

Burgos, Alexander N

Subject: FW: [External] 18 NCAC 07B Rules for Posting on RRC Website for 1/31 Meeting
Attachments: 18 NCAC 07B .0205 FEE FOR DISHONORED PAYMENT.docx; 18 NCAC 07B .0301 FORM USE REQUIRED.docx; 18 NCAC 07B .0305 RESPONSE TO QUESTIONS AND REQUESTS FOR INFORMATION.docx; 18 NCAC 07B .0402 CONTACT INFORMATION.docx

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Friday, January 19, 2024 8:17 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Cc: Liebman, Brian R <brian.liebman@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: [External] 18 NCAC 07B Rules for Posting on RRC Website for 1/31 Meeting

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Hi, Dana & Alex.

Enclosed are the rules that were revised pursuant to technical change requests, as well as one rule with non-substantial changes pursuant to 26 NCAC 05 .0107(b)(2). All have been submitted previously to Brian Liebman, who asked that we forward them to you for posting on the website for the 1/31 meeting. These are being sent on behalf of & pursuant to the express request of Ann Wall, General Counsel & Rulemaking Coordinator for the Secretary of State.

Please let us know if anything else is needed.

Thank you!

Sincerely,
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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1 18 NCAC 07B .0205 is amended with changes as published in 38:04 NCR 194 as follows:

2
3 **18 NCAC 07B .0205 UNPAID FEES FEE FOR DISHONORED PAYMENT**

4 Pursuant to G.S. 25-3-506, the Department may charge a thirty-five dollar (\$35.00) processing fee to a filer if a
5 tendered payment is dishonored by a bank or financial institution. If a fee is paid with a check or other instrument
6 which is returned by the institution upon which it was issued for "insufficient funds" or for other similar reason:

7 (1) The Division shall issue a notice of intent to deny the application or revoke the commission; and

8 (2) The Division shall issue a denial or revocation if the fee is not paid in full within 10 business days
9 after the date on the notice of intent to deny or revoke.

10 (3) The Division shall charge a twenty five dollar (\$25.00) fee for which payment has been refused by
11 the payer's bank for insufficient funds or for no account.

12
13 *History Note:* Authority G.S. 10B-4; [~~10B-13; 10B-14(b);~~] ~~10B-14(f);~~ [~~10B-108; 10B-134.19(b), (f), (g);~~] ~~25-3-~~
14 ~~506; 147-37;~~

15 *Eff. April 1, 2007;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
17 *6, 2016;*

18 *Transferred from 18 NCAC 07B .0105(c) Eff. June 1, ~~2023~~ 2023;*

19 *Amended Eff. July 1, 2024.*

1 18 NCAC 07B .0301 is adopted with changes as published in 38:04 NCR 194 as follows:

2
3 **SECTION .0300 – FILING, SIGNATURES ON FILINGS, AND RESPONSES TO REQUESTS FOR**
4 **INFORMATION**

5
6 **18 NCAC 07B .0301 FORM USE REQUIRED**

7 ~~A~~ In submitting a filing, a filer shall:

- 8 (1) use a form in Section .0400 of this ~~Subchapter unless:~~ Subchapter; or
9 ~~(1)(2)~~ if there is not a form for the filer's purpose in Section .0400 of this Subchapter; or Subchapter,
10 provide in writing the information required by G.S. Chapter 10B or the rules in this Chapter.
11 (2) ~~there is an exception in Chapter 10B of the General Statutes or a rule in this Chapter.~~

12
13 *History Note: Authority G.S. 10B-4; 10B-14(a), (f); 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-134.17; 10B-*
14 *134.19; 10B-134.21; 10B-134.23;*
15 *Eff. July 1, 2024.*

1 18 NCAC 07B .0305 is adopted with changes as published in 38:04 NCR 195 as follows:

2

3 **18 NCAC 07B .0305 RESPONSE TO QUESTIONS AND REQUESTS FOR INFORMATION**

4 A filer shall respond to departmental requests for information within the time and in the manner specified ~~by the~~

5 ~~Department, after~~ based upon the Department's consideration of:

- 6 (1) the nature of the information requested;
- 7 (2) the urgency of the Department's need for the information; and
- 8 (3) the ease of production by the recipient of the request.

9

10 *History Note: Authority G.S. 10B-4; ~~10B-14; 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-134.17; 10B-~~*

11 *134.19; 10B-134.21; ~~10B-134.123;~~*

12 *Eff. July 1, 2024.*

1 18 NCAC 07B .0402 is adopted with changes as published in 38:04 NCR 196 as follows:

2
3 **18 NCAC 07B .0402 CONTACT INFORMATION**

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

- 5 (1) for an individual who is identified pursuant to G.S. 10B-134.19(c)(2):
- 6 (a) the full name of the individual;
 - 7 (b) the following addresses:
 - 8 (i) ~~physical residential address that is not a post office box; address;~~
 - 9 (ii) business address;
 - 10 (iii) mailing address;
 - 11 (c) business telephone numbers;
 - 12 (d) business email addresses;
 - 13 (e) any other names by which the individual is known, including nicknames;
- 14 (2) for a business entity:
- 15 (a) the name of the entity on record with the Secretary of ~~State~~ State, formation or filing office
 - 16 in its state, federally recognized tribe, or country of formation;
 - 17 (b) the name of the state, federally recognized tribe, or country of formation;
 - 18 (c) the street address, and the mailing address if different, of the entity's principal office;
 - 19 (d) the street address, and the mailing address if different, of the entity's registered office;
 - 20 ~~(e) the name, street address, and mailing address if different, of the entity's registered agent;~~
 - 21 ~~(f)~~(e) the principal office telephone ~~numbers~~ number of the entity;
 - 22 ~~(g)~~(f) the email address of the entity;
 - 23 ~~(h)~~(g) the URL for the entity's website, if any;
 - 24 ~~(i)~~(h) the name of ~~the~~ an individual who is designated by the entity as the primary contact
 - 25 between the Department and the entity, and for that individual:
 - 26 (i) title and position;
 - 27 (ii) telephone number;
 - 28 (iii) mailing address if different from the addresses provided in ~~SubItems~~ Sub-Items
 - 29 (2)(c) and (d) of this Item;
 - 30 (iv) primary email address;
 - 31 (v) secondary email address, if applicable;
 - 32 ~~(j)~~(i) the name of an individual designated as the secondary contact between the Department and
 - 33 the entity if the individual named in ~~SubItem (2)(i)~~ Sub-Item (2)(h) of this Item is not
 - 34 available; and
 - 35 ~~(k)~~(j) the information in ~~SubItem (2)(i)~~ Sub-Item (2)(h) of this Item for the secondary contact
 - 36 individual named in ~~SubItem (j)~~ Sub-Item (i) of this ~~Rule;~~ Item; or
 - 37 (3) for a registered agent listed on an application filed pursuant to G.S. 10B-134.19:

- 1 (a) the name of the registered agent;
- 2 (b) the registered office address for the registered agent and mailing address if different; and
- 3 (c) a business email address for the registered agent.
- 4

5 *History Note: Authority G.S. 10B-4; ~~10B-125; 10B-126; 10B-127; 10B-134.17; 10B-134.19; 10B-134.21;~~*
6 *Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

From: Ann Wall <awall@sosnc.gov>

Sent: Friday, January 19, 2024 5:55 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

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To be clear, the only ones we need to send are the ones to which we made changes?

Thanks, 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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Burgos, Alexander N

Subject: FW: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Friday, January 19, 2024 5:44 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

OK, that's fine then. I will recommend approval of all of the 07B rules at the January hearing. Please send all revised versions to Alex and Dana for filing and posting on the website, copying me.

I will have something back to you on the 07I rules on Monday.

Thanks, and have a great weekend.

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

From: Ann Wall <awall@sosnc.gov>

Sent: Friday, January 19, 2024 4:28 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Response to Request for Technical Change to 18 NCAC 07B .0312

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Dear Brian,

Thank you for calling the omission of 07B .0312 from our responses to your technical change requests to our attention. As you have kindly acknowledged, our staff has been under stress this week. Our reply is below.

Before proceeding further, though, we appreciate your responsive email acknowledging receipt of the other 07B rules and intent to recommend approval of the other 07B rules at the January meeting.

Insofar as the remaining request for a technical change to a rule:

18 NCAC 07B .0312: *"On line 4, deemed complete by whom, and according to what standards?"* **18 NCAC 07B .0310 specifies that it is the Department which makes the determination, and the determination is made based on the items listed there. Adding detail here would be duplicative. Hence, no change has been made.**

Let us know if you have further questions.

Thanks again for your compassion and eye for detail.

Regards,

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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Burgos, Alexander N

Subject: FW: [External] Responses to technical change requests for 18 NCAC 07B

From: Ann Wall <awall@sosnc.gov>

Sent: Friday, January 19, 2024 3:51 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Responses to technical change requests for 18 NCAC 07B

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Thanks. We're looking at it (and why we omitted it) right now and hope to get it back to you this afternoon. If not, it will be as early as possible on Monday.

Have a good weekend.

Ann

Ann B. Wall

General Counsel

Department of the Secretary of State

awall@sosnc.gov

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Fax 919-814-5391

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Burgos, Alexander N

Subject: FW: [External] Responses to technical change requests for 18 NCAC 07B

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Friday, January 19, 2024 3:33 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: RE: [External] Responses to technical change requests for 18 NCAC 07B

Hi Ann and Anne,

Thanks for getting these to me, and again, my condolences on your loss.

I think everything here looks fine, but I noticed there was no response to my request for changes for Rule .0312. If you could send that over, I'd appreciate it.

Outside of .0312, I'll recommend approval of the 07B rules at the January meeting.

Have a good weekend,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Responses to technical change requests for 18 NCAC 07B
Attachments: 18 NCAC 07B .0205 FEE FOR DISHONORED PAYMENT.docx; 18 NCAC 07B .0301 FORM USE REQUIRED.docx; 18 NCAC 07B .0305 RESPONSE TO QUESTIONS AND REQUESTS FOR INFORMATION.docx; 18 NCAC 07B .0402 CONTACT INFORMATION.docx

From: Ann Wall <awall@sosnc.gov>
Sent: Friday, January 19, 2024 11:13 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Responses to technical change requests for 18 NCAC 07B

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Hi, Brian.

Thanks again for the extension and for your insights as we revised our adopted rules. This email addresses two things: (1) responses to your technical change requests related to 18 NCAC 07B, and (2) notice of changes pursuant to 26 NCAC 05 .0107(b)(2).

1. Your requests for technical changes: You have not previewed our responses to the change requests you made on 1/3; however, we believe we have addressed your concerns. Enclosed are the technical corrections to the 07B Rules as described below:

18 NCAC 07B .0204: "I noticed that in 07B .0203, you eliminated money orders as a method of in person payment. Just wanted to make sure you didn't leave it here unintentionally."
Money orders have not been eliminated as a method of in person payment. In 18 NCAC 07B .0203, "money orders" was stricken in (1)(b) and instead, it has been moved from (1)(b) to (3). Thus, money orders are included as methods of payment in both 18 NCAC 07B .0203 and .0204, No change has been made, therefore, Rule .0204 is not attached.

18 NCAC 07B .0205: "Please add G.S. 25-3-506 back into your History Note." **Change made as requested.**

18 NCAC 07B .0301:

*** What is the scope of "filings" here?" Pursuant to 18 NCAC 07B .0101, the scope rule, the filings here relate to the qualification, commissioning, notarial acts, conduct and discipline of notaries as Constitutional officers of the State. "Filing" is defined in 18 NCAC 07K, approved by the RRC at its December 2023 meeting:**

18 NCAC 07K .0101(13): "Filing" means a form or other document required or permitted to be filed with the Department pursuant to Chapter 10B of the General Statutes or the rules in this Chapter."

In Phase 2 of our rulemaking, for which the adopted rules are being filed today, the scope in 18 NCAC 07B .0101, published in 38:09 NCR 550, is expanded to include notary

instructors and technology providers. Although 18 NCAC 07B .0101 is not yet before you, here is the adopted text that we are submitting today:

18 NCAC 07B .0101 SCOPE

The rules in this Subchapter implement Chapter 10B of the General Statutes, ~~the Notary Public and Electronic Notary Acts. Statutes.~~ The rules govern govern:

(1) the qualification, commissioning, notarial acts, ~~conduct~~conduct, and

discipline of notaries **public** as Constitutional officers of the State.~~State;~~

(2) the qualification, certification, and discipline of certified notary instructors;

and

(3) the qualification, approval or licensing, conduct, and discipline of technology providers.

*** "What must a filer do if there is no form in Section .0400?" The rule has been revised to expressly address the no-form scenario by adding a paragraph (b) in lines 9-11.**

18 NCAC 07B .0305: Comments relate solely to the history note. The history note has been revised. Particulars are below.

*•In your History Note, why is 10B-134.19 included here? **It is included because 10B-134.19(c)(4) references rulemaking authority to identify information necessary for platform licensure.***

*•Also, why is 10B-134.21 deleted? Was this a typo? **10B-134.21 has been added back. Thank you.***

*•Please omit the citation to Myers. I see what you're driving at with the case, but it doesn't specifically mention the Department of the Secretary of State, doesn't interpret Chapter 10B, and ultimately, doesn't confer statutory authority on the Department. As such, it's inappropriate in the History Note. **Done as requested: Myers has been stricken.***

*•Based on your pre-review responses, I see that G.S. 10B-126 and 10B-134.17 do confer statutory authority, but the scope of those provisions is limited to e-notaries. Is there a similar statute for traditional notaries? **10B-4 confers general rulemaking authority over all notaries including traditional notaries. 10B-4 is included in the history note. Although not included in the history note, we are operating under the directive of the General Assembly to:***

G.S. 10B-2. Purposes. This Chapter shall be construed and applied to advance its underlying purposes, which are the following:

- (1) To promote, serve, and protect the public interests.
- (2) To simplify, clarify, and modernize the law governing notaries.
- (3) To prevent fraud and forgery.
- (4) To foster ethical conduct among notaries.
- (5) To enhance interstate recognition of notarial acts.
- (6) To integrate procedures for all of the following notarial acts:
 - a. Traditional paper.
 - b. Electronic notarization.
 - c. Remote electronic notarization.

2. Notice of changes pursuant to 26 NCAC 05 .0107(b)(2):

18 NCAC 07B .0402 CONTACT INFORMATION: We deleted the word "physical" in front of "residential" in line 8 for consistency with other usage.

Let us know if you have any 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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1 18 NCAC 07B .0205 is amended with changes as published in 38:04 NCR 194 as follows:

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3 **18 NCAC 07B .0205 UNPAID FEES FEE FOR DISHONORED PAYMENT**

4 Pursuant to G.S. 25-3-506, the Department may charge a thirty-five dollar (\$35.00) processing fee to a filer if a
5 tendered payment is dishonored by a bank or financial institution. If a fee is paid with a check or other instrument
6 which is returned by the institution upon which it was issued for "insufficient funds" or for other similar reason:

7 (1) The Division shall issue a notice of intent to deny the application or revoke the commission; and

8 (2) The Division shall issue a denial or revocation if the fee is not paid in full within 10 business days
9 after the date on the notice of intent to deny or revoke.

10 (3) The Division shall charge a twenty five dollar (\$25.00) fee for which payment has been refused by
11 the payer's bank for insufficient funds or for no account.

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13 *History Note:* Authority G.S. 10B-4; [~~10B-13; 10B-14(b);~~] ~~10B-14(f);~~ [~~10B-108; 10B-134.19(b), (f), (g);~~] ~~25-3-~~
14 ~~506; 147-37;~~

15 *Eff. April 1, 2007;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
17 *6, 2016;*

18 *Transferred from 18 NCAC 07B .0105(c) Eff. June 1, ~~2023;~~ 2023;*

19 *Amended Eff. July 1, 2024.*

1 18 NCAC 07B .0301 is adopted with changes as published in 38:04 NCR 194 as follows:

2
3 **SECTION .0300 – FILING, SIGNATURES ON FILINGS, AND RESPONSES TO REQUESTS FOR**
4 **INFORMATION**

5
6 **18 NCAC 07B .0301 FORM USE REQUIRED**

7 ~~A~~ In submitting a filing, a filer shall:

- 8 (1) use a form in Section .0400 of this ~~Subchapter unless:~~ Subchapter; or
9 ~~(1)(2)~~ if there is not a form for the filer's purpose in Section .0400 of this Subchapter; or Subchapter,
10 provide in writing the information required by G.S. Chapter 10B or the rules in this Chapter.
11 (2) ~~there is an exception in Chapter 10B of the General Statutes or a rule in this Chapter.~~

12
13 *History Note: Authority G.S. 10B-4; 10B-14(a), (f); 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-134.17; 10B-*
14 *134.19; 10B-134.21; 10B-134.23;*
15 *Eff. July 1, 2024.*

1 18 NCAC 07B .0305 is adopted with changes as published in 38:04 NCR 195 as follows:

2

3 **18 NCAC 07B .0305 RESPONSE TO QUESTIONS AND REQUESTS FOR INFORMATION**

4 A filer shall respond to departmental requests for information within the time and in the manner specified ~~by the~~

5 ~~Department, after~~ based upon the Department's consideration of:

- 6 (1) the nature of the information requested;
- 7 (2) the urgency of the Department's need for the information; and
- 8 (3) the ease of production by the recipient of the request.

9

10 *History Note: Authority G.S. 10B-4; ~~10B-14; 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-134.17; 10B-~~*

11 *134.19; 10B-134.21; ~~10B-134.123;~~*

12 *Eff. July 1, 2024.*

1 18 NCAC 07B .0402 is adopted with changes as published in 38:04 NCR 196 as follows:

2
3 **18 NCAC 07B .0402 CONTACT INFORMATION**

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

- 5 (1) for an individual who is identified pursuant to G.S. 10B-134.19(c)(2):
- 6 (a) the full name of the individual;
 - 7 (b) the following addresses:
 - 8 (i) ~~physical residential address that is not a post office box; address;~~
 - 9 (ii) business address;
 - 10 (iii) mailing address;
 - 11 (c) business telephone numbers;
 - 12 (d) business email addresses;
 - 13 (e) any other names by which the individual is known, including nicknames;
- 14 (2) for a business entity:
- 15 (a) the name of the entity on record with the Secretary of ~~State~~ State, formation or filing office
 - 16 in its state, federally recognized tribe, or country of formation;
 - 17 (b) the name of the state, federally recognized tribe, or country of formation;
 - 18 (c) the street address, and the mailing address if different, of the entity's principal office;
 - 19 (d) the street address, and the mailing address if different, of the entity's registered office;
 - 20 ~~(e) the name, street address, and mailing address if different, of the entity's registered agent;~~
 - 21 ~~(f)~~(e) the principal office telephone ~~numbers~~ number of the entity;
 - 22 ~~(g)~~(f) the email address of the entity;
 - 23 ~~(h)~~(g) the URL for the entity's website, if any;
 - 24 ~~(i)~~(h) the name of ~~the~~ an individual who is designated by the entity as the primary contact
 - 25 between the Department and the entity, and for that individual:
 - 26 (i) title and position;
 - 27 (ii) telephone number;
 - 28 (iii) mailing address if different from the addresses provided in ~~SubItems~~ Sub-Items
 - 29 (2)(c) and (d) of this Item;
 - 30 (iv) primary email address;
 - 31 (v) secondary email address, if applicable;
 - 32 ~~(j)~~(i) the name of an individual designated as the secondary contact between the Department and
 - 33 the entity if the individual named in ~~SubItem (2)(i)~~ Sub-Item (2)(h) of this Item is not
 - 34 available; and
 - 35 ~~(k)~~(j) the information in ~~SubItem (2)(i)~~ Sub-Item (2)(h) of this Item for the secondary contact
 - 36 individual named in ~~SubItem (j)~~ Sub-Item (i) of this ~~Rule; Item;~~ or
 - 37 (3) for a registered agent listed on an application filed pursuant to G.S. 10B-134.19:

- 1 (a) the name of the registered agent;
- 2 (b) the registered office address for the registered agent and mailing address if different; and
- 3 (c) a business email address for the registered agent.
- 4

5 *History Note: Authority G.S. 10B-4; ~~10B-125; 10B-126; 10B-127; 10B-134.17; 10B-134.19; 10B-134.21;~~*
6 *Eff. July 1, 2024.*

Burgos, Alexander N

Subject: FW: [External] Quick and urgent question re responses to 18 NCAC 07B technical correction requests due today

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, January 17, 2024 5:00 PM

To: Wall, Ann B <awall@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] Quick and urgent question re responses to 18 NCAC 07B technical correction requests due today

Sounds good. Thanks for letting me know.

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 17, 2024 4:47:26 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: Re: [External] Quick and urgent question re responses to 18 NCAC 07B technical correction requests due today

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Hi, Brian. After further consideration, I am going to accept your gracious offer to let us send both sets together on or before Friday, January 19, 2024.

Thanks again.

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.

Not a problem. I think the other batch was due Friday? Just send them together.

My condolences to whoever it was who suffered the loss.

Brian Liebman

Counsel to the North Carolina Rules Review Commission

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(984)236-1948

brian.liebman@oah.nc.gov

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From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, January 17, 2024 2:07:30 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Quick and urgent question re responses to 18 NCAC 07B technical correction requests due today

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Would you be okay with it if we don't file our responses to your technical corrections until after 5 p.m. today?

We're close, but due to a death in the immediate family of a critical member of our rulemaking team for this immense project, we've lost a little time. I do believe we will have no trouble filing before midnight - and suspect it will be before 8 or 9 p.m., barring something else unforeseen happening.

Thanks for considering it, Ann

Ann B. Wall

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Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, January 17, 2024 2:13 PM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Elmore, Ann M
Subject: [External] Additional note re Quick and urgent question re responses to 18 NCAC 07B technical correction requests due today

Importance: High

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There is a reasonable possibility that we will be able to make 5 p.m. filing, I just thought I should go ahead and ask for approval in case I'm wrong.

Thanks, Ann

Original Message:

Would you be okay with it if we don't file our responses to your technical corrections until after 5 p.m. today?

We're close, but due to a death in the immediate family of a critical member of our rulemaking team for this immense project, we've lost a little time. I do believe we will have no trouble filing before midnight - and suspect it will be before 8 or 9 p.m., barring something else unforeseen happening.

Thanks for considering it, Ann

Ann B. Wall
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Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, January 3, 2024 5:11 PM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Elmore, Ann M
Subject: [External] Re: Request for Changes - 07B Rules

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Happy New Year Brian.

This acknowledges receipt of the changes.

We should not have an issue with getting back to you by the 17th.

Thanks, Ann

Ann B. Wall
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awall@sosnc.gov
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Fax 919-814-5391

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Hi Ann and Anne,

Attached, please find my requests for changes for the 07B rules. There isn't too much here. I've given you the usual 10 business days—January 17—for a deadline, and I'd be shocked if we don't get these done for the January meeting. I'm working on the 07I rules now, and should have something to you in the next few days.

Hope you both had a wonderful Christmas and New Years.

Brian

Brian Liebman
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Burgos, Alexander N

Subject: FW: [External] Information to assist your review of the notary rules
Attachments: 11.8.23 response to pre-review emld to Seth-Brian.pdf; eNotary Flowchart 11-17-2023.pdf; Definitions in Adopted Phase 1 Rules and Proposed Phase 2 rules.pdf

From: Ann Wall <awall@sosnc.gov>
Sent: Monday, November 20, 2023 1:01 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; 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] Information to assist your review of the notary rules

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I forgot to ask: please cc Ann Elmore on your emails to me. She is assisting me with the rulemaking process.

Attached are some things that I hope will assist you in your review:

1. Response to the pre-review comments you provided regarding the Phase 1 rules. My notes indicate that I submitted this previously but it may have gone to the main rules address rather than to the two of you directly.
2. A flow chart showing the process to become an electronic notary public
3. A comprehensive list of definitions that includes:
 - A. The definitions in the Phase 1 rules that have been adopted and are before you and RRC for review.
 - B. The definitions in the Phase 2 rules that have been published and for which the hearing is on 11/28/23 and the comment period ends on January 2, 2023.

Both Ann and I are on leave this week. I will, however, check email daily and so if you have specific questions for me, please go ahead and send them.

Thanks, Ann

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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

BY EMAIL

Brian Liebman
Seth Ascher
Counsel to Rules Review Commission
Office of Administrative Hearings
brian.liebman@oah.nc.gov
seth.ascher@oah.nc.gov

Re: Response to July 2023 pre-review of 18 NCAC 07 proposed rules

November 8, 2023

Dear Mr. Liebman and Mr. Ascher:

Thanks again for your pre-review of the Department's first set of remote notary rules. In many instances, we have modified the rules to reflect your comments. Below I have only included those portions of your comments for which I am providing a response.

Generally:

1. I believe we have fixed the issues you noted with history notes.
2. As you suggested:
 - a. In some instances, we changed rules from lists to sentences.
 - b. We have made certain that exception rules are cited in the primary rule to which the exception applies.
 - c. We corrected typographical errors such as missing modifiers or misplaced conjunctions.

Your specific comments and questions

Your comments are italicized.

Comments on 18 NCAC 07B .0200, .0300, .0400

18 NCAC 07B .0201

Is this Rule necessary? I looked through 10B and in every place that a fee was mentioned, the legislature denominated the fee in "dollars".

Response: Yes, we believe it to be necessary, based upon experience with customers such as those in

the “sovereign citizen” movement. There are several countries around the world for which the official currency is the “dollar” but not the U.S. dollar. Examples are Canada, Australia, and New Zealand. Further, we need to make clear that tender in cryptocurrency, for example, no matter how denominated, will not suffice.

18 NCAC 07B .0205

On line 34, what is the fee? You’re saying the department may charge the fee, which is exactly what G.S. 25-3-506 says, but you don’t say what the amount of the fee is. Thus, to the extent that the rule just repeats the statute, it’s unnecessary. If you specify the fee, that would ameliorate that issue.

Response: We have added the amount of the fee.

18 NCAC 07B .0206, .0207, .0208

As an initial matter, I think this rule should be combined with either Rule .0207 or .0208. The immediate concern I have is that in .0206 you say that if the payment is dishonored, the filing will not be processed, but in both .0207 and .0208, you expand on that and give additional relevant information – that the filing will not be processed until payment is received, and that the filer has 15 days to make payment without voiding the filing.

Response: Rules .0206, .0207, and .0208 address separate actions that are triggered by notice of dishonor. Rule .0206 directs that processing shall not proceed further, if processing has not been completed, and has been modified for clarification. Rule .0207 establishes the effects of the dishonor and actions the agency is to take with the filing if the dishonor is not corrected within the allotted time. Rule .0208(1) describes the contents of the notice the filer is to receive from the agency upon notice of dishonor. As a matter of style, we have elected to draft separate rules for these three separate activities, even though each action is triggered by notice of dishonor.

As between Rules .0206 and .0207, please note that in rule .0206 you use the term “related” payment, while in .0207, you say “tendered”. If there is a substantive difference, it is not immediately clear what that is. What is a “related payment”? Please define.

Response: These rules no longer use the word “related.”

.0208: In (1), line 7, you say “fee payment” but in (2)(a) and (b) you reference “payment and fees”. Is there a difference? In (2)(b), is there a difference between the “date of the dishonor” and the date of “receipt of notice of dishonor”?

Response: The rule has been modified to address these issues.

.0209: Why is this Rule necessary? It seems entirely redundant to Rules .0207 and .0208. On line 22, you say the filer can ask the department to process the filing (1) within 15 days of the dishonor, and (2) “if a filing has not been processed”. According to .0206, .0207, and .0208, a dishonored payment automatically stops the filing from being processed. Is there some daylight here where the payment is dishonored but the filing was processed already?

.0210: Why is this Rule necessary? Again, it seems redundant to rules .0207 and .0208.

Response: We did not move forward with Rule .0209 as presented to you in pre-review, and did not

include it in the proposed rules published in 38 NCR 04. We did propose and publish a Rule .0209 which was re-numbered and was numbered .0212 in the rules you saw in pre-review. We have not adopted Rule .0209 [the former .0212].

18 NCAC 07B .0300

Overall Notes: In general, I was struck by the impression that most of these seem more to be instructions for filling out forms, rather than rules.

Response: While we would have preferred to depend upon common sense in order to have fewer rules, that is not a good regulatory strategy. In addition to our regulated community of sophisticated, well-lawyered technology providers, the concomitant development of what may well be lengthy applications for platforms and custodians means we need these instructions to be both explicit and mandatory.

18 NCAC 07B .0302

On line 9, what are “other electronic means”?

Response: The phrase has been deleted.

I think this rule and Rule .0303 should be combined, or at the very least you need a cross reference to Rule .0303 in item (2). Otherwise I think splitting these two rules up introduces ambiguity. Here you say that filings are electronic unless paper is permitted by 10B or these rules. Then in .0303 you say paper is permitted where there is no web portal or in certain instances for traditional notaries. Do the categories in Rule .0303 encompass all of the areas where paper filings are permitted by both 10B and these rules? It’s not clear.

Response: Rule .0302 now cross-references Rule .0303. We have clarified both rules so that it should be clear which documents may be filed on paper.

18 NCAC 07B .0304

. . . Just saying “...but shall respond ‘not applicable’ (N/A).” is sufficient. Additionally, what if someone uses another synonymous form to indicate that the question is not applicable? Would that application be rejected?

Response: We would offer the filer the opportunity to rectify the error but, if not corrected, we would reject the application. This allows more expeditious handling of the filer’s application, reduces the requirement for agency examiners to employ interpretation, and eliminates uncertainty. The OAH Administrative Rule Style Guide points out that synonyms are rarely synonymous (p. 2). For example, a filer leaving a question blank or using synonyms would not provide us with the certainty needed to assess the application, as it does not tell us whether the person: (a) does not know the answer; (b) wishes to dodge the answer; (c) does not want us to know the answer, (d) simply skipped the question, etc.

18 NCAC 07B .0305

I am skeptical of your authority to essentially give departmental requests for information the force of law, particularly where there is no specificity as to the request. For instance, what stops the department from telling one person that they have 24 hours to submit an original form of a document

in person, and from telling another person that they have 30 business days to submit a copy via email? At the very least this is ambiguous, at worst, you have a statutory authority issue.

Response: To address the concerns you expressed, we have modified the rule to include factors we will consider in setting the time period for a response. Filers who need more time will be able to request a waiver using the more specific waiver rules in Phase 2 of our rulemaking. Those more specific proposed waiver rules are published at 38 NCAC 09, pages 553-554, as 18 NCAC 07B .0106-.0108.

The flexibility built into this rule is necessary to address a wide variety of circumstances ranging from filing errors to serious allegations of misconduct. The statutory authority for such flexibility is found at S 552, S.L. 2023-57 (“(f) The failure of an electronic notary to produce within ~~10 days~~ of the time period set out in the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary”). That chapter is to be construed “[t]o integrate procedures for traditional paper and electronic notarial acts.” N.C.G.S. § 10B-2(6). “The Secretary may adopt rules necessary to administer and enforce this Chapter in order to achieve the purposes of the Act.” N.C.G.S. § 10B-4.

There are situations where a 10-day response time would be absurdly short, and other situations where a filer should be able respond in less than 10 days. Therefore, flexibility of the rule as drafted is both statutorily authorized and warranted by the circumstances.

18 NCAC 07B .0306

On line 27, I assume the “question” mentioned here means something on a form?

Response: Yes. The rule has been modified.

Can you define when “additional space is needed”? Otherwise, I don’t know how you enforce this rule.

Response: The rule has been modified.

18 NCAC 07B .0308

In (1), line 19, what do you mean by “duly authorized”? In (2), line 20, to whom and how must the signer provide this information?

Response: The phrase “duly authorized” is now defined in the adopted rule. The rule now clarifies how the authorization is to be provided.

18 NCAC 07B .0402

In (1), line 25, what do you mean by “an individual who is identified pursuant to G.S. 10B-134.19”? That statute refers to platform licenses. . . In (2)(i), p.2, line 7, where does the concept of “the primary contact between the Department and the entity” come from? I didn’t see it in the statutes cited. Please clarify.

Response:

Rule .0402(1) focuses on contact information associated with business filers such as filers submitting

applications for platform licenses. The contact information for individuals as described by Rule .0402(1) is necessary because N.C.G.S. § 10B-134.19(c)(2) requires “[t]he names of all officers or directors directly involved in the operation, management, or control of the platform and all employees who exercise substantial influence or control over the platform.” N.C.G.S. § 10B-134.19(d) requires the Secretary to conduct a background investigation, to include a criminal history check, on both the applicant and persons described in N.C.G.S. § 10B-134.19(c)(2).

When dealing with business entities, we must have a single primary person to contact plus a backup, as it is common for a primary contact to leave the employ of the filer without providing notice to the Department. Requesting a backup contact poses no burden on the filer and in fact helps the filer avoid problems that derive from failed lines of communication. Authority to require this information is found at N.C.G.S. § 10B-134.19(c)(4) (application shall include “[a]ny other information the Secretary may deem necessary.”)

Subchapter I (Journal requirements)

General response: Recent changes to Chapter 10B directly affect journal requirements for notaries. S.L. 2023-124. We have addressed the changes necessitated by the new amendment in the Phase 1 rules adopted and submitted to the RRC.

18 NCAC 07I .0101

Generally, we frown on scope rules, and here I don't know why you need one.

Response: We recognize what appears to be general disapproval of scope rules. Stakeholders (most of whom are not attorneys), however, tell us scope rules are invaluable, and that they rely on the scope rules to help direct them as the regulated community. It does not appear that there is anything in 26 NCAC 02C or in the Style Guide forbidding the use of scope rules. This scope rule is an agency statement of general applicability that implements an enactment of the General Assembly. N.C.G.S. § 150B-2(8a).

18 NCAC 07I .0102

What is the scope of this definitions rule? Does it only apply to 07I section .0100? If not, why are these definitions not all contained in the central definitions rule in 07K?

Response: We have modified the language in the adopted rule to narrow the definitions to Subchapter I. Please note that Subchapter K is a direct result of your suggestion when we met in the spring. Section .0100 of Subchapter K exists as a means of establishing Chapter-wide definitions in the Phase 1 rules before we were ready to work on other Chapter-wide definitions. After all three phases of rules have been adopted, the 07K definitions will be transferred to their final resting places in 18 NCAC 07B .0100.

18 NCAC 07I .0104

Why is this rule necessary? It restates what is already stated in 10B-134.15(a).

Response: A rule is necessary to clarify that the traditional notary's journal is the property of the traditional notary. N.C.G.S. § 10B-134.15(a) is applicable only to electronic notaries and electronic journals created by electronic notaries. Otherwise, an employer might claim that the traditional journal belongs to the employer.

18 NCAC 07I .0105

This rule seems to contradict what is stated in 10B-134.15(a) regarding electronic journals. Here you say that a “notary public” (which I assume includes traditional and electronic notaries) can allow others to make entries under some circumstances, when 134.15(a) says that: “[t]he electronic notary shall not allow another person to make entries in the electronic journal” full stop. I think at the very least you need to consider whether this rule needs to be limited to traditional notaries using paper journals.

Response: The adopted rules are consistent with N.C.G.S. § 10B-134.15(a). 10B-134.15 applies only to remote electronic notarizations. 18 NCAC 07I .0404 provides clarification for that context by specifying that it is the electronic notary who includes the electronic signature in the journal after confirmation that signatures to be entered are those of the principal, principal designee, or credible witness, as applicable.

18 NCAC 07I .0106

Similarly to what I said in .0105, I am not sure you can make exceptions for electronic journals.

Response: We have clarified the rule.

18 NCAC 07I .0203

I’m not sure this rule entirely makes sense. I’m assuming “notary public” encompasses traditional, electronic, and remote electronic notaries. If so, a traditional notary can’t maintain an e-journal that contains entries for electronic notarial and remote electronic notarial acts, as a traditional notary can’t perform those acts. Please revise. Make sure you define “notary public” so it’s clear

Response: We have clarified the rule. Notary public is defined in N.C.G.S. § 10B-3(13), electronic notary is defined in N.C.G.S. § 10B-101(4), as amended by SL 2023-57. We have added a definition of “traditional notary public” to the proposed rules.

18 NCAC 07I .0208

On line 4, the phrase “described is a mode that is:” is very awkward. Consider revising. There is nothing in this rule indicating to your regulated public that there are exceptions to this rule contained in another rule.

Response: We have clarified the proposed rule. We have defined “modes of notarial acts,” e.g., traditional, e-notarization. We have also defined “types of notarial acts” – which are the five statutory types of acts that a notary can perform.

18 NCAC 07I .0210

In (5), is “inventorying” a word? Seems a little awkward.

Response: “Inventorying” is a transitive verb. See Merriam-Webster definition [here](#).

18 NCAC 07I .0212

What is the interplay between this rule and G.S. 10B-126 which states that “all records shall be delivered to the Secretary” upon the notary’s death or resignation? Also between this rule and G.S. 10B-134.15 which requires the notary to keep a backup of the electronic journal for 10 years?

Response: SL 2023-57 amended 10B-126 (and defined “custodian”):

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to ~~the Secretary~~ an approved custodian selected by the notary.”

18 NCAC 07I .0300

Overall Notes: . . . Many of the rules in this section refer to “supplemental information”, yet this term is undefined as far as I can tell.

Response: We have defined “supplemental information.”

18 NCAC 07I .0302

In (3), this may be my ignorance showing, but what are the “types and modes” of notarial acts? Are these defined somewhere? In (4), what are the “types” of documents, and why is this “if applicable”? Wouldn’t every kind of document have a type? In (6), what does “where satisfactory evidence was presented” mean? Satisfactory evidence of what? In (6)(c), the rule says “where the satisfactory evidence was by a credible witness”. This does not make sense to me. Did you mean “presented by”?

Response: We modified the proposed rule. See response above at .0208 re definitions of modes and types of notarial acts. “Satisfactory evidence” is defined in N.C.G.S. §10B-3(22). Ensuring there is satisfactory evidence of identity of an individual is one of the two critical elements of a notary’s official duties if the notary does not “personally know” (defined in N.C.G.S. § 10B-3(17) the principal. “Credible witness” is defined in N.C.G.S. § 10B-3(5). Understanding these terms and their application are the core of the notarial training courses.

An instance of a notarial activity that does not include a document is inventorying a safe deposit box. N.C.G.S. § 53C-6-13(a).

The principal controls the type of document to be notarized. Neither the notary nor this office has the ability to define the types of documents that may be notarized.

18 NCAC 07I .0303

In (3), when you say “present with” the remotely located principals, what does this mean? Present in the room, house, or building? Visible to the notary? This needs a little more specificity.

Response: We have clarified the rule.

18 NCAC 07I .0304

. . . In (3), what does it mean that the information is “directly related” to the act? This is unclear.

Response: All North Carolina notaries receive the same curriculum, which is taught by certified notary instructors. According to our subject matter expert, who has personally taught every certified notary instructor in North Carolina, “directly related to the act” is gone over in detail and something every notary would know.

18 NCAC 07I .0402

I'm a little unclear about the difference between the requirement to back up the journal and the requirement to place the information in a depository. Wouldn't putting the information in the depository satisfy the backup requirement?

Response: No. We interpret the provisions of RENA, SL 2022-54, Part 4A, as amended by SL 2023-57, to require physical separation of the original and the backup. This physical separation is a fundamental tenet of electronic security. Maintaining the original as the backup negates the purpose of having the information available, for example, if the original files become corrupted, the system containing the e-records of the original crashes, or is destroyed in a fire or weather-related disaster. There is no assurance that without specific rules a depository will maintain the physical separation of original and back up that is required by core principles of electronic security.

18 NCAC 07I .0405

It was my understanding that the platform would include the electronic journal, and that the electronic notary is required to use a platform. Does this rule not conflict with those requirements?

Response: The platforms are required only for remote electronic notarizations, and their communication and identity proofing features are not applicable to in-person electronic notarizations. While all electronic notaries will be trained for remote notarial acts, some may have no interest in, and may never perform, remote electronic notarial acts. An electronic notary who does not want to do remote electronic notarial acts, and does not comply with the requirements of the law and rules, may use a journal provided by an AVEN (defined term).

18 NCAC 07K

18 NCAC 07K .0101

In (4) . . . Also with respect to (4), why not just use the term "depository institution"?

Response: [re-numbered in adopted rules as (3)] Non-attorney notaries will, according to our subject matter expert, understand the rules better if we use "bank or depository institution". The phrase is defined.

In (9), I think you should refer to or otherwise incorporate by reference the federal regulation where the mileage rate is set.

Response: In light of your comments, we have modified the proposed rule to require that notaries check the IRS website before each time they travel. Federal regulation does not set the mileage rate and instead gives Treasury/IRS the authority to set the rate at least annually. An individual has to go to the IRS website to find the rate, and IRS sometimes changes the rate more than once a year.

In (24)(C) [re-numbered in published rules as (26) and in adopted rules as (25)], what is the "passing grade"?

Response: Passing grade for the notary course is specified as 80% in N.C.G.S. § 10B-8(a) and cross-referenced in N.C.G.S. § 10B-11(b). For electronic notaries, N.C.G.S. § 10B-102 is interpreted to mean that the 80% in 10B-8(a) applies. We have proposed codifying that interpretation in the proposed rules. A passing grade for instructors is defined as 90% in 18 NCAC 07E .0302 (which was

proposed for amendment in the Phase 2 rules (38 NCR 09) without changing the passing grade).

In (25) [re-numbered in published rules as (27) and in adopted rules as (26)], is the definition of “component of the electronic notarization system” only applicable to this particular rule? Or is this more generally applicable to the Chapter?

Response: In the Phase 1 rules, the phrase is used only in (27). As stated above re 18 NCAC 07I .0102, all definitions in 07K .0101 apply to the entire chapter. After all three phases of rules have been adopted, the 07K definitions will be transferred to their final resting places in 18 NCAC 07B .0100.

In (26), what is an AVEN?

Response: The definition of AVEN is in 18 NCAC 07F .0102.

In (28) [re-numbered in published rules as (30) and in adopted rules as (29)], what is a “wet ink signature”? It seems to me that you mean the use of pen and paper, but I think this term would also include things like a stamp, an inkjet printer, or any other method where wet ink is applied to paper.

Response: In light of your comments, we have modified the definition. This term of art is well known to all notaries. A related term -- “wet-signed” -- is used several times in N.C.G.S. § 10B-25, Emergency Video Notarization (expiring on June 30, 2024).

18 NCAC 07K .0201:

What does it mean to “monitor” the IRS website? Does the notary need to check daily? Weekly? What exactly are you requiring your notaries to do? Does this apply to electronic or remote electronic notaries? I thought the whole point was to avoid being physically present, i.e. travelling?

Response: To resolve the questions posed, the published rule has been modified to require the notary to refer to the IRS website to establish the current federal business mileage rate prior to charging a mileage fee. It is anticipated that both traditional notaries and electronic notaries may have occasion to charge travel fees.

18 NCAC 07F

Almost all the history notes are overinclusive of statutory references. Statutory references in history notes are generally only for the agency’s authority to make the rule. (Emphasis added.) In the case of these rules, most of them only need a reference to N.C.G.S. 10B-4, the agency’s broad authority to adopt rules to administer and enforce the chapter, and a reference to sections showing that the subject matter of the rule is within the Chapter. I provided detailed examples through rule .403, but many of the other rules suffer the same problem.

Response: We have made changes to the history notes, but welcome further instruction regarding the highlighted part of your pre-review comments.

Globally, there seems to be some inconsistency with the terms “appointment” and “office”. As I read

the statutes, the only office is the “Office of Notary Public” and some notaries public are registered as electronic notaries, which allows them to perform electronic notarization. I do not think someone is “appointed” to be an electronic notary and I do not think there is an “Office of Electronic Notary Public.” I’ve tried to flag places where the terminology seemed inconsistent, but be on the lookout for consistent usage throughout.

Response: Based upon an informal advisory opinion from the DOJ that is in accord with your assessment, we adjusted the proposed rules prior to adoption and submittal to RRC.

18 NCAC 07F .0101

- *Consider whether a scope rule is necessary, since in this case it seems to have no effect.*

Response: As noted above at 18 NCAC 07I .0101, we believe scope rules are necessary, useful, and not forbidden by statute or rule.

18 NCAC 07F. 0102

- *What about the definitions being proposed in Subchapter 07K of this chapter?*

Response: See comment above. As per our discussion when we met in the spring, the Subchapter 07K .0100 rules were determined necessary to adopt in Phase 1 of our rulemaking, and will ultimately be moved into Subchapter 07B. The definitions in 07F .0102 were intended to apply only to N.C.G.S. Chapter 10B, Article 2. It is possible that in Phase 3, we may move some of those definitions into Subchapter 07B. At this time, however, the definitions apply only to Article 2 of N.C.G.S. Chapter 10B and to Subchapter 18 NCAC 07F.

- *Consider if the history note is overinclusive. The general rulemaking authority in G.S. 10B-4 may be sufficient for definitions, and then additional authority would be needed when using those definitions to establish requirements.*

Response: See comment above at 18 NCAC 07F Overall Comments. Please clarify the highlighted portion of your comments.

18 NCAC 07F .0201

- *On p. 3 line 21, “continue to” raises some questions about timing. Is there a point where an electronic notary would not need to be qualified to hold the notary commission? Consider deleting “continue to”.*

- *Aren’t the holders of notary commissions already required to continue to meet the qualifications?*

- *When someone applies to be an electronic notary are their qualifications to hold a notary commission being rechecked?*

Response: We modified the wording. The qualifications of an applicant to obtain appointment as a notary public are checked each time they apply to be commissioned or recommissioned. Initial registration as an electronic notary may take place at a different time from commissioning. Therefore, the applicant must confirm continued qualification to be registered.

18 NCAC 07F .0302

- *When does the applicant attend the course? Before applying or before certification?*

Response: An electronic notary applicant is required to attend the course before applying for registration, as specified in 18 NCAC 07F .0402.

18 NCAC 07F .0402

- *As written, I don't think this rule makes logical sense. Per the definition in .0102(4), they wouldn't be an applicant unless they had already applied.*
- *Practically, does a notary take the course before or after applying?*

Response: The electronic notary application process begins by attending the electronic notary course. The electronic application is then submitted only after successful completion of the course.

18 NCAC 07F .0404

- *I'm not sure I understand what this rule is meant to do. What changes? When?*
- *If this rule is just requiring electronic notaries to comply with rules that exist elsewhere in rule or statute, I don't see how this could be necessary.*

Response: We modified the rule [renumbered as .0403 in adopted rules]

18 NCAC 07F. 0405

- *As written, this rule appears to cover the management of an internal process at the department, and thus does not meet the definition of a rule.*
- *If this is meant to cover an applicant's "procedural or substantive rights or duties", I would expect timelines, requirements to respond to requests for additional information, or standards for when additional information would be requested instead of an application denied.*

Response: We have not adopted the proposed rule at this time.

18 NCAC 07F .0406

- *I'm not sure I understand what this rule is meant to do. If the department has rejected an application for failure to comply with a rule, and is requiring an applicant to submit a new application to correct the error, why would the department then reconsider the rejected application? Wouldn't it just be considering the new application?*

Response: We have not adopted the proposed rule at this time.

18 NCAC 07F Section .0500

- *The terms "office," "appointment," and "commission," seem to be used imprecisely throughout this section.*
- *Throughout this section, the rules seem to contemplate an "electronic notary public" as a separate office from a "notary public." The statutes contemplate electronic notaries as "registered" (G.S. 10B-134.1(9)). It seems to me that there is only one office (notary public), but some people holding that office are registered to perform electronic notarization.*
- *Are notaries appointed? Most of the statutes seemed to refer to "commissioning" notaries.*
- *As I understand the statute, someone who is commissioned as a notary public holds the office of notary public and can be registered as an electronic notary if they meet additional qualifications. Is that wrong?*

Response: See comments above at 18 NCAC 07F Overall Comments. In accord with the DOJ informal advisory opinion, we have made appropriate changes prior to adoption of the rules, before submitting them to the RRC.

18 NCAC 07F .0501

- *Is this rule necessary? At best, it seems to restate the broad purpose of the statute.*
- *What does qualified mean? More than what is already laid out in rule and statute?*

Response: We have not adopted this rule at this time.

18 NCAC 07F .0503

- *How will the department notify the notary?*
- *When will the department notify the notary?*

Response: The rule has been modified.

18 NCAC 07F .0512

- *What is meant by “confirm a notary public’s status”? To whom and for what reason?*

Response: We confirm a notary’s commission and registration status, including whether an action is pending against the notary, when asked. This activity currently includes confirmation to an AVEN that a notary is registered as an electronic notary at certain milestone moments.

18 NCAC 07F .0602

- *Is this duplicating the existing requirement of 10B-134.19?*

Response: No. N.C.G.S. § 10B-134.19 only applies only to remote electronic notarization, and therefore does not address in-person electronic notarizations. This rule makes it absolutely clear that an electronic notary who is doing any electronic notarization must use approved technology.

18 NCAC 07F .0701

- *What is the standard for measuring uniqueness of signatures?*
- *How would someone know if their signature was unique?*
- *Consider if “specific” would work instead of “unique”.*

Response: We have changed “unique” to “specific.”

18 NCAC 07F .0703

- *Item 1 appears to be required by the exclusive control requirement in .0702. Why is it necessary to repeat this rule?*
- *Item 2 appears to be required by the uniqueness requirement in .0701. Why is it necessary to repeat this rule?*

Response: We have repealed .0703 and modified .0702 to include the unique element that was in .0703.

18 NCAC 07F .0704

- *Are “attached to” and “logically associated with” defined somewhere? I see that the terms come from the statute, but I do not know what they mean.*

Response: The phrases mean that the signature is so closely linked to the signed document that there can be no question that the two are related. These are terms of art that are well understood among the regulated community of technology providers.

18 NCAC 07F .0706

- *Why is it necessary for a rule to require compliance with the statute?*

Response: We modified the rule to clarify when compliance applies.

18 NCAC 07F. 0709

- *The definition for commit is currently in subchapter K. Should it be in this subchapter?*

Response: For Phase 1, we believe that the definition is in the correct location. It is possible that in Phase 2 or Phase 3, we would decide that the definition should be moved.

18 NCAC 07F .0802

- *Where does an electronic notary get their seal?*
- *As written, the rule contemplates a singular seal and a singular notary, but not a relationship between them.*

Response: An electronic notary typically gets their seal from the AVEN that they choose to use. The rule has been revised to clarify that a particular electronic seal must be attributable to a particular electronic notary.

18 NCAC 07F .0807

- *The 10B-37(c) requirement for the border is that: “The perimeter of the seal shall contain a border that is visible when impressed.” It is not immediately clear how to apply this as the rule is written.*
- *I don’t understand what (2)(d) is requiring. G.S. 10B-37(d) permits, but does not require, a seal to contain the date of a commission’s expiration.*

Response: The rule has been modified for clarity, and now also requires the electronic notary’s expiration date to be included in the electronic notarial seal pursuant to our authority in N.C.G.S. § 10B-4 and Article 2 of Chapter 10B of the General Statutes.

18 NCAC 07F .0808

- *I am not sure how this rule works. N.C.G.S. 10B-101(5) defines the electronic seal as the “information within a notarized document.” So, is this meant to invoke some kind of intellectual property right?*
- *How does this interact with property rights of any third party software used in creating or affixing the seal?*

Response: N.C.G.S. § 10B-101(5) is designed to assure clarity of the notarial information conveyed by the seal, not to address whether intellectual property rights attach to the electronic seal. The requirement that the electronic notary's seal be the private property of the notary is required as part of the integration directive in N.C.G.S. § 10B-2(6) (S.L. 2022-54).

18 NCAC 07F .0809

- *Why is it necessary for a rule to require compliance with the statute and other rules?*

20

Response: We have added the time frame that makes this clear.

18 NCAC 07F .0901

- *Is this rule necessary? It appears to only require compliance with statutes and other rules.*

Response: This rule is a scope rule.

18 NCAC 07F .0904

- *Should there be a timing requirement for when the course is completed in this rule?*

Response: Upon close consideration, we have concluded that a time-to-complete element is not appropriate in this instance. Because the electronic notary registration is co-terminous with the notary commission, the electronic notary course must be taken in time to be reregistered at the same time of recommissioning. The rules deal separately with the rare instances in which a notary does not reregister as an electronic notary at the time of recommissioning.

18 NCAC 07F .1002

- *How is this different from the rules requiring sole control? (.0702 and .0802)*

Response: (1) The rule covers journals. The other rules referenced cover electronic notary signatures and electronic notary seals. (2) The rule adds specificity regarding how the electronic notary must comply, *i.e.*, by complying with the departmentally approved authentication methods of the technology provider.

18 NCAC 07F .1104

- *If the requirements exist in rule, why is it necessary to restate them here?*

Response: The requirements are not being restated. This is a cross-reference to make it clear.

18 NCAC 07F .1105

- *What does "wet-signed" mean?*

Response: The rule has been revised to eliminate use of the term.

18 NCAC 07F .1106

- *What changes are they required to report? If there is a new version of the software? A new staff contact?*

Response: We have clarified the rule.

18 NCAC 07F .1107

- *Item(3) seems to create an unbounded exception in the discretion of the notary. That does not seem intentional. Could a notary decide that a complete technological failure that impedes the notarial act did not warrant termination?*

Response: We have modified the rule. Whether a notary performs a notarial act is solely in the discretion of the notary, except insofar as the exercise of discretion violates the Constitution or a provision of the Act.

18 NCAC 07F .1108

- *There is a mismatch between the language of .1107 and .1108. Under .1107, a notary cannot perform the notarial act, but .1108 seems to contemplate stopping or restarting a notary act. If the notary act could not be performed, I don't think it could be continued.*

Response: The two rules have been revised so they work in harmony, with .1107 stating the general rule, and .1108 providing narrow exceptions (*e.g.*, as when a computer freeze resolves quickly).

18 NCAC 07F .1110

- *What does it mean to suspend or cancel the provider's technology under this rule?*
- *How is item (3) different from .1106?*

Response: The rules are revised for clarity. .1106 covers notaries who choose to change providers, and .1110 covers circumstances where provider issues have emerged.

18 NCAC 07F .1111

- *Item (1) doesn't make sense.*

Response: The rule has been clarified.

Regards,



Ann B. Wall
General Counsel

Definitions in Adopted Phase 1 Rules and Proposed Phase 2 rules, 18 NCAC 07

Please note that at the conclusion of the rulemaking, I will be working with Ashley and Dana to move some of the definitions to their permanent location in Subchapter 07B. Definitions in Subchapter 07B are applicable to the entirety of 18 NCAC 07

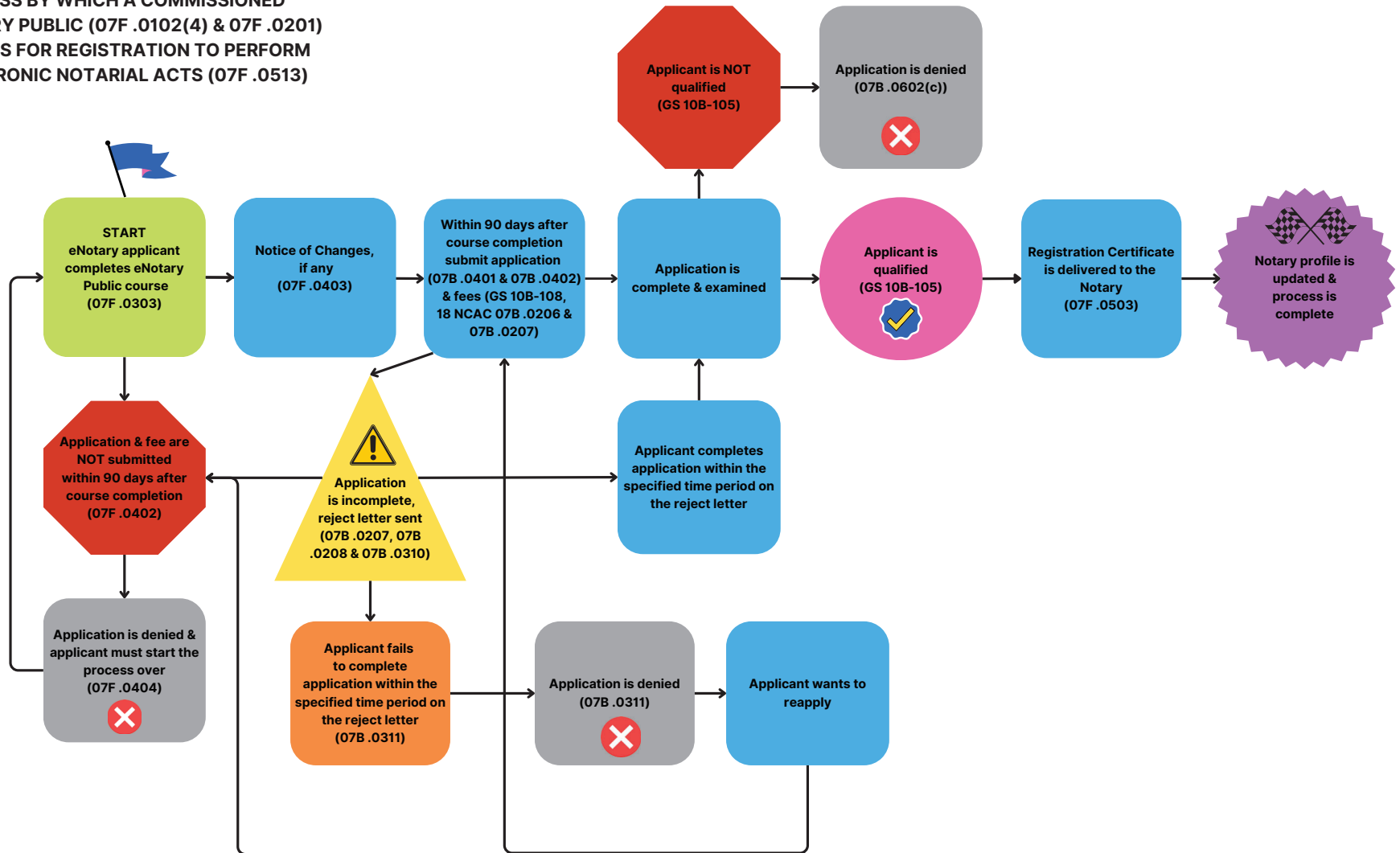
Defined word or phrase	Subchapter	Rule #	Adopted ¹ & to RRC for review (Ph. 1)	Proposed ² , Comment period closes 1/2/24 (Ph. 2)
"Active experience as a notary"	07E	.0101(b)(1)	X	
"Active experience as a certified notary instructor"	"	.0101(b)(2)	X	
"Affidavit of moral character form"	"	.0101(b)(3)	X	
"Appoint" or "Appointment"	07B	.0102(1)		X
"Appointee"	"	.0102(2)		X
"Approved"	07K	.0101(1)		X
"Approved vendor for electronic notarizations," "approved electronic notary solution provider," or "AVEN"	07F	.0102(1)	X	
"Armed Forces of the United States"	07K	.0101(2)		X
"Authorization"	07B	.0102(3)		X
"Authorize"	"	.0102(4)		X
"Bank or financial institution"	07K	.0101(3)		X
"Biometric Authentication"	07F	.0102(2)	X	
"Canceled act"	07I	.0102(1)		X
"Certificate of appointment"	07K	.0101(4)		X
"Commission applicant"	07C	.0102(1)	X	
"Commission certificate"	07K	.0101(5)		X
"Commission date"	07B	.0102(5)		X
"Commit"	07K	.0101(6)		X
"Court"	07B	.0102(6)		X
"Crime"	"	.0102(7)		X
"Crime involving dishonesty"	"	.0102(8)		X
"Criminal convictions"	"	.0102(9)		X
"Denial" with regard to public office	"	.0102(10)		X
"Disciplinary action"	"	.0102(11)		X
"Disciplinary order"	"	.0102(12)		X
"Dishonored payment" or "payment that has been dishonored"	07K	.0101(7)		X
"Electronic notarization system"	07F	.0102(3)	X	
"Electronic notary applicant"	"	.0102(4)	X	
"Electronic notary's electronic signature"	"	.0102(5)	X	
"Eligible institution" or "institution"	07E	.0101(b)(4)	X	
"Enter information"	07K	.0101(8)		X
"Exam"	07C	.0102(2)	X	
"Family member"	07B	.0102(13)		X
"Federal business mileage rate"	07K	.0101(9)		X
"Federally recognized Indian tribe"	07K	.0101(10)		X
"File"	"	.0101(11)		X
"Filer"	07K	.0101(12)		X
"Filing"	07K	.0101(13)		X
"Finding"	07B	.0102(14)		X
"Form"	07K	.0101(14)		X
"Form preparer"	"	.0101(15)		X

¹ Published August 15, 2023, at 38 NCR 04.

² Published November 1, 2023, at 38 NCR 09.

"Harm"	07B	.0102(15)		X
"Independently verifiable"	07F	.0102(6)	X	
"Information technology" or "IT"	07K	.0101(16)		X
"Information technology security" or "IT security"	"	.0101(17)		X
"Initial appointment"	"	.0101(18)		X
"Instructor," "certified notary public instructor," "certified instructor," "notary instructor," and "certified notary instructor"	"	.0101(19)		X
"Instructor applicant"	07E	.0101(b)(5)	X	
"Instructor application form"	"	.0101(b)(6)	X	
"Instructor course"	"	.0101(b)(7)	X	
"Instructor recertification application form"	"	.0101(b)(8)	X	
"In the presence of the electronic notary at the time of notarization"	07F	.0102(7)	X	
"Issuance" with regard to public office	07B	.0102(16)		X
"Journal"	07I	.0102(2)		X
"Licensed member of the North Carolina State Bar"	07B	.0102(17)		X
"Location"	07K	.0101(20)		X
"Long-term"	"	.0101(21)		X
"Mode of notarial act"	07I	.0102(3)		X
"Name for use on a notary public commission"	07B	.0102(18)		X
"Notarial act"	"	.0102(19)		X
"Notarial transaction process"	07K	.0101(22)		X
"Notary course"	07B	.0102(20)		X
"Password authentication"	07F	.0102(8)	X	
"Person"	07K	.0101(23)		X
"Probation" with regard to criminal convictions	07B	.0102(21)		X
"Professional license"	"	.0102(22)		X
"Public office"	"	.0102(23)		X
"Recommendation form"	07E	.0101(b)(9)	X	
"Restriction" with regard to public office	07B	.0102(24)		X
"Release from prison, probation or parole"	"	.0102(25)		X
"Residence address" or "residential address"	"	.0102(26)		X
"Revocation" with regard to an individual's capacity to serve in a public office	"	.0102(27)		X
"State recognized tribe"	07K	.0101(24)		X
"Successfully complete" and "successful completion"	"	.0101(25)		X
"Successfully complete" . . . when used to describe an instructor applicant	07E	.0101(b)(10)	X	
"Supplemental information"	07I	.0102(4)		X
"Suspension" with regard to a public office	07B	.0102(28)		X
"Technological failure"	07K	.0101(26)		X
"Technology provider"	"	.0101(27)		X
"Termination of employment"	07K	.0101(28)		X
"Token authentication"	07F	.0102(9)	X	
"Traditional notarization"	07K	.0101(29)		X
"Traditional notary public"	"	.0101(30)		X
"Type of notarial act"	"	.0101(31)		X
"Under the exclusive control of the notary"	"	.0101(32)		X
"United States" or "U.S."	"	.0101(33)		X

PROCESS BY WHICH A COMMISSIONED NOTARY PUBLIC (07F .0102(4) & 07F .0201) APPLIES FOR REGISTRATION TO PERFORM ELECTRONIC NOTARIAL ACTS (07F .0513)



Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Monday, November 20, 2023 12:46 PM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Ascher, Seth M; Elmore, Ann M
Subject: [External] Re: Notary Rules

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Hi, Brian. The only part of Subchapter K that needs to be effective on January 1, is Section .0200.

I will have some stuff to aid you in your work soon.

Ann

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

Hi Ann,

We're looking at the filings you've sent in. To confirm, we have sections 07B, 07F, 07I, and 07K. It's my and Seth's intention to split these along the same lines as the pre-review, with Seth taking 07F, and me taking the rest.

It looks like 07B, 07F, and 07I all have an effective date of June 1, 2024, and for 07K you'd like an effective date of January 1, 2024. Again, just to confirm, if we need to prioritize our review, you'd like us to get to 07K at the December meeting, and then if an extension is necessary, it would be for the remaining rules, correct?

Thanks,
Brian

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