

Burgos, Alexander N

Subject: FW: [External] Thank you! Re: Revised & Formatted Rules Re: Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Friday, May 16, 2025 2:48 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: [External] Thank you! Re: Revised & Formatted Rules Re: Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B

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Wonderful news, Seth! Thank you for closing the loop on this subchapter!
Truly,
AnnE

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>>> "Ascher, Seth M" <seth.ascher@oah.nc.gov> 5/16/2025 2:43 PM >>>
These look good and I anticipate recommending the final revised version of 18 NCAC 07B.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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From: Ann Elmore <aelmore@sosnc.gov>
Sent: Friday, May 16, 2025 2:25 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>

Subject: [External] Revised & Formatted Rules Re: Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good afternoon, Seth.

Thank you for the good news on a Friday!

Enclosed are the five formatted rules in Subchapter 07B reflecting the changes made pursuant to the TCRs.

Please let us know if anything else is needed.

Sent on behalf of Ann B. Wall, General Counsel & Rulemaking Coordinator.

AnnE

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>>> "Ascher, Seth M" <seth.ascher@oah.nc.gov> 5/16/2025 1:48 PM >>>
Ann,

Thank you for the prompt responses. These satisfy the concerns I had and I anticipate recommending approval once the rules impacted by changes are filed.

Sincerely,

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

1 18 NCAC 07B .0402 is amended with changes as published in 39:13 NCR 808-809 as follows:

2
3 **SECTION .0400 – FORMS**
4

5 **18 NCAC 07B .0402 CONTACT INFORMATION**

6 For purposes of the rules in this Section, unless otherwise indicated, "contact information" means:

- 7 (1) for ~~a key an~~ individual who is identified pursuant to ~~G.S. 10B-134.19(c)(2)~~; G.S. 10B-134.19(c)(2)
8 by a platform, by an IPEN, or for key individuals operating a sole proprietorship or general
9 partnership:
10 (a) the full name of the individual;
11 (b) the following addresses:
12 (i) residential address;
13 (ii) business address;
14 (iii) mailing address;
15 (c) business telephone numbers;
16 (d) business email addresses; **and**
17 (e) any other names by which the individual is known, including nicknames;
18 (2) for a business entity:
19 (a) the name of the entity on record with the Secretary of State, formation or filing office in its
20 state, federally recognized tribe, or country of formation;
21 (b) the name of the state, federally recognized tribe, or country of formation;
22 (c) the year of formation;
23 ~~(e)(d)~~ the street address, and the mailing address if different, of the entity's principal office;
24 ~~(d)(e)~~ the street address, and the mailing address if different, of the entity's registered office;
25 ~~(e)(f)~~ the principal office telephone number of the entity;
26 ~~(f)(g)~~ the email address of the entity;
27 ~~(g)(h)~~ the URL for the entity's website, if any;
28 ~~(h)(i)~~ the name of an individual who is designated by the entity as the primary contact between
29 the Department and the entity, and for that individual:
30 (i) title and position;
31 (ii) telephone number;
32 (iii) mailing address if different from the addresses provided in Sub-Items (2)(c) and
33 (d) of this Item;
34 (iv) primary email address; **and**
35 (v) secondary email address, if applicable;

1 ~~(j)~~(i) the name of an individual designated as the secondary contact between the Department and
2 the entity if the individual named in ~~Sub-Item (2)(h)~~ Sub-Item (2)(i) of this Item is not
3 available; and

4 ~~(j)~~(k) the information in ~~Sub-Item (2)(h)~~ Sub-Item (2)(i) of this Item for the secondary contact
5 individual named in ~~Sub-Item (i)~~ Sub-Item (2)(j) of this Item; or

6 (3) for a technology provider's, or traditional physical seal manufacturer manufacturer's or vendor's
7 registered agent listed on an ~~application filed pursuant to G.S. 10B-134.19:~~ application:

8 (a) the name of the registered agent;

9 (b) the registered office address for the registered agent and mailing address if different; and

10 (c) a business email address for the registered agent.

11
12 *History Note: Authority G.S. 10B-4; 10B-134.21;*

13 *Eff. July 1, ~~2024~~ 2024;*

14 *Amended Eff. July 1, 2025.*

1 18 NCAC 07B .0411 is amended with changes as published in 39:13 NCR 810 as follows:

2
3 **18 NCAC 07B .0411 NOTICE OF CHANGES REGARDING CRIMINAL HISTORY RECORD**

4 The form for notice of changes in criminal history record requires:

- 5 (1) the name of the individual;
- 6 (2) if a commissioned notary ~~public~~ public, the notary's commission number;
- 7 (3) the last four digits of the individual's SSN;
- 8 (4) contact information for the individual;
- 9 (5) for a previously unreported criminal charge:
- 10 (a) the date of the charge;
- 11 (b) the court in which the charge is filed;
- 12 (c) whether the charge is for a felony or misdemeanor;
- 13 (d) the name of the charge;
- 14 (e) whether the charge has been set for a hearing or trial and, if yes, the scheduled date; and
- 15 (f) the case number;
- 16 (6) for notice of a disposition of a criminal charge:
- 17 (a) the date of the disposition;
- 18 (b) the name of the court and the case number;
- 19 (c) if the disposition resulted in a conviction:
- 20 (i) whether the conviction was for a felony or misdemeanor; and
- 21 (ii) the sentence imposed;
- 22 (d) a copy of the disposition document or judgment;
- 23 (e) a copy of any document restoring citizenship rights; ~~and~~
- 24 (7) a declaration under penalty of perjury that the information provided is true and [correct]
- 25 complete to the best of the affiant's knowledge and belief; and
- 26 ~~(7)~~(8) the signature of the individual and the date signed.

27
28 *History Note: Authority G.S. 10B-4;*
29 *Eff. July 1, ~~2024~~ 2024;*
30 *Amended Eff. July 1, 2025.*

1 18 NCAC 07B .0420 is adopted with changes as published in 39:13 NCR 810-811 as follows:

2
3 **18 NCAC 07B .0420 NOTARY FORM TO REPORT TECHNOLOGY DYSFUNCTIONS**

4 The form notaries public and electronic notaries public use to report technology dysfunctions pursuant to 18 NCAC
5 07D .0309 requires:

- 6 (1) the notary's commission name;
- 7 (2) the name of the technology provider with which the notary is experiencing dysfunctions;
- 8 (3) a description of the dysfunction;
- 9 (4) the basis for concern if a dysfunction is suspected to involve ~~security, privacy or accuracy of~~
10 credential verification or identity ~~proofing~~; proofing;
- 11 (a) security;
- 12 (b) privacy; or
- 13 (c) accuracy;
- 14 (5) the dates, times, and duration of the dysfunctions; and
- 15 (6) the efforts undertaken to resolve the dysfunctions by the notary or the technology provider.

16
17 *History Note: Authority G.S. 10B-4; 10B-134.19;*
18 *Eff. July 1, 2025.*

1 18 NCAC 07B .0422 is adopted with changes as published in 39:13 NCR 811-812 as follows:

2
3 **18 NCAC 07B .0422 APPLICATION FOR TECHNOLOGY PROVIDER AUTHORIZATION –**
4 **GENERAL**

5 Technology provider application forms shall require:

- 6 (1) the type or types of authorization to which the application applies:
- 7 (a) IPEN;
- 8 (b) platform;
- 9 (c) credential analysis;
- 10 (d) identity proofing; or
- 11 (e) custodian;
- 12 (2) contact information:
- 13 (a) the information specified in Rule .0402(2) of this Section for the applicant;
- 14 (b) the information specified in Rule .0402(3) of this Section for the registered agent of a
- 15 business entity that is an applicant;
- 16 (c) the information specified in Rule .0402(1) of this Section for:
- 17 (i) the applicant's key individuals; and
- 18 (ii) the applicant's compliance contact employee designated pursuant to Item (4)(b)
- 19 of this Rule, except that the residential address shall not be required; and
- 20 (3) the following general information about the technology provider applicant and its business:
- 21 (a) the type of business entity;
- 22 (b) all states and nations in which the technology provider applicant has obtained a certificate
- 23 of authority to do business, or its equivalent;
- 24 (c) all assumed business names, trade names, or "doing business as" names used by the
- 25 applicant in North Carolina, other states, or nations;
- 26 (d) all fictitious or equivalent names registered with the Department or other states or nations
- 27 because the business' legal name is not available. Note: An example would be a fictitious
- 28 name registered with the Department pursuant to G.S. 55D-22(a)(6);
- 29 (e) for legal actions, the information required by 18 NCAC 07J .0416;
- 30 (f) for debarment involving the applicant or the applicant's key individuals, the information
- 31 specified in 18 NCAC 07J .0414;
- 32 (g) for disciplinary actions, the information specified in 18 NCAC 07J .0418;
- 33 (h) for voluntary exclusion in lieu of debarment involving the applicant or the applicant's key
- 34 individuals, the information specified in 18 NCAC 07J .0415;
- 35 (i) for bankruptcy, the information required by 18 NCAC 07J .0420;
- 36 (j) a summary of its most recent IT security audit as required by 18 NCAC 07J .0621;
- 37 (4) the following information related to the authorization that the applicant seeks:

- 1 (a) the name of the product and the version number for which authorization is sought;
- 2 (b) the full name of the compliance contact who meets the requirements of, and has the duties
- 3 set forth in, 18 NCAC 07J .0406;
- 4 (c) minimum hardware and software specifications as required by 18 NCAC 07J .0608;
- 5 (5) the following information regarding the applicant's provision of the same or similar notarial services
- 6 in jurisdictions other than North Carolina:
- 7 (a) the name of each state, tribe or nation; and
- 8 (b) for each named jurisdiction, the information required by 18 NCAC 07J .0405;
- 9 (6) a URL link to the information that the applicant is required to provide pursuant to 18 NCAC 07J
- 10 .0607;
- 11 (7) information regarding whether the applicant's services as a technology provider have within the
- 12 preceding five years been the subject of:
- 13 (a) a security breach; or
- 14 (b) a ransomware attack, as defined at G.S. 143B-1320(a)(14a);
- 15 (8) identification and information for third-party vendors, supporting vendors, and businesses pursuant
- 16 to 18 NCAC 07J .0408-.0411;
- 17 (9) the applicant's certifications, compliance reports, or equivalents by independent third-party entities
- 18 with:
- 19 (a) the information required by 18 NCAC .07J .0413; and
- 20 (b) if the certifications, compliance reports, or equivalents have levels, grades, or annotations,
- 21 those applicable to the applicant;
- 22 Note: Examples of acceptable certifications are ISO 270001 and SOC2;
- 23 (10) the applicant's certification that it complies with the requirements to have and implement the plans
- 24 required by 18 NCAC 07J Section .0600; and
- 25 (11) signature by a key individual employed by the technology provider applicant who has the authority
- 26 to:
- 27 (a) bind the applicant;
- 28 (b) make certifications required by this ~~rule~~ Rule and the rules in 18 NCAC Subchapter 07J;
- 29 and
- 30 (c) declare under penalty of perjury that:
- 31 (i) the information provided is true and complete to the best of the signer's knowledge
- 32 and belief;
- 33 (ii) the application was prepared under the signer's authority and supervision;
- 34 (iii) the applicant agrees that representations, ~~promises~~ promises, and assurances of
- 35 performance in the application are binding on it; and
- 36 (d) the date on which the application was signed.
- 37

1 *History Note:* *Authority G.S. 10B-4; 10B-126(d); 10B-134.19; 10B-134.21; 10B-134.23(b);*
2 *Eff. July 1, 2025.*

1 18 NCAC 07B .0431 is adopted with changes as published in 39:13 NCR 813-814 as follows:

2
3 **18 NCAC 07B .0431 FORM FOR NOTARY REPORTABLE INCIDENTS**

4 The form for a notary public notifying the Department of reportable incidents pursuant to 18 NCAC 07D .0310
5 requires:

- 6 (1) the notary's commission name and commission number;
- 7 (2) how the notary discovered the reportable incident;
- 8 (3) the date of the last notarization performed by the notary before the reportable incident occurred or
9 was discovered;
- 10 (4) the date on which the notary discovered the reportable incident regarding the notary's physical seal,
11 electronic seal, signature, journal, notarial records, or communication technology recording;
- 12 (5) the date on which the reportable incident occurred, if different from the date of discovery;
- 13 (6) the date on which the notary reported to:
- 14 (a) the Register of Deeds, and the county of that Register of Deeds; and
- 15 (b) law enforcement, if applicable, including the name of the law enforcement agency and a
16 copy of the law enforcement report if available;
- 17 ~~(7) — how the notary discovered the reportable incident;~~
- 18 ~~(8)(7)~~ any other information that the notary believes may be useful to the Department in assessing the
19 reportable incident; and
- 20 ~~(9)(8)~~ the notary's signature and the date of the report to the Department.

21
22 *History Note: Authority G.S. 10B-4; 10B-36; 10B-125(b); 10B-126(d); 10B-134.21;*
23 *Eff. July 1, 2025.*

Burgos, Alexander N

Subject: FW: [External] Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B
Attachments: Response to 18 NCAC 07B TCRs (5.14.25).docx

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Wednesday, May 14, 2025 3:46 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: [External] Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B

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Hi, Seth.

Please use the enclosed document instead of the one by the same name sent at 2:16PM today. The earlier version contains a footer for draft tracking. Removal of that footer changed spacing, so I moved the last paragraph to the signature page. The text is otherwise the same.

Thank you for your consideration.

Sent on behalf of Ann B. Wall, General Counsel and Rulemaking Coordinator.

Truly,
AnnE

Ann McNellis Elmore, Agency Legal Consultant

NC Department of the Secretary of State

PO Box 29622

Raleigh, NC 27626-0622

Telephone: [\(919\) 814-5521](tel:9198145521)

Fax: 919 814-5596

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https://www.sosnc.gov/divisions/securities/for_investors.)

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

ELAINE F. MARSHALL
SECRETARY OF STATE

ANN B. WALL
General Counsel

May 14, 2025

By email

Seth M. Ascher
OAH counsel to RRC
seth.ascher@oah.nc.gov

Re: Request for technical changes to
18 NCAC 07B

Enclosed please find our responses to your requests for changes to 18 NCAC 07B as well as responses to your questions. For convenience, we have numbered the technical change requests. The language of the adopted rules and your technical correction requests are provided in black font, with your requests italicized. Our responses and changes made, if any, are provided in blue font.

Please feel free to call me if you have any questions.

RESPONSES TO
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10
FOR 18 NCAC SUBCHAPTER 07B

RFC #1

***18 NCAC 07B .0102:** In item (18), the definition for journal, does the post-publication strike-through of the reference to statute and rule change the intended meaning? It reads to me like removing unnecessary verbiage to help with readability, but I want to make sure I have not missed some nuance in this change.*

18 NCAC 07B .0102 DEFINITIONS

For purposes of this Chapter:

...
(18) "Journal" means a collection of entries describing notarial acts that is created and maintained by a notary public. ~~[public in compliance with Chapter 10B of the General Statutes and the rules in this Chapter.]~~
...

Your understanding of the reason for the strikethrough is correct. We do not think the strike-through changes the meaning of the definition.

RFC #2

18 NCAC 07B .0105: Is there a concrete standard behind reasonable efforts? Or is that meant to be subjective to the person responding?

18 NCAC 07B .0105 OBTAINING REQUESTED INFORMATION

A ~~filer~~ person responding to a departmental information request shall:

- (1) use reasonable efforts to obtain information requested by the Department;
- (2) deliver to the Department all requested information that is available to the ~~filer~~ person; and
- (3) if unable to obtain requested information, describe to the Department the efforts taken to obtain the information.

We have provided a single response following the second question on this topic.

Put another way, would you view it as a violation of this rule if a responder was unable to provide the information, described what they tried to do to obtain the information, and you believe that there are additional actions they should take?

The purpose of this rule is to ensure transparency regarding the steps that are expected to be taken by a person when the Department requests information, whether as part of an application, an investigation, or some other reason. The person must supply available requested information and explain what it has done to find information requested but not provided. Whether the Department would determine that a failure to provide requested information violates the rule would be dependent upon factors such as the Department's reason for asking for the information, the significance of the information, and exigent factors outside the control of the respondent.

The proposed "reasonable efforts" standard is designed to provide respondents with flexibility to explain why requested information could not be delivered to the Department. Deleting the "reasonable efforts" standard such that the respondent would be required to deliver requested information in all instances would establish instead a strict compliance standard, which in foreseeable instances would not be fair to the respondent. Having no standard would eliminate programmatic integrity by allowing respondents to baldly declare information unavailability without having to provide any support for the assertion. Adopting a "best efforts" standard approaches the draconian outcomes of a strict compliance standard. The Department has concluded that the "reasonable efforts" standard, accompanied by a description of efforts actually undertaken to obtain the requested information, is the standard that strikes the correct balance between providing circumstantial flexibility and assuring programmatic integrity.

There are certainly foreseeable instances where, under the circumstances, the Department might not consider as "reasonable" efforts to obtain requested information that the respondent nonetheless considered reasonable. Such instances, in the experience of Department staff, are exceedingly rare, to the point of being non-existent. Where such a disagreement could not be resolved by negotiation, dispute resolution would be found in the Office of Administrative Hearings.

The Department does not think there can be a single standard for "reasonable efforts" to obtain information that it requests. For example, consider the difference between a departmental request for:

- omitted information on a notary's commission application that could simply be a skipped blank, or
- details regarding specific aspects of a technology provider's current contingency plan when the Department is investigating a prolonged system outage.

In the first instance, a reasonable effort might be looking up the omitted information and filling in the blank. In the second instance, a reasonable effort might include searching paper or computer documents for the relevant sections of their documented plan and documenting the deviation between the plan and actual steps taken.

RFC #3

18 NCAC 07B .0402: *Add an and at the end of item (1)(d).*

Add an and at the end of item (2)(i)(iv).

18 NCAC 07B .0402 CONTACT INFORMATION

For purposes of the rules in this Section, unless otherwise indicated, "contact information" means:

- (1) ~~for a key an~~ individual who is identified pursuant to ~~G.S. 10B-134.19(e)(2);~~ G.S. 10B-134.19(c)(2)
by a platform, by an IPEN, or for key individuals operating a sole proprietorship or general partnership:
 - (a) the full name of the individual;
 - (b) the following addresses:
 - (i) residential address;
 - (ii) business address;
 - (iii) mailing address;
 - (c) business telephone numbers;
 - (d) business email addresses;
 - (e) any other names by which the individual is known, including nicknames;
 - (2) for a business entity:
 - (a) the name of the entity on record with the Secretary of State, formation or filing office in its state, federally recognized tribe, or country of formation;
 - (b) the name of the state, federally recognized tribe, or country of formation;
 - (c) the year of formation;
 - ~~(e)(d)~~ the street address, and the mailing address if different, of the entity's principal office;
 - ~~(d)(e)~~ the street address, and the mailing address if different, of the entity's registered office;
 - ~~(e)(f)~~ the principal office telephone number of the entity;
 - ~~(d)(g)~~ the email address of the entity;
 - ~~(g)(h)~~ the URL for the entity's website, if any;
 - ~~(h)(i)~~ the name of an individual who is designated by the entity as the primary contact between the Department and the entity, and for that individual:
 - (i) title and position;
 - (ii) telephone number;
 - (iii) mailing address if different from the addresses provided in Sub-Items (2)(c) and (d) of this Item;
 - (iv) primary email address;
 - (v) secondary email address, if applicable;
- ...

The Department agrees with both technical change requests for 18 NCAC 07B .0402 and proposes to make the changes as highlighted below in **green**.

18 NCAC 07B .0402 CONTACT INFORMATION

For purposes of the rules in this Section, unless otherwise indicated, "contact information" means:

- (1) ~~for a key an~~ individual who is identified pursuant to ~~G.S. 10B-134.19(e)(2);~~ G.S. 10B-134.19(c)(2)
by a platform, by an IPEN, or for key individuals operating a sole proprietorship or general partnership:
 - (a) the full name of the individual;
 - (b) the following addresses:
 - (i) residential address;
 - (ii) business address;
 - (iii) mailing address;
 - (c) business telephone numbers;
 - (d) business email addresses; **and**

- (e) any other names by which the individual is known, including nicknames;
- (2) for a business entity:
 - (a) the name of the entity on record with the Secretary of State, formation or filing office in its state, federally recognized tribe, or country of formation;
 - (b) the name of the state, federally recognized tribe, or country of formation;
 - (c) the year of formation;
 - ~~(e)~~(d) the street address, and the mailing address if different, of the entity's principal office;
 - ~~(d)~~(e) the street address, and the mailing address if different, of the entity's registered office;
 - ~~(e)~~(f) the principal office telephone number of the entity;
 - ~~(f)~~(g) the email address of the entity;
 - ~~(g)~~(h) the URL for the entity's website, if any;
 - ~~(h)~~(i) the name of an individual who is designated by the entity as the primary contact between the Department and the entity, and for that individual:
 - (i) title and position;
 - (ii) telephone number;
 - (iii) mailing address if different from the addresses provided in Sub-Items (2)(c) and (d) of this Item;
 - (iv) primary email address; **and**
 - (v) secondary email address, if applicable;
- ...

RFC #4

18 NCAC 07B .0411: *In item (2), I think you need a comma: “if a commissioned notary **public** **public**, the notary’s commission number;”*

18 NCAC 07B .0411 NOTICE OF CHANGES REGARDING CRIMINAL HISTORY RECORD

The form for notice of changes in criminal history record requires:

- (1) the name of the individual;
- (2) if a commissioned notary public the notary's commission number;
- (3) the last four digits of the individual's SSN; . . .

The Department agrees and proposes to make the change as highlighted below in **green**.

18 NCAC 07B .0411 NOTICE OF CHANGES REGARDING CRIMINAL HISTORY RECORD

The form for notice of changes in criminal history record requires:

- (1) the name of the individual;
- (2) if a commissioned notary **public** **public**, the notary's commission number;
- (3) the last four digits of the individual's SSN;

...

RFC #5

18 NCAC 07B .0420: *There is a potential grammar problem in your list in item (4). As written, it is unclear if “privacy or accuracy” is meant to modify just “credential verification” or both “credential verification” and “identity proofing.” Depending on your intended meaning I think it needs to be either (highlights to emphasize difference):*

*“to involve security, **or** privacy or accuracy of **either** credential verification or identity proofing;” or*

*“to involve security, or privacy or accuracy of credential **verification**, or identity proofing;”*

18 NCAC 07B .0420 NOTARY FORM TO REPORT TECHNOLOGY DYSFUNCTIONS

The form notaries public and electronic notaries public use to report technology dysfunctions pursuant to 18 NCAC 07D .0309 requires:

- (1) the notary's commission name;
- (2) the name of the technology provider with which the notary is experiencing dysfunctions;
- (3) a description of the dysfunction;
- (4) the basis for concern if a dysfunction is suspected to involve security, privacy or accuracy of credential verification or identity proofing;
- (5) the dates, times, and duration of the dysfunctions; and
- (6) the efforts undertaken to resolve the dysfunctions by the notary or the technology provider.

The Department proposes making the change highlighted below in **green**

18 NCAC 07B .0420 NOTARY FORM TO REPORT TECHNOLOGY DYSFUNCTIONS

The form notaries public and electronic notaries public use to report technology dysfunctions pursuant to 18 NCAC 07D .0309 requires:

- (1) the notary's commission name;**
- (2) the name of the technology provider with which the notary is experiencing dysfunctions;**
- (3) a description of the dysfunction;**
- (4) the basis for concern if a dysfunction is suspected to involve **Credential verification or identity proofing:****
 - (a) security;**
 - (b) privacy; or**
 - (c) accuracy;**
- (5) the dates, times, and duration of the dysfunctions; and**
- (6) the efforts undertaken to resolve the dysfunctions by the notary or the technology provider.**

RFC #6

18 NCAC 07B .0422: *In item (11)(b), capitalize rule in “this Rule”.*

In item (11)(c)(iii), consider a comma after promises: “representations, promises, and assurances”.

18 NCAC 07B .0422 APPLICATION FOR TECHNOLOGY PROVIDER AUTHORIZATION – GENERAL

Technology provider application forms shall require:

...

- (11) signature by a key individual employed by the technology provider applicant who has the authority to:
 - (a) bind the applicant;

- (b) make certifications required by this rule and the rules in 18 NCAC Subchapter 07J; and
- (c) declare under penalty of perjury that:
 - (i) the information provided is true and complete to the best of the signer's knowledge and belief;
 - (ii) the application was prepared under the signer's authority and supervision;
 - (iii) the applicant agrees that representations, promises and assurances of performance in the application are binding on it; and

...

The Department agrees with both technical change requests for 18 NCAC 07B .0422 and proposes to make the changes as highlighted below in **green**.

**18 NCAC 07B .0422 APPLICATION FOR TECHNOLOGY PROVIDER AUTHORIZATION
– GENERAL**

Technology provider application forms shall require:

...

- (11) signature by a key individual employed by the technology provider applicant who has the authority to:
 - (a) bind the applicant;
 - (b) make certifications required by this **rule Rule** and the rules in 18 NCAC Subchapter 07J; and
 - (c) declare under penalty of perjury that:
 - (i) the information provided is true and complete to the best of the signer's knowledge and belief;
 - (ii) the application was prepared under the signer's authority and supervision;
 - (iii) the applicant agrees that representations, **promises promises**, and assurances of performance in the application are binding on it; and

...

RFC #7

18 NCAC 07B .0431: *Items (2) and (7) are identical. Remove one of them and renumber appropriately.*

18 NCAC 07B .0431 FORM FOR NOTARY REPORTABLE INCIDENTS

The form for a notary public notifying the Department of reportable incidents pursuant to 18 NCAC 07D .0310 requires:

- (1) the notary's commission name and commission number;
- (2) how the notary discovered the reportable incident;
- (3) the date of the last notarization performed by the notary before the reportable incident occurred or was discovered;
- (4) the date on which the notary discovered the reportable incident regarding the notary's physical seal, electronic seal, signature, journal, notarial records, or communication technology recording;
- (5) the date on which the reportable incident occurred, if different from the date of discovery;
- (6) the date on which the notary reported to:
 - (a) the Register of Deeds, and the county of that Register of Deeds; and
 - (b) law enforcement, if applicable, including the name of the law enforcement agency and a copy of the law enforcement report if available;
- (7) how the notary discovered the reportable incident;
- (8) any other information that the notary believes may be useful to the Department in assessing the reportable incident; and
- (9) the notary's signature and the date of the report to the Department.

The Department agrees and proposes to make the change as highlighted below in **green**.

18 NCAC 07B .0431 FORM FOR NOTARY REPORTABLE INCIDENTS

The form for a notary public notifying the Department of reportable incidents pursuant to 18 NCAC 07D .0310 requires:

- (1) the notary's commission name and commission number;
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- (4) the date on which the notary discovered the reportable incident regarding the notary's physical seal, electronic seal, signature, journal, notarial records, or communication technology recording;
- (5) the date on which the reportable incident occurred, if different from the date of discovery;
- (6) the date on which the notary reported to:
 - (a) the Register of Deeds, and the county of that Register of Deeds; and
 - (b) law enforcement, if applicable, including the name of the law enforcement agency and a copy of the law enforcement report if available;
- ~~(7) —~~ how the notary discovered the reportable incident;
- ~~(8);~~(7) any other information that the notary believes may be useful to the Department in assessing the reportable incident; and
- ~~(9);~~(8) the notary's signature and the date of the report to the Department.

RFC #8

18 NCAC 07B .0802: *With regards to item (c), is there a rule or statute that would otherwise indicate that a notary public could not rely on representations made by third parties?*

18 NCAC 07B .0802 PRINCIPAL SEEKING ACCOMMODATION

(a) Before performing a notarial act, a notary public shall require a principal needing reasonable accommodation for vision, hearing, or speech impairments to ~~describe~~ disclose:

- (1) any auxiliary aid that the principal ~~is using~~ has chosen for use in connection with the notarial act; and
- (2) any interpreter, transliterator, or CART captioner that the principal ~~is using~~ has chosen for use in connection with the notarial act.

(b) If the notarial act is a remote notarial act, ~~then~~ the notary shall comply with Paragraph (a) of this Rule before starting the communication technology recording.

(c) A notary public may rely on representations made by an interpreter, transliterator, or certified CART captioner pursuant to this Section.

Yes, there are many instances in which a notary cannot rely on third party representations. The physical presence of the principal is required for a traditional notarization. G.S. §10B-20(c)(1). There have been instances in which an employer has directed a notary to notarize for a principal based on the employer's statement that the employer recognizes the voice of the principal on the phone authorizing the notarization and the principal's signature. This is a representation upon which the notary may not rely and which may lead to enforcement for failure to require the physical presence of the principal. As another example, 18 NCAC 07H .0302 prohibits a notary public from relying upon a credible witness to identify a remotely located principal. Hence, Item (c) gives needed direction for what is permitted in this narrow circumstance.

Thanks to you, Seth, and your colleague Travis Wiggs for your careful attention to detail.

Regards,

A handwritten signature in cursive script, appearing to read "Ann B. Wall".

Ann B. Wall
General Counsel and Rulemaking Coordinator

Burgos, Alexander N

Subject: FW: [External] Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B
Attachments: Response to 18 NCAC 07B TCRs (5.14.25).docx

From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, May 14, 2025 2:16 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Responses to your technical change requests (TCRs) and questions regarding 18 NCAC 07B

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Attached please find our responses to your questions and TCRs for 18 NCAC 07B.

Please let us know if you have any further questions.

Regards,

Ann

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

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State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

ANN B. WALL
General Counsel

May 14, 2025

By email

Seth M. Ascher
OAH counsel to RRC
seth.ascher@oah.nc.gov

Re: Request for technical changes to
18 NCAC 07B

Enclosed please find our responses to your requests for changes to 18 NCAC 07B as well as responses to your questions. For convenience, we have numbered the technical change requests. The language of the adopted rules and your technical correction requests are provided in black font, with your requests italicized. Our responses and changes made, if any, are provided in blue font.

Please feel free to call me if you have any questions.

RESPONSES TO
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10
FOR 18 NCAC SUBCHAPTER 07B

RFC #1

***18 NCAC 07B .0102:** In item (18), the definition for journal, does the post-publication strike-through of the reference to statute and rule change the intended meaning? It reads to me like removing unnecessary verbiage to help with readability, but I want to make sure I have not missed some nuance in this change.*

18 NCAC 07B .0102 DEFINITIONS

For purposes of this Chapter:

- ...
- (18) "Journal" means a collection of entries describing notarial acts that is created and maintained by a notary public. ~~[public in compliance with Chapter 10B of the General Statutes and the rules in this Chapter.]~~
- ...

Your understanding of the reason for the strikethrough is correct. We do not think the strike-through changes the meaning of the definition.

RFC #2

18 NCAC 07B .0105: *Is there a concrete standard behind reasonable efforts? Or is that meant to be subjective to the person responding?*

18 NCAC 07B .0105 OBTAINING REQUESTED INFORMATION

A ~~filer~~ person responding to a departmental information request shall:

- (1) use reasonable efforts to obtain information requested by the Department;
- (2) deliver to the Department all requested information that is available to the ~~filer~~ person; and
- (3) if unable to obtain requested information, describe to the Department the efforts taken to obtain the information.

We have provided a single response following the second question on this topic.

Put another way, would you view it as a violation of this rule if a responder was unable to provide the information, described what they tried to do to obtain the information, and you believe that there are additional actions they should take?

The purpose of this rule is to ensure transparency regarding the steps that are expected to be taken by a person when the Department requests information, whether as part of an application, an investigation, or some other reason. The person must supply available requested information and explain what it has done to find information requested but not provided. Whether the Department would determine that a failure to provide requested information violates the rule would be dependent upon factors such as the Department's reason for asking for the information, the significance of the information, and exigent factors outside the control of the respondent.

The proposed "reasonable efforts" standard is designed to provide respondents with flexibility to explain why requested information could not be delivered to the Department. Deleting the "reasonable efforts" standard such that the respondent would be required to deliver requested information in all instances would establish instead a strict compliance standard, which in foreseeable instances would not be fair to the respondent. Having no standard would eliminate programmatic integrity by allowing respondents to baldly declare information unavailability without having to provide any support for the assertion. Adopting a "best efforts" standard approaches the draconian outcomes of a strict compliance standard. The Department has concluded that the "reasonable efforts" standard, accompanied by a description of efforts actually undertaken to obtain the requested information, is the standard that strikes the correct balance between providing circumstantial flexibility and assuring programmatic integrity.

There are certainly foreseeable instances where, under the circumstances, the Department might not consider as "reasonable" efforts to obtain requested information that the respondent nonetheless considered reasonable. Such instances, in the experience of Department staff, are exceedingly rare, to the point of being non-existent. Where such a disagreement could not be resolved by negotiation, dispute resolution would be found in the Office of Administrative Hearings.

The Department does not think there can be a single standard for "reasonable efforts" to obtain information that it requests. For example, consider the difference between a departmental request for:

- omitted information on a notary's commission application that could simply be a skipped blank, or
- details regarding specific aspects of a technology provider's current contingency plan when the Department is investigating a prolonged system outage.

In the first instance, a reasonable effort might be looking up the omitted information and filling in the blank. In the second instance, a reasonable effort might include searching paper or computer documents for the relevant sections of their documented plan and documenting the deviation between the plan and actual steps taken.

RFC #3

18 NCAC 07B .0402: *Add an and at the end of item (1)(d).*

Add an and at the end of item (2)(i)(iv).

18 NCAC 07B .0402 CONTACT INFORMATION

For purposes of the rules in this Section, unless otherwise indicated, "contact information" means:

- (1) for a key an individual who is identified pursuant to ~~G.S. 10B-134.19(e)(2)~~: G.S. 10B-134.19(c)(2) by a platform, by an IPEN, or for key individuals operating a sole proprietorship or general partnership:
 - (a) the full name of the individual;
 - (b) the following addresses:
 - (i) residential address;
 - (ii) business address;
 - (iii) mailing address;
 - (c) business telephone numbers;
 - (d) business email addresses;
 - (e) any other names by which the individual is known, including nicknames;
- (2) for a business entity:
 - (a) the name of the entity on record with the Secretary of State, formation or filing office in its state, federally recognized tribe, or country of formation;
 - (b) the name of the state, federally recognized tribe, or country of formation;
 - (c) the year of formation;
 - ~~(e)(d)~~ the street address, and the mailing address if different, of the entity's principal office;
 - ~~(d)(e)~~ the street address, and the mailing address if different, of the entity's registered office;
 - ~~(e)(f)~~ the principal office telephone number of the entity;
 - ~~(f)(g)~~ the email address of the entity;
 - ~~(g)(h)~~ the URL for the entity's website, if any;
 - ~~(h)(i)~~ the name of an individual who is designated by the entity as the primary contact between the Department and the entity, and for that individual:
 - (i) title and position;
 - (ii) telephone number;
 - (iii) mailing address if different from the addresses provided in Sub-Items (2)(c) and (d) of this Item;
 - (iv) primary email address;
 - (v) secondary email address, if applicable;

...

The Department agrees with both technical change requests for 18 NCAC 07B .0402 and proposes to make the changes as highlighted below in **green**

18 NCAC 07B .0402 CONTACT INFORMATION

For purposes of the rules in this Section, unless otherwise indicated, "contact information" means:

- (1) for a key an individual who is identified pursuant to ~~G.S. 10B-134.19(e)(2)~~: G.S. 10B-134.19(c)(2) by a platform, by an IPEN, or for key individuals operating a sole proprietorship or general partnership:
 - (a) the full name of the individual;

- (b) the following addresses:
 - (i) residential address;
 - (ii) business address;
 - (iii) mailing address;
 - (c) business telephone numbers;
 - (d) business email addresses; **and**
 - (e) any other names by which the individual is known, including nicknames;
- (2) for a business entity:
- (a) the name of the entity on record with the Secretary of State, formation or filing office in its state, federally recognized tribe, or country of formation;
 - (b) the name of the state, federally recognized tribe, or country of formation;
 - (c) the year of formation;
 - ~~(e)~~(d) the street address, and the mailing address if different, of the entity's principal office;
 - ~~(d)~~(c) the street address, and the mailing address if different, of the entity's registered office;
 - ~~(e)~~(f) the principal office telephone number of the entity;
 - ~~(f)~~(g) the email address of the entity;
 - ~~(g)~~(h) the URL for the entity's website, if any;
 - ~~(h)~~(i) the name of an individual who is designated by the entity as the primary contact between the Department and the entity, and for that individual:
 - (i) title and position;
 - (ii) telephone number;
 - (iii) mailing address if different from the addresses provided in Sub-Items (2)(c) and (d) of this Item;
 - (iv) primary email address; **and**
 - (v) secondary email address, if applicable;

...

RFC #4

18 NCAC 07B .0411: *In item (2), I think you need a comma: “if a commissioned notary **public** **public**, the notary’s commission number;”*

18 NCAC 07B .0411 NOTICE OF CHANGES REGARDING CRIMINAL HISTORY RECORD

The form for notice of changes in criminal history record requires:

- (1) the name of the individual;
- (2) if a commissioned notary public the notary's commission number;
- (3) the last four digits of the individual's SSN; . . .

The Department agrees and proposes to make the change as highlighted below in **green**.

18 NCAC 07B .0411 NOTICE OF CHANGES REGARDING CRIMINAL HISTORY RECORD

The form for notice of changes in criminal history record requires:

- (1) the name of the individual;
- (2) if a commissioned notary **public** **public**, the notary's commission number;
- (3) the last four digits of the individual's SSN;

...

RFC #5

18 NCAC 07B .0420: *There is a potential grammar problem in your list in item (4). As written, it is unclear if “privacy or accuracy” is meant to modify just “credential verification” or both “credential verification” and “identity proofing.” Depending on your intended meaning I think it needs to be either (highlights to emphasize difference):*

*“to involve security, **or** privacy or accuracy of **either** credential verification or identity proofing;” or*

*“to involve security, or privacy or accuracy of credential **verification**, or identity proofing;”*

18 NCAC 07B .0420 NOTARY FORM TO REPORT TECHNOLOGY DYSFUNCTIONS

The form notaries public and electronic notaries public use to report technology dysfunctions pursuant to 18 NCAC 07D .0309 requires:

- (1) the notary's commission name;
- (2) the name of the technology provider with which the notary is experiencing dysfunctions;
- (3) a description of the dysfunction;
- (4) the basis for concern if a dysfunction is suspected to involve security, privacy or accuracy of credential verification or identity proofing;
- (5) the dates, times, and duration of the dysfunctions; and
- (6) the efforts undertaken to resolve the dysfunctions by the notary or the technology provider.

The Department proposes making the change highlighted below in **green**

18 NCAC 07B .0420 NOTARY FORM TO REPORT TECHNOLOGY DYSFUNCTIONS

The form notaries public and electronic notaries public use to report technology dysfunctions pursuant to 18 NCAC 07D .0309 requires:

- (1) the notary's commission name;**
- (2) the name of the technology provider with which the notary is experiencing dysfunctions;**
- (3) a description of the dysfunction;**
- (4) the basis for concern if a dysfunction is suspected to involve **Credential verification or identity proofing.****
 - (a) security;**
 - (b) privacy; or**
 - (c) accuracy;**
- (5) the dates, times, and duration of the dysfunctions; and**
- (6) the efforts undertaken to resolve the dysfunctions by the notary or the technology provider.**

RFC #6

18 NCAC 07B .0422: *In item (11)(b), capitalize rule in “this Rule”.*

In item (11)(c)(iii), consider a comma after promises: “representations, promises, and assurances”.

18 NCAC 07B .0422 APPLICATION FOR TECHNOLOGY PROVIDER AUTHORIZATION – GENERAL

Technology provider application forms shall require:

...

- (11) signature by a key individual employed by the technology provider applicant who has the authority to:

- (a) bind the applicant;
- (b) make certifications required by this rule and the rules in 18 NCAC Subchapter 07J; and
- (c) declare under penalty of perjury that:
 - (i) the information provided is true and complete to the best of the signer's knowledge and belief;
 - (ii) the application was prepared under the signer's authority and supervision;
 - (iii) the applicant agrees that representations, promises and assurances of performance in the application are binding on it; and

...

The Department agrees with both technical change requests for 18 NCAC 07B .0422 and proposes to make the changes as highlighted below in **green**.

18 NCAC 07B .0422 APPLICATION FOR TECHNOLOGY PROVIDER AUTHORIZATION – GENERAL

Technology provider application forms shall require:

...

- (11) signature by a key individual employed by the technology provider applicant who has the authority to:
 - (a) bind the applicant;
 - (b) make certifications required by this **rule Rule** and the rules in 18 NCAC Subchapter 07J; and
 - (c) declare under penalty of perjury that:
 - (i) the information provided is true and complete to the best of the signer's knowledge and belief;
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 - (iii) the applicant agrees that representations, **promises promises**, and assurances of performance in the application are binding on it; and

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RFC #7

18 NCAC 07B .0431: *Items (2) and (7) are identical. Remove one of them and renumber appropriately.*

18 NCAC 07B .0431 FORM FOR NOTARY REPORTABLE INCIDENTS

The form for a notary public notifying the Department of reportable incidents pursuant to 18 NCAC 07D .0310 requires:

- (1) the notary's commission name and commission number;
- (2) how the notary discovered the reportable incident;
- (3) the date of the last notarization performed by the notary before the reportable incident occurred or was discovered;
- (4) the date on which the notary discovered the reportable incident regarding the notary's physical seal, electronic seal, signature, journal, notarial records, or communication technology recording;
- (5) the date on which the reportable incident occurred, if different from the date of discovery;
- (6) the date on which the notary reported to:
 - (a) the Register of Deeds, and the county of that Register of Deeds; and
 - (b) law enforcement, if applicable, including the name of the law enforcement agency and a copy of the law enforcement report if available;
- (7) how the notary discovered the reportable incident;
- (8) any other information that the notary believes may be useful to the Department in assessing the reportable incident; and

(9) the notary's signature and the date of the report to the Department.

The Department agrees and proposes to make the change as highlighted below in **green**.

18 NCAC 07B .0431 FORM FOR NOTARY REPORTABLE INCIDENTS

The form for a notary public notifying the Department of reportable incidents pursuant to 18 NCAC 07D .0310 requires:

- (1) the notary's commission name and commission number;
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 - (a) the Register of Deeds, and the county of that Register of Deeds; and
 - (b) law enforcement, if applicable, including the name of the law enforcement agency and a copy of the law enforcement report if available;
- ~~(7) —~~ **how the notary discovered the reportable incident.**
- ~~(8)(7)~~ any other information that the notary believes may be useful to the Department in assessing the reportable incident; and
- ~~(9)(8)~~ the notary's signature and the date of the report to the Department.

RFC #8

18 NCAC 07B .0802: *With regards to item (c), is there a rule or statute that would otherwise indicate that a notary public could not rely on representations made by third parties?*

18 NCAC 07B .0802 PRINCIPAL SEEKING ACCOMMODATION

(a) Before performing a notarial act, a notary public shall require a principal needing reasonable accommodation for vision, hearing, or speech impairments to ~~describe~~ disclose:

- (1) any auxiliary aid that the principal ~~is using~~ has chosen for use in connection with the notarial act; and
- (2) any interpreter, transliterator, or CART captioner that the principal ~~is using~~ has chosen for use in connection with the notarial act.

(b) If the notarial act is a remote notarial act, ~~then~~ the notary shall comply with Paragraph (a) of this Rule before starting the communication technology recording.

(c) A notary public may rely on representations made by an interpreter, transliterator, or certified CART captioner pursuant to this Section.

Yes, there are many instances in which a notary cannot rely on third party representations. The physical presence of the principal is required for a traditional notarization. G.S. §10B-20(c)(1). There have been instances in which an employer has directed a notary to notarize for a principal based on the employer's statement that the employer recognizes the voice of the principal on the phone authorizing the notarization and the principal's signature. This is a representation upon which the notary may not rely and which may lead to enforcement for failure to require the physical presence of the principal. As another example, 18 NCAC 07H .0302 prohibits a notary public from relying upon a credible witness to identify a remotely located principal. Hence, Item (c) gives needed direction for what is permitted in this narrow circumstance.

Thanks to you, Seth, and your colleague Travis Wiggs for your careful attention to detail.

Regards,

A handwritten signature in cursive script, appearing to read "Ann B. Wall".

Ann B. Wall
General Counsel and Rulemaking Coordinator

Burgos, Alexander N

From: Ascher, Seth M
Sent: Monday, May 5, 2025 3:49 PM
To: Wall, Ann B; Elmore, Ann M
Cc: Burgos, Alexander N
Subject: Re: [External] Re: 18 NCAC 07B RFC

I'm leaving Wednesday.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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From: Ann Wall <awall@sosnc.gov>
Sent: Monday, May 5, 2025 3:44 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: 18 NCAC 07B RFC

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Great, thanks, and thank Travis for us, as well.

I thought you were out having fun this week?

Ann

Ann B. Wall
General Counsel
Department of the Secretary of State
awall@sosnc.gov
Phone (919) 814-5310
Fax 919-814-5391

Please be aware that communications with the Secretary of State's office may be public records.

Anns,

I have finished my review of 07B and the RFC is attached. The deadline for response is Friday, May 16. Special thanks to my colleague Travis Wiggs who did a quick pre-review to make my review faster.

To update you on the process thus far: this will be the last RFC for at least a week, but when I get back next week I will pick up the rest. By my count, only 7F, 7G, 7I, and 7K are waiting for my initial review, and they are all comparatively short. Let me know if you think I have missed a subchapter. I am planning to review and respond to the responses you've already sent me over the next couple of days.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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