

Burgos, Alexander N

Subject: FW: [External] Links for the RRC meeting on Thursday

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Monday, April 21, 2025 12:40 PM
To: Wall, Ann B <awall@sosnc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Stallworth, Ozie H <ostallworth@sosnc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: RE: [External] Links for the RRC meeting on Thursday

The final 07J rules are posted on the agenda. They were split into two parts due to the size of the PDFs.

Alexander Burgos

Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940
Alexander.burgos@oah.nc.gov

From: Ann Wall <awall@sosnc.gov>
Sent: Monday, April 21, 2025 12:11 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Stallworth, Ozie H <ostallworth@sosnc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: RE: [External] Links for the RRC meeting on Thursday

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Thanks, Alex.

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.

Invites have been sent.

Alexander Burgos

Paralegal

Office of Administrative Hearings

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Raleigh NC, 27609

(984) 236-1940

Alexander.burgos@oah.nc.gov

From: Ann Wall <awall@sosnc.gov>

Sent: Monday, April 21, 2025 10:44 AM

To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Stallworth, Ozie H <ostallworth@sosnc.gov>

Cc: Elmore, Ann M <aelmore@sosnc.gov>

Subject: [External] Links for the RRC meeting on Thursday

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Hi. We have three people who will be available for questions and will need the link that will allow them to speak in response to questions, if necessary. They are

David Luttrell, DLuttrell@sosnc.gov

Ozie Stallworth, ostallworth@sosnc.gov

Tina Dupree, tdupree@sosnc.gov

Thanks, Ann

Ann B. Wall

General Counsel

Department of the Secretary of State

awall@sosnc.gov

Phone (919) 814-5310

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Burgos, Alexander N

Subject: FW: Fw: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

Alexander Burgos

From: Ann Wall <awall@sosnc.gov>
Sent: Monday, April 21, 2025 10:44 AM
To: Rules, Oah <oah.rules@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: Fw: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

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Thanks, Seth.

Ann B. Wall
General Counsel
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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.

I have reviewed these, and they are ready to be uploaded.

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

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Burgos, Alexander N

Subject: FW: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, April 21, 2025 10:44 AM

To: Elmore, Ann M <aelmore@sosnc.gov>

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

Subject: Re: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

I have reviewed these, and they look good to me. I have sent them on to be updated in our systems.

At this point, I anticipate recommending approval of subchapter 07J, with the caveat that there is a staff opinion about the protocol issue that may require discussion. I will be asking for an extension of the remainder of the notary filing, with the hope of having it ready for the May meeting.

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.

Burgos, Alexander N

Subject: FW: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Monday, April 21, 2025 9:13 AM

To: Elmore, Ann M <aelmore@sosnc.gov>

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

Subject: Re: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

Thanks,

I will look these over and get back to you if I have any questions before finalizing.

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.

Burgos, Alexander N

Subject: FW: [External] 18 NCAC 07J - TCR-prompted rule changes with the rules attached
Attachments: 18 NCAC 07J .0608.docx; 18 NCAC 07J .0402.docx; 18 NCAC 07J .0607.docx; 18 NCAC 07J .0201.docx; 18 NCAC 07J .0208.docx; 18 NCAC 07J .0904.docx; 18 NCAC 07J .0619.docx; 18 NCAC 07J .0616.docx; 18 NCAC 07J .0810.docx; 18 NCAC 07J .1401.docx; 18 NCAC 07J .1104.docx; 18 NCAC 07J .1006.docx; 18 NCAC 07J .1603.docx; 18 NCAC 07J .1406.docx; 18 NCAC 07J .1803.docx; 18 NCAC 07J .2002.docx; 18 NCAC 07J .0101.docx; 18 NCAC 07J .2009.docx

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Monday, April 21, 2025 8:05 AM
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] 18 NCAC 07J - TCR-prompted rule changes with the rules attached

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Good morning, Seth.

As agreed, enclosed are the formatted 18 rules. The changes were prompted by your technical change request document, as well as our subsequent email discussion which added 07J .0101(9). The enclosures are as submitted to you with the following formatter-prompted corrections:

- 07J .0208(b)(2) - The sub-items have been changed from lower-case letters to upper-case letters.
- 07J .0402 - The introductory statement needed to be changed from adopted to amended.
- 07J .0607 - "is" was in the published version; it was added and stricken, as it has since been replaced by "are." 07J .0619 - "3rd" was changed to "third."

The following are being withdrawn pursuant to TCRs. They are not included. We understand the notification is sufficient; however, if you require more, please advise.

- 07J .0625 and
- 07J .1004.

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

Thank you for your consideration.

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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1 18 NCAC 07J .0101 is adopted with changes as published in 39:13 NCR 831-832 as follows:

2
3 **SUBCHAPTER 07J – ~~REQUIREMENTS FOR TECHNOLOGY TO CONDUCT ELECTRONIC~~**
4 **~~NOTARIZATION~~ TECHNOLOGY PROVIDER REQUIREMENTS**

5
6 **SECTION .0100 – GENERAL RULES**

7
8 **18 NCAC 07J .0101 DEFINITIONS**

9 For purposes of this Subchapter:

- 10 (1) "Break in service" means:
- 11 (a) the technology provider is subject to a disciplinary action by the Department that:
- 12 (i) restricts its services;
- 13 (ii) suspends its services; or
- 14 (iii) revokes its authorization;
- 15 (b) the technology provider has been denied a subsequent license or approval by the
- 16 Department;
- 17 (c) the technology provider has not submitted an application to the Department for a renewed
- 18 license or approval; or
- 19 (d) the technology provider has discontinued providing its authorized solution in North
- 20 Carolina or support for the solution for any reason.
- 21 (2) "Communication technology recording" means a data file that contains the audio, video, and written
- 22 communication that occurred during a remote notarial transaction process via the communication
- 23 technology in a platform.
- 24 (3) "Custodial notary" means an electronic notary public who designates himself or herself as a
- 25 custodian of the electronic notary's own session records pursuant to 18 NCAC 07H .0504.
- 26 (4) "Cybersecurity incident" means an occurrence defined in G.S. 143B-1320(a)(4a).
- 27 (5) "Depository" means a storage services solution for electronic journal entries and communication
- 28 technology recordings, if applicable, that is offered by an IPEN solution provider or a platform
- 29 provider.
- 30 (6) "Electronic notary solution" means any of the following products or services:
- 31 (a) an IPEN solution that is:
- 32 (i) available from an existing technology provider subject to Section .1100 of this
- 33 Subchapter; or
- 34 (ii) subject to approval pursuant to Rule .1301 of this Subchapter;
- 35 (b) a platform as defined in G.S. 10B-134.1(6) and subject to approval pursuant to Rule .1501
- 36 of this Subchapter;

- 1 (c) an identity proofing solution as defined in G.S. 10B-134.1(5) and subject to approval
2 pursuant to Rule .1901 of this Subchapter;
- 3 (d) a credential analysis solution as defined in G.S. 10B-134.1(3) and subject to approval
4 pursuant to Rule .1701 of this Subchapter; and
- 5 (e) custodial services as defined in G.S. 10B-134.1(3a) and subject to approval pursuant to
6 Rule .2101 of this Subchapter.
- 7 (7) "Encryption" shall have the meaning in G.S. 75-61(8).
- 8 (8) "Existing technology providers" means IPEN solution providers approved before the effective date
9 of these rules.
- 10 (9) "Geolocation" means technology that identifies the location of remotely located principals
11 connecting to a ~~platform using a GPS-enabled device with an accuracy rate of within 100 feet.~~
12 platform.
- 13 (10) "Journal convenience copy" means a collection of a notary's electronic journal entries hosted by a
14 depository in an electronic format for use by the notary as a convenience and that may be retained
15 or deleted by the depository at the notary's discretion. The journal convenience copy is not a session
16 record.
- 17 (11) "Key individuals" are those individuals who are identified by a platform provider or an IPEN
18 solution provider as meeting the criteria identified in G.S. 10B-134.19(c)(2).
- 19 (12) "Protocols" or "Department's Scientific, Architectural, and Engineering Protocols for Technology
20 Providers" means a document prepared by the Department and made available to the public that
21 contains scientific, architectural, and engineering standards, forms, or procedures related to
22 information technology for technology providers.
- 23 (13) "Session record" means the electronic journal entries for a notarial session preserved in PDF/A
24 format in accordance with the Department's protocols, including any embedded communication
25 technology recording and associated metadata.
- 26 (14) "Supporting vendor" means a person that provides an electronic service to a technology provider:
27 (a) upon which the provider relies to provide the notarial service for which the provider seeks
28 or has approval or licensure; and
29 (b) that must be reported to the Department pursuant to Rule .0410 of this Subchapter.
- 30 (15) "Transferee" means a custodian that receives a session record from a depository or a custodian.
- 31 (16) "Transferor" means a depository or a custodian that transfers a session record to a custodian.

32
33 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*
34 *134.21; 10B-134.23;*
35 *Eff. July 1, 2025.*

1 18 NCAC 07J .0201 is amended **with changes** as published in 39:13 NCR 834 as follows:

2
3 **SECTION .0200 – ~~PROCESS FOR APPROVAL FOR AVEN TECHNOLOGY TO CONDUCT~~**
4 **ELECTRONIC NOTARIZATION NOTICES REQUIRED FROM TECHNOLOGY PROVIDERS**

5
6 **18 NCAC 07J .0201 ~~ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION NOTICE OF~~**
7 **MATERIAL CHANGE TO ELECTRONIC NOTARY SOLUTION**

8 ~~(a) Any person or entity applying to the Department for designation as an approved electronic notary solution provider~~
9 ~~must complete and submit an application to the Department for review and approval before authorizing any electronic~~
10 ~~notary seals or electronic signatures to North Carolina electronic notaries. The application shall include the following~~
11 ~~information:~~

12 ~~(1) Hardware and software specifications and requirements for the provider's electronic notarization~~
13 ~~system,~~

14 ~~(2) A description of the type(s) of technology used in the provider's electronic notarization system, and~~

15 ~~(3) A demonstration of how the technology is used to perform an electronic notarization.~~

16 ~~(b) An electronic notary solution provider may appeal the Department's rejection of the provider's application for~~
17 ~~designation as an approved electronic notary solution provider as provided under Article 3 of Chapter 150B of the~~
18 ~~General Statutes.~~

19 **(a) After authorization by the Department and before implementation, a technology provider shall notify the**
20 **Department of any material change to its authorized electronic notary solution.**

21 **(b) [Note:] For purposes of this Section, a material change is one affecting the electronic notary solution's core:**

22 **(1) functionality;**

23 **(2) security; or**

24 **(3) reliability.**

25
26 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126(d); 10B-134.15; 10B-134.17; 10B-134.19;*
27 *10B-134.21; 10B-134.23; 47 16.5; 47 16.7; 147 36; 15 USC 7002;*

28 *Eff. January 1, 2007;*

29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
30 *6, 2016;*

31 *Transferred from 18 NCAC 07C .0501 Eff. June 1, ~~2023.~~ 2023;*

32 *Amended Eff. July 1, 2025.*

1 18 NCAC 07J .0208 is adopted with changes as published in 39:13 NCR 835 as follows:

2

3 **18 NCAC 07J .0208 NOTICE OF REPORTABLE INCIDENT**

4 (a) Within 72 hours of discovery of a reportable incident, a technology provider shall notify the Department.

5 (b) ~~Note:~~ For purposes of the rules in this Section of this Subchapter, a reportable incident is one that involves:

6 (1) a technology provider's electronic notary solution, a notary public's records, ~~a~~ an electronic notary's
7 electronic seal or signature, or a principal's records or information;

8 (2) any of the following affecting data or access:

9 ~~(a)~~(A) unauthorized access, use, alteration, or disclosure;

10 ~~(b)~~(B) theft;

11 ~~(c)~~(C) loss; or

12 ~~(d)~~(D) compromise; or

13 (3) a cybersecurity incident.

14

15 *History Note:* Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-
16 134.21; 10B-134.23;

17 *Eff. July 1, 2025.*

1 18 NCAC 07J .0402 is amended **with changes** as published in 39:13 NCR 838-839 as follows:

2
3 **18 NCAC 07J .0402 ~~CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION~~**
4 **~~PROVIDERS~~ PROVIDER NAME**

5 Each applicant and each approved electronic notary solution provider shall:

- 6 (1) ~~Provide a free and readily available viewer/reader so as to enable all parties relying on the~~
7 ~~electronically notarized record or document to view the electronic notary signature and the~~
8 ~~electronic notary seal without incurring any cost;~~
9 (2) ~~Comply with the laws, policies, and rules that govern North Carolina notaries;~~
10 (3) ~~Provide an electronic notarization system or solution that complies with the technical specifications~~
11 ~~of the rules and standards that govern electronic notarization processes and procedures in North~~
12 ~~Carolina;~~
13 (4) ~~Require such of the provider's principals or employees to take the mandatory electronic notary~~
14 ~~education course online and pass the required examination as is necessary to ensure the provider~~
15 ~~possesses sufficient familiarity with North Carolina's electronic notary laws and requirements;~~
16 (5) ~~Require notaries to present the NC Secretary of State's Electronic Notary Certificate to Perform~~
17 ~~Electronic Notary Acts prior to authorizing an electronic notary seal and signature;~~
18 (6) ~~Verify the authorization of a North Carolina notary to perform electronic notary acts by logging on~~
19 ~~to the Department's website and comparing the name, notary commission number and commission~~
20 ~~expiration date with the information on the Electronic Notary Certificate to Perform Electronic~~
21 ~~Notary Acts prior to authorizing an electronic notary seal and signature;~~
22 (7) ~~Provide prorated fees to align the usage and cost of the electronic notary system or solution with the~~
23 ~~commission term limit of the electronic notary purchasing the electronic notary seal and signature;~~
24 (8) ~~Suspend the use of any electronic notarization system or solution for any notary whose commission~~
25 ~~has been revoked or suspended by the North Carolina Secretary of State; and~~
26 (9) ~~Submit an exemplar of the electronic notary signature and the electronic notary seal to the~~
27 ~~Department for each electronic notary who subscribes to the provider's electronic notary solution.~~

28 All technology provider applications shall include:

- 29 (1) ~~the provider's name in its state or jurisdiction of [formation; formation as required by 18 NCAC~~
30 ~~07B .0402(2)(a); and~~
31 (2) ~~the names required by [18 NCAC 07B .0422(3)(e); 18 NCAC 07B .0422(3)(c) and (d).~~

32
33 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126(d); 10B-126; 10B-134.15; 10B-134.17; 10B-*
34 *134.19; 10B-134.21; 10B-134.23; 47-16.5; 47-16.7; 147-36; 15 USC 7002;*
35 *Eff. January 1, 2007;*
36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
37 *6, 2016;*

1 *Transferred from 18 NCAC 07C .0502 Eff. June 1, ~~2023~~ 2023;*
2 *Amended Eff. July 1, 2025.*

1 18 NCAC 07J .0607 is adopted with changes as published in 39:13 NCR 843 as follows:

2

3 **18 NCAC 07J .0607 SINGLE LINK AND SUBMISSION TO DEPARTMENT**

4 A technology provider shall ensure that the ~~primary~~ website page or pages required by Rule .0606 of this Section and
5 website content required by Rule .0608 of this Section ~~is~~ are accessible through a single link provided to the

6 Department:

7 (1) for inclusion on the Department's authorized technology provider web page; and

8 (2) with any sub-pages directly accessible through the single linked page.

9

10 *History Note:* Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-

11 134.21; 10B-134.23;

12 *Eff. July 1, 2025.*

1 18 NCAC 07J .0608 is adopted with changes as published in 39:13 NCR 843 as follows:

2

3 **18 NCAC 07J .0608 WEBSITE CONTENT**

4 A technology provider's website shall include the following content in the order set out in this Rule:

- 5 (1) the provider's name;
- 6 (2) the provider's contact information, including:
- 7 (a) a general telephone number;
- 8 (b) a sales number, if different; and
- 9 (c) a support or help desk number;
- 10 (3) the types of authorized electronic notary solution offered and each product name;
- 11 (4) if applicable, a notice that North Carolina notaries may use only electronic notary solutions
- 12 authorized by the Department;
- 13 (5) a product description, including the functions offered;
- 14 (6) service sectors served by the products described;
- 15 (7) the minimum technical specifications for use of the electronic notary solution by:
- 16 (a) a notary public;
- 17 (b) a principal; and
- 18 (c) other participants in an electronic notarial transaction;
- 19 (8) a direct link to the service level agreement required by Rule .0109 of this Subchapter;
- 20 (9) either the disclosures required by the following rules in this Subchapter or a link to ~~them~~ those
- 21 disclosures:
- 22 (a) Rule .1208;
- 23 (b) Rule .1427;
- 24 (c) ~~Rule .1611~~; Rule .1613
- 25 (d) Rule .1812; and
- 26 (e) Rule .2021;
- 27 (10) either the instructions for use and demonstrations or tutorials or links to them; and
- 28 (11) other information that the provider wishes to provide, such as pricing.

29

30 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*

31 *134.21; 10B-134.23;*

32 *Eff. July 1, 2025.*

1 18 NCAC 07J .0616 is adopted with changes as published in 39:13 NCR 844 as follows:

2

3 **18 NCAC 07J .0616 CONFIGURATION MANAGEMENT PLAN**

4 A technology provider shall maintain a configuration management plan for systems supporting the electronic notary
5 solution that addresses:

6 (1) maintenance of an accurate inventory of items including:

7 (a) software;

8 (b) hardware; and

9 (c) network components;

10 ~~(2) establishment of configuration settings that reflect the most restrictive mode consistent with its~~
11 ~~operational requirements;~~

12 (2) implementation of configuration settings which represent the most restrictive security settings
13 compatible with the systems' operational requirements;

14 (3) use of automated mechanisms to detect inventory and configuration changes;

15 (4) prevention of unauthorized changes to the systems; and

16 (5) evaluation of the potential security impact of proposed changes.

17

18 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*
19 *134.21; 10B-134.23;*
20 *Eff. July 1, 2025.*

1 18 NCAC 07J .0619 is adopted with changes as published in 39:13 NCR 844 as follows:

2

3 **18 NCAC 07J .0619 VULNERABILITY DETECTION AND REMEDIATION**

4 A technology provider shall:

5 ~~(1) scan for vulnerabilities of the systems supporting the electronic notary solution at least weekly; and~~

6 (1) at least weekly execute or cause to be executed a third party security program which shall evaluate

7 each system endpoint for indications of malware, known security risks, and other vulnerabilities;

8 and

9 (2) detect and remediate IT security vulnerabilities.

10

11 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*

12 *134.21; 10B-134.23;*

13 *Eff. July 1, 2025.*

1 18 NCAC 07J .0810 is adopted with changes as published in 39:13 NCR 847 as follows:

2

3 **18 NCAC 07J .0811** ~~18 NCAC 07J .0810~~ **SEGREGATION OF ENTRIES**

4 An IPEN or platform provider shall ensure that entries in its electronic journals can be ~~designated separately~~ annotated
5 and distinguished from other entries. Note: An example of separate ~~designation~~ and distinguishing annotation would
6 be flagging entries subject to a litigation hold.

7

8 *History Note:* Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-
9 134.21; 10B-134.23;

10 *Eff. July 1, 2025.*

1 18 NCAC 07J .0904 is adopted with changes as published in 39:13 NCR 848 as follows:

2

3 **18 NCAC 07J .0904 VIDEO CUSTOMIZATION STANDARD**

4 A platform provider's communication technology shall include a feature ~~that~~ that

5 (1)——allows each participant to lock the size and position of a priority video window; and

6 (2)——can be located easily by a participant in a notarial transaction.

7

8 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*

9 *134.21; 10B-134.23;*

10 *Eff. July 1, 2025.*

1 18 NCAC 07J .1006 is adopted with changes as published in 39:13 NCR 849-850 as follows:

2

3 **18 NCAC 07J .1006 SEARCHABLE SESSION RECORD FIELDS**

4 A depository shall make session records searchable and identifiable by the following fields:

5 (1) the session identifier required pursuant to Rule .1005 of this Section;

6 (2) the commission name of the notary public;

7 (3) the county of the notary's commission;

8 ~~(4) the number of notarial acts performed as entered by the notary public;~~

9 ~~(5)~~(4) the names of the remotely located principals as they appear on the credentials presented for
10 credential analysis;

11 ~~(6)~~(5) the time of day when the session ended;

12 ~~(7)~~(6) whether the session was performed in the conduct of the business of a notary's employer;

13 ~~(8)~~(7) the name of the employer, if applicable;

14 ~~(9)~~(8) the types of notarial acts, or cancellation of the session; and

15 ~~(10)~~(9) whether the electronic notarial act was:

16 (a) an electronic notarial act; or

17 (b) a remote electronic notarial act:

18 (i) pursuant to G.S. 10B-134.9(d) for which no electronic journal entry is made; or

19 (ii) other remote electronic notarial act pursuant to Article 4A of Chapter 10B of the
20 General Statutes; or

21 ~~(11)~~(10) whether the session record is for a supplemental journal entry.

22

23 History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-
24 134.21; 10B-134.23;

25 Eff. July 1, 2025.

1 18 NCAC 07J .1104 is adopted with changes as published in 39:13 NCR 852 as follows:

2

3 **18 NCAC 07J .1104 APPLICATION REQUIRED UPON CHANGES**

4 If an existing technology provider operating pursuant to Rule .1101 of this Section undergoes a change reportable
5 pursuant to Rule .0201 of this Subchapter, it shall file an application pursuant to Section .1300 of this ~~Subchapter.~~
6 Subchapter and not implement the change without Departmental approval of the application.

7

8 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*
9 *134.21; 10B-134.23;*

10 *Eff. July 1, 2025.*

1 18 NCAC 07J .1401 is adopted with changes as published in 39:13 NCR 855 as follows:

2
3 **SECTION .1400 – PLATFORM STANDARDS**

4
5 **18 NCAC 07J .1401 REQUIRED GENERAL PLATFORM FUNCTIONS**

6 A platform provider shall integrate into its platform each of the following functions:

- 7 (1) use of communication ~~technology~~; technology as defined in G.S. 10B-134.1(1) that complies with
8 Section .0900 of this Subchapter;
- 9 (2) use of geolocation ~~when a remotely located principal connects to the platform using a GPS-enabled~~
10 ~~device~~; as defined in G.S. 10B-134.1(4a) and Rule .0101(9) of this Subchapter that
11 complies with the requirements of this Subchapter;
- 12 (3) use of credential ~~analysis~~; analysis as defined in G.S. 10B-134.1(3) that complies with Section .1600
13 of this Subchapter;
- 14 (4) use of identity ~~proofing~~; proofing as defined in G.S. 10B-134.1(5) that complies with Section .1800
15 of this Subchapter;
- 16 (5) an electronic ~~journal~~; journal as defined in G.S. 10B-134.1(4) that complies with Section .0800 of
17 this Subchapter;
- 18 (6) the capability to attach or logically associate the electronic notary public’s electronic signature and
19 seal; ~~and seal that complies with Section .0700 of this Subchapter; and~~
- 20 (7) a depository ~~services~~; as defined in Rule .0101(5) of this Subchapter that complies with Section
21 .1000 of this Subchapter.

22
23 *History Note: Authority G.S. 10B-4; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-134.21;*
24 *10B-134.23;*
25 *Eff. July 1, 2025.*

1 18 NCAC 07J .1406 is adopted with changes as published in 39:13 NCR 856 as follows:

2

3 **18 NCAC 07J .1406 GEOLOCATION DETECTION**

4 A platform provider shall detect whether any device used by a principal to connect with the platform during the notarial
5 transaction process is:

6 (1) GPS-enabled; and

7 (2) capable of geolocation at the time of the remote electronic notarial act.

8

9 *History Note: Authority G.S. 10B-4; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-134.21;*
10 *10B-134.23;*

11 *Eff. July 1, 2025.*

1 18 NCAC 07J .1603 is adopted with changes as published in 39:13 NCR 861 as follows:

2

3 **18 NCAC 07J .1603 CREDENTIAL ANALYSIS SOLUTION TRIAL PROCESS**

4 A credential analysis solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting
5 the solution with no less than 100 subjects to be evaluated:

6 (1) who are real individuals:

7 (a) whose ages, races, and ~~genders~~ sexes are ~~proportionate to~~ within five percent of the
8 proportion of ages, races, and sexes of the population of ~~North Carolina~~ the United States

9 that is 18 years or older, as established by the most recent United States decennial census;

10 and

11 (b) at least 18 years old; and

12 (2) with no less than:

13 (a) 10 percent of the credentials presented being inauthentic or modified; and

14 (b) 10 percent of the credentials presented being authentic but not belonging to the individual
15 depicted in the authentic credential with the individual presenting the credential being:

16 (i) of the same race and ~~gender~~ sex as the genuine owner of the credential; and

17 (ii) within five years of age of the individual depicted.

18

19 *History Note: Authority G.S. 10B-4; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-134.21;*
20 *10B-134.23;*

21 *Eff. July 1, 2025.*

1 18 NCAC 07J .1803 is adopted with changes as published in 39:13 NCR 864 as follows:

2

3 **18 NCAC 07J .1803 IDENTITY PROOFING SOLUTION TRIAL PROCESS**

4 An identity proofing solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting
5 the solution with no less than 100 subjects to be evaluated:

6 (1) who are real individuals:

7 (a) whose ages, races, and ~~genders sexes~~ are ~~proportionate to~~ within five percent of the
8 proportion of ages, races, and sexes to that of the adult population of North Carolina the
9 United States that is 18 years or older, as established by the most recent United States
10 decennial census; and

11 (b) at least 18 years old; and

12 (2) with no less than 10 percent of the tests assessing imposters who attempt to complete the identity
13 proofing process using the personal information of other individuals.

14

15 *History Note:* Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-
16 134.21; 10B-134.23;
17 *Eff. July 1, 2025.*

1 18 NCAC 07J .2002 is adopted with changes as published in 39:13 NCR 866 as follows:

2

3 **18 NCAC 07J .2002 RECEIPT FROM CUSTODIAN TRANSFEREE**

4 A custodian transferee shall create a receipt and provide it to the transferor confirming that:

- 5 (1) the custodian has received from the depository or custodian transferor:
 - 6 (a) one or more session records; and
 - 7 (b) a copy of the session record logs associated with the session records; and
- 8 (2) the session records and associated session record logs have been:
 - 9 (a) received; and
 - 10 (b) ~~validated.~~ verified as unmodified and uncorrupted.

11

12 *History Note: Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*
13 *134.21; 10B-134.23;*
14 *Eff. July 1, 2025.*

1 18 NCAC 07J .2009 is adopted with changes as published in 39:13 NCR 867 as follows:

2

3 **18 NCAC 07J .2009 SESSION RECORD DELETION BY CUSTODIAN UPON TRANSFER**

4 A custodian that transfers a session record to another custodian shall delete the record only after receiving confirmation
5 from the ~~custodian~~ transferee that the record has been:

6 (1) accepted; and

7 (2) ~~validated.~~ verified as unmodified and uncorrupted.

8

9 *History Note:* *Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-126; 10B-134.15; 10B-134.17; 10B-134.19; 10B-*
10 *134.21; 10B-134.23;*

11 *Eff. July 1, 2025.*

Burgos, Alexander N

Subject: FW: [External] Thank you! Re: Update re 07J

From: Ann Elmore <aelmore@sosnc.gov>

Sent: Thursday, April 17, 2025 4:53 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: Update re 07J

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Good afternoon, Seth.

Thank you for the update!

May you & yours (yours, too, Alex!) have a restful, enjoyable holiday weekend!

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

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

For tips on how to become a better informed investor, go to
[https://www.sosnc.gov/divisions/securities/for_investors.](https://www.sosnc.gov/divisions/securities/for_investors))

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>>> "Ascher, Seth M" <seth.ascher@oah.nc.gov> 4/17/2025 4:32 PM >>>
Ann and Ann,

Attached is my staff opinion regarding the protocol issue in subchapter 07J.

Note that it is my intent to recommend approval of the final revised versions of these rules, assuming the changes described in your responses are made.

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.

From: Ann Wall <awall@sosnc.gov>
Sent: Thursday, April 17, 2025 2:04 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: Re: [External] Update re 07J

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Excellent thanks. We'll try to have the formatted changed rules to you as early as we can on Monday.

Have a good holiday,

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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I think that works.

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: Thursday, April 17, 2025 1:58 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Update re 07J

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We've decided to go with this for 18 NCAC 07J .0101(9):

18 NCAC 07J .0101 DEFINITIONS

For purposes of this Subchapter:

. . . .

(9) "Geolocation" means technology that identifies the location of remotely located principals connecting to a platform. ~~platform using a GPS-enabled device with an accuracy rate of within 100 feet.~~

If that's an issue for you, please let us know as soon as possible.

Thanks, and have a good holiday,

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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**Re RFCs #3 18 NCAC 07J .0111
13 18 NCAC 07J .0624
24 18 NCAC 07J .1501
27 18 NCAC 07J .1701
30 18 NCAC 07J .1901
34 18 NCAC 07J .2101**

Dear Seth,

Thank you for the invitation to address concerns about protocols referenced in the Department's technology provider rules. The rule numbers subject to requests for change expressly involving protocols are set out above. Your comments and questions are set out in *black italics*. Our authority, context, and explanation are set out in blue.

HOW NON-RULES FIT WITHIN APA RULE-MAKING

Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. Explain if I've missed something.

G.S. 150B-2(8a)h of the Administrative Procedure Act provides that scientific, architectural, and engineering standards, forms, or procedures, including design criteria and construction standards are not subject to rulemaking. One reason for this exclusion that is particularly appropriate in the software context is that the rules adoption process cannot keep up with the rapidly changing standards that assure software security and data integrity.

The Department's protocols are scientific and engineering standards that address subjects such as application programming interfaces between the Department notary database and platforms; cyber- and software security measures to be adopted and implemented by technology providers that are generally accepted industry practice; accommodations for users with vision, hearing or speech impairment; and assuring data integrity at rest and after transfer.

The exceptions to the definition of a "rule" found in G.S. 150B-2(8a) are enforceable and have the weight of law, regardless of whether they are included in a rule. However, the General Assembly has definitively demonstrated its intent that their mention in rules is permissible. See G.S. § 150B-19(4), which provides explicit permission for reference to other laws, rules, and regulations "that informs the public of a requirement imposed by law". The purpose of this exception is to allow agencies to give notice in rule of other legal requirements. That the RRC has long recognized the ability of agencies to enforce non-rules by reference within a rule is demonstrated by the exemplar rules provided below.

Notably, G.S. 10B-134.21 provides that the Secretary shall adopt rules necessary to establish standards, procedures, practices relating to any aspect of the remote notarial act, including without limitation security standards, features, qualifications, measures, storage, and any other matter related to the products and services provided by technology service providers. Elsewhere, G.S. 10B-134.23 provides that technology service providers shall meet all standards established by the Secretary and that if the Secretary has not established any

such standards, then service providers must meet security standards generally accepted within the industry for that service. The General Assembly's declaration of its purpose in enacting the Notary Act, G.S. 150B-2, buttresses the breadth and depth of the Department's rulemaking authority. These authorities, coupled with the general power found in the APA to adopt and apply scientific and engineering standards, provides the Department with the authority to establish and enforce the scientific and engineering standards found in the protocols. Please find below multiple citations establishing the authority of the Department to establish rules and standards that provide for the security of the products and services offered by technology providers.

It is not uncommon for rules approved by the Rules Review Commission to require compliance with scientific and engineering standards that the regulatory agency has written. As set out below, the Rules Review Commission has approved multiple instances where the North Carolina Department of Transportation, for example, references and enforces in rule scientific and engineering standards that are established outside the rulemaking process pursuant to the Administrative Procedure Act. See, e.g., 19A NCAC 02D .0421 ("commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways").

The easiest solution would be to remove the reference to Department protocols from this rule.

Removing references to the protocols from the rules would deprive the regulated community of the notice required by Due Process and is not consistent with prior practice of the Rules Review Commission.

[H]ow does an applicant know what provisions of the protocols are applicable?

A reading of the protocols will inform the applicant of the applicable provisions. In addition, the protocols include a table of contents and a preface specifying that the protocols are adopted pursuant to the exception in G.S. 150B-2(8a)h. Each technology provider is required to have a compliance contact who must successfully complete the Department's technology provider course. 18 NCAC 07J .0406(4). That course will acquaint the applicant further with the protocols. The protocols cite the rules and statute underpinning them. As part of the approval/licensing process, the providers will demonstrate the electronic notary solution to the Department to enable it to evaluate the compliance with applicable laws, rules, and protocols. 18 NCAC 07J .0301(2). Discussion of compliance with the protocols will be an inherent part of the demonstration process. And, of course, the Department plans to modify its website to provide information specific to providers including the rules in 18 NCAC 07J and the protocols.

AUTHORITY FOR ADOPTING STANDARDS

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Given the stakes and the fast-changing nature of technology, the General Assembly provided abundant authority to promulgate rules and adopt and set standards. Key provisions include:

- **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. G.S. §10B-2 (**emphasis added**).
- **G.S. 10B-4** The Secretary may adopt rules necessary to administer and enforce this Chapter in order to achieve the purposes of the Act.
- **G.S. 10B-134.21. Rules.**
The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to remote electronic notarial acts to implement this Part, including at least all of the following: . . .
 - (3) The security standards, features, qualifications, measures, storage, and any other matter related to communication technology, credential analysis, identity proofing, and depository and custodial services.
- **10B-134.23. Standards for services provided to electronic notaries; enforcement.**
 - (a) All licensees and third-party vendors shall meet all standards established by the Secretary under this Part for the provision of services to electronic notaries in this State for remote electronic notarization services. If the Secretary has not adopted rules establishing standards for a service, a licensee or third-party vendor may not furnish that service to an electronic notary public until the Secretary has determined that the provided service meets security standards generally accepted within the industry for that service.
 - (b) The Secretary may adopt rules establishing, supplementing, or amending third-party vendor guidelines for standards and processes for identity proofing and credential analysis services so that third-party vendors interacting with electronic notaries satisfy the security qualifications of establishing the identity of the remotely located principal.

- **G.S. 10B-134.19 (e)** The Secretary shall award a license only to applicants who are of good moral character and who provide a communication technology capable of all of the following:

...

(2) Securely creating and storing, or transmitting securely to be securely stored, the communication technology recording, keeping confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis.

(3) A manner of ensuring that real-time communications are secure from unauthorized interception, access, or viewing.

(4) Reasonable security measures to prevent unauthorized access to all of the following:

- The live transmission of the remote electronic notarial act.
- Any communication technology recording of the remote electronic notarial act.
- The verification methods and credentials used to verify the identity of the remotely located principal.
- The electronic documents presented for remote electronic notarization.

(5) Geolocation of the remotely located ~~principal~~principal when the remotely located principal is conducting the remote electronic notarization via a device capable of identifying the geographic location of the remotely located principal at the time of the remote electronic notarization. [The ~~strikeout and underlining~~ appears in S.L. 2024-47.]

OTHER INSTANCES OF RULE-DIRECTED COMPLIANCE WITH DEPARTMENTAL STANDARDS

Examples where RRC previously has approved language conditioning approval based on compliance with departmental standards include:

- **19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE**

...

(2) applications for commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways. This policy may be accessed at no cost to the public by visiting <https://connect.ncdot.gov/projects/Roadway/RoadwayDesignAdministrativeDocuments/Policy%20on%20Street%20and%20Driveway%20Access.pdf>; and. . .

- **15A NCAC 02H .1017(13)**, providing a compliance option to "design its own post-construction practices based on the Department's guidance on scientific and engineering standards for SCMs."

- **19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS**

Approval of curb and gutter or underground storm drainage facilities that are located along the State highway system, where no construction projects are proposed, shall be determined according to the engineering standards of the Department, and based on....

- **19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED**

When any railroad changes the grades of its tracks where the tracks cross or intersect any road, street, or highway of the State highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the road, street or highway shall be made in accordance with Departmental engineering standards.

CONCLUSION

Note that I recognize that this is an overarching issue applicable to several rules. I have identified several other rules where this issue is presented, but depending on the resolution of this question, there may be follow-up for other rules referencing the protocols.

Under the circumstances outlined above, the Department has both the authority and the pressing need for technology standards to be included in a separate public-access document that is clearly referenced in the rules.

April 16, 2025

Dear Seth,

Thank you for the invitation to address concerns and questions about specified rules within 18 NCAC 07J. To facilitate review, we have:

1. Numbered the requests for change in black and bold;
2. Provided the entire rule or the relevant portion of the rule in black;
3. Provided your comments, questions and requests for changes in *black italics*; and
4. Provided our authority, context, explanation, or proposed change for your approval in blue.

Among the rules called out are those referring to the protocols. In order to ease review of our responses regarding your protocol-related comments and questions, we have provided a separate protocol-related memo. In that memo, we have consolidated your questions and concerns and our authority, rationale, and context.

RFC #1:

18 NCAC 07J .0105 PERMISSIBLE PROVIDER DESIGNATIONS

An authorized technology provider may use the applicable following designations for its authorized electronic notary solutions only during the period that each approval or license is effective:

- (1) "approved North Carolina in-person electronic notary solution" or "approved North Carolina IPEN solution";
- (2) "licensed North Carolina electronic notary platform";
- (3) "approved North Carolina identity proofing solution";
- (4) "approved North Carolina credential analysis solution"; and
- (5) "approved North Carolina custodial services solution."

Note: An authorized technology provider may use "NC" or "N.C." as well as "North Carolina."

18 NCAC 07J .0105: *I'm not sure I understand what this rule is supposed to do.*

This rule establishes permissible disclosure language that will not mislead the public into concluding the Department endorses a particular technology provider. The list is not exhaustive list of permissible statements.

Do you have the authority to prevent use of these phrases by unauthorized technology providers?

Use of any of these permitted statements provides notice to the public of the legal status of a provider. G.S. § 10B-4 authorizes the Department to “adopt rules necessary to administer and enforce this Chapter in order to achieve the purposes of the Act.” G.S. § 10B-2, Purpose, is the General Assembly’s directive that the Notary Act “shall be construed and applied to advance its underlying purposes, which are the following:

- (1) To promote, serve, and protect the public interests.

. . . .

- (3) To prevent fraud and forgery.

- (4) To foster ethical conduct among notaries”

Provider statements that imply or state endorsement by the Department are deceptive and against the public interest. Impermissible statements may be prosecuted under the Unfair and Deceptive Trade Practices Act, Chapter 75 of the N.C. General Statutes and common law. The Department's use of the provisions of Chapter 75 is sanctioned by G.S. § 10B-60(k): "The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting."

The note seems to suggest that you are intending technology providers to use exactly these phrases. Is that correct? If so, are there phrases (or types of phrases) they can't use?

The list is permissive ("may use") and is not exhaustive. 18 NCAC 07J .0106 specifies that "[a] technology provider shall not state or imply that the Department endorses the services of the technology provider." Thus, any statement violating 07J .0106 or otherwise indicating that the provider is endorsed by the Department or the State of North Carolina is not allowed.

Alternatively, is this rule meant to require the use of these phrases? If so, change may to shall and indicate where the phrases have to appear.

The specified phrases are neither exclusive nor required. Technology providers advertising their products using this language are assured that they are neither implying endorsement from the Department nor engaged in deceptive trade practices. They can choose to use this language or take their chances with something different. See above.

RFC #2:

18 NCAC 07J .0107 TIMELY RESPONSE REQUIRED

A technology provider or applicant shall respond to any inquiry from the Department in the manner and within the time set by the Department. Extensions may be requested and granted pursuant to 18 NCAC 07B .0313 and .0314, respectively.

***18 NCAC 07J .0107:** How will the department determine the manner and time for response?*

The Department will set a time and manner of response based on the considerations set out in 18 NCAC 07B .0305, Response To Questions And Requests For Information.

Is that set out in rule or statute somewhere?

See immediately preceding reply. Also, if additional time is needed, relief is available via 18 NCAC 07B .0313, Extension Request To Department.

RFC #3:

~~18 NCAC 07J .0112~~ 18 NCAC 07J .0111 COMPLIANCE WITH TECHNOLOGY PROVIDER PROTOCOLS REQUIRED

Technology providers shall comply with applicable provisions of the Department's Scientific, Architectural, and Engineering Protocols for Technology Providers. The protocols may be accessed on the Department's website at no cost.

***18 NCAC 07J .0111:** Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. Explain if I've missed something.*

Please see our Protocol-related separate memo.

RFC #4:**18 NCAC 07J .0201 ~~ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION NOTICE OF MATERIAL CHANGE TO ELECTRONIC NOTARY SOLUTION~~**

...[stricken old language omitted]

After authorization by the Department and before implementation, a technology provider shall notify the Department of any material change to its authorized electronic notary solution.

Note: For purposes of this Section, a material change is one affecting the electronic notary solution's core:

- (1) functionality;
- (2) security; or
- (3) reliability.

18 NCAC 07J .0201: Pursuant to 26 NCAC 02C .0110 Notes are “merely examples or clarifications which, when not read, do not change the meaning of the rule”. It appears to me that the definition of “material change” here is necessary for the rule to be clear, so it would not be appropriate as a note. Strike “Note:” or otherwise incorporate the definition into the text of the rule.

Applying that guidance, the Department proposes the changes highlighted in green:

(b) After authorization by the Department and before implementation, a technology provider shall notify the Department of any material change to its authorized electronic notary solution.

(b) Note: For purposes of this Section, a material change is one affecting the electronic notary solution's core:

- (1) functionality;
- (2) security; or
- (3) reliability.

RFC # 5:**18 NCAC 07J .0202 IMPLEMENTATION OF MATERIAL CHANGES PROHIBITED PENDING DEPARTMENTAL APPROVAL**

No material change to an electronic notary solution shall be implemented and offered to a notary public until the technology provider:

- (1) files written notice pursuant to the rules in this Section;
- (2) complies with Section .0500 of this Subchapter; and
- (3) receives approval from the ~~Department.~~ Department upon its determination that the material change does not adversely affect the provider's continued compliance with the standards established in the rules in this Subchapter and the Protocols.

18 NCAC 07J .0202: For this rule to be clear, it needs a definition of “material change”. Making the suggested change in .0201 would solve the issue without needed to change this rule.

The Department has changed .0201 as recommended. See RFC #4 above.

RFC # 6:**18 NCAC 07J .0208 NOTICE OF REPORTABLE INCIDENT**

Within 72 hours of discovery of a reportable incident, a technology provider shall notify the Department.

Note: For purposes of the rules in this Section of this Subchapter, a reportable incident is one that involves:

- (1) a technology provider's electronic notary solution, a notary public's records, ~~a~~ an electronic notary's electronic seal or signature, or a principal's records or information;
- (2) any of the following affecting data or access:
 - (a) unauthorized access, use, alteration, or disclosure;
 - (b) theft;
 - (c) loss; or
 - (d) compromise; or
- (3) a cybersecurity incident.

18 NCAC 07J .0208: Pursuant to 26 NCAC 02C .0110 Notes are “merely examples or clarifications which, when not read, do not change the meaning of the rule”. It appears to me that the definition of “reportable incident” here is necessary for the rule to be clear, so it would not be appropriate as a note. Strike “Note:” or otherwise incorporate the definition into the text of the rule.

The change indicated has been made and is highlighted in green:

18 NCAC 07J .0208 NOTICE OF REPORTABLE INCIDENT

(a) Within 72 hours of discovery of a reportable incident, a technology provider shall notify the Department.

(b) For purposes of the rules in this Section of this Subchapter, a reportable incident is one that involves:

- (1) a technology provider's electronic notary solution, a notary public's records, a an electronic notary's electronic seal or signature, or a principal's records or information;
- (2) any of the following affecting data or access:
 - (a) unauthorized access, use, alteration, or disclosure;
 - (b) theft;
 - (c) loss; or
 - (d) compromise; or
- (3) a cybersecurity incident.

RFC # 7:

18 NCAC 07J .0301 APPLICATION PROCESS

A technology provider applicant for authorization of an electronic notary solution shall:

- (1) submit a complete electronic application to the Department;
- (2) demonstrate the electronic notary solution to the Department to enable it to evaluate ~~the~~ compliance with applicable laws, rules, and protocols; and
- (3) submit the filing fee, if applicable, with the application.

18 NCAC 07J .0305 LIMIT ON DESIGNATION OF TRADE SECRET OR CONFIDENTIAL INFORMATION

A technology provider applicant shall not designate its entire application as:

- (1) a trade secret; or
- (2) confidential information.

18 NCAC 07J .0306 DESIGNATION OF CONFIDENTIAL OR TRADE SECRET INFORMATION

A technology provider applicant shall designate each specific item on its application, attachments, and other filings for which confidentiality or trade secret protection is claimed. Each designation shall comply with:

- (1) the North Carolina Trade Secrets Protection Act, Chapter 66, Article 24 of the General Statutes; or
- (2) the confidentiality provisions of G.S. 132-1.2.

18 NCAC 07J .0309 GOOD FAITH BASIS FOR CONFIDENTIAL OR TRADE SECRET DESIGNATION

If a technology provider designates items on its application as confidential or trade secret, the applicant shall certify on the application that it has formed a good faith opinion that the information claimed as confidential or trade secret meets the requirements for designation under the laws specified in Rule .0306 of this Section.

18 NCAC 07J .0310 SOURCES OF CONFIDENTIAL INFORMATION

If designated as confidential or trade secret, the Department shall presume that the following plans and documents are confidential information or trade secrets:

- (1) configuration management plan required by Rule .0616 of this Subchapter;
- (2) information technology security audit and summary required by Rules .0620 and .0621 of this Subchapter;
- (3) security plan required by Rule .0624 of this Subchapter;
- (4) security incident response plan required by Rule .0626 of this Subchapter; and
- (5) contingency plan required by Rule .0628 of this Subchapter.

18 NCAC 07J.0301: *Under .0309, can't an applicant designate items other than those listed as confidential or trade secret?*

Yes, Rule .0306 establishes that an applicant can designate any item it files with the Department as either trade secret or confidential. Rule .0310 establishes a list for which there is an internal departmental presumption that the designation is correct. Rule .0310 does not establish an exclusive list for which trade secret or confidential treatment may apply, if so designated.

If something is designated, but not on the .0309 list, what happens?

The list does not purport to be exhaustive. Under Rule .0306, other items filed with the Department can be designated as confidential or trade secret, but no internal departmental presumption attaches as is the case with the filings listed in Rule .0310.

The Rule .0310 list describes those documents that typically include trade secrets and confidential information. It is also intended to alert applicants that they may wish to consider and designate, as appropriate and consistent with Rule .0309, the parts that are confidential or trade secret, and offers a departmental presumption that such designations are appropriate.

Assuming designation, under Rule .0310 the Department will presume to be trade secret or confidential those listed items that are so designated.

RFC # 8:

18 NCAC 07J .0402 ~~CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS PROVIDER NAME~~

...[old deleted text is omitted here]

All technology provider applications shall include:

- (1) the provider's name in its state or jurisdiction of formation; and
- (2) the names required by 18 NCAC 07B .0422(3)(c).

18 NCAC 07J .0301 APPLICATION PROCESS

A technology provider applicant for authorization of an electronic notary solution shall:

- (1) submit a complete electronic application to the Department;
- (2) demonstrate the electronic notary solution to the Department to enable it to evaluate the compliance with applicable laws, rules, and protocols; and
- (3) submit the filing fee, if applicable, with the application.

18 NCAC 07J .0402: *This rule appears to duplicate requirements that are already in 18 NCAC 07J .0301. Why is this necessary?*

07J .0402 does not duplicate 07J .0301. 07J .0402 provides an overview of each step in the application process. 07J .0301, on the other hand, provides more detail regarding what must be put in the actual application.

For your information, requirements related to the names of a technology provider are located in several places in the rules. 18 NCAC 07B .0402(2)(a) requires that contact information for all businesses include what is often referred to as their legal names – that is their names in the state or jurisdiction in which the entities are legally formed or created. G.S. § 55D, Article 3, governs the names of entities including foreign (non-NC) entities. 18 NCAC

07J .0402 requires that regardless of location within the 18 NCAC 07 rules, technology provider applicants must provide all names they use: legal name, assumed business names, and fictitious names used by foreign entities when their legal name is already in use in NC when they get their Certificate of Authority. 18 NCAC 07B .0422(3)(c) relates only to “all assumed business names, trade names, or "doing business as" names used by the applicant in North Carolina, other states, or nations;...” However, your question has pointed out that we inadvertently omitted inclusion of 18 NCAC 07B .0422(3)(d). To further clarify, the Department proposes the change shown in green:

18 NCAC 07J .0402 ~~CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS PROVIDER NAME~~

...[old deleted text is omitted here]

All technology provider applications shall include:

- (1) the provider's name in its state or jurisdiction of ~~formation;~~ **formation as required by 18 NCAC 07B .0402(2)(a)** and
- (2) the names required by 18 NCAC 07B ~~.0422(3)(e), .0422(3)(c) and (d).~~

RFC # 9:

18 NCAC 07J .0606 TECHNOLOGY PROVIDER WEB PAGE

A technology provider shall create a publicly accessible web page or pages containing the information required by Rule .0607 of this Section.

18 NCAC 07J .0607 SINGLE LINK AND SUBMISSION TO DEPARTMENT

A technology provider shall ensure that the primary website page required by Rule .0606 of this Section is accessible through a single link provided to the Department:

- (1) for inclusion on the Department's authorized technology provider web page; and
- (2) with any sub-pages directly accessible through the single linked page.

18 NCAC 07J .0608 WEBSITE CONTENT

A technology provider's website shall include the following content in the order set out in this Rule: . . .

18 NCAC 07J .0606: I believe you mean to reference Rule .0608, not .0607.

The purpose of the rule is to establish a single URL that will be available on the Department's website and on which a consumer can click and go to the provider's website. The consumer may then find all of the other required content on the provider's website. The content in Rule .0608 might well be spread across multiple web pages. Rule .0606 has been modified as highlighted green to make this clearer.

18 NCAC 07J .0607 SINGLE LINK AND SUBMISSION TO DEPARTMENT

A technology provider shall ensure that the ~~primary~~ website page ~~or pages~~ required by Rule .0606 ~~and website content required by Rule .0608~~ of this Section ~~are~~ accessible through a single link provided to the Department:

- (1) for inclusion on the Department's authorized technology provider web page; and
- (2) with any sub-pages directly accessible through the single linked page.

RFC # 10:**18 NCAC 07J .0608 WEBSITE CONTENT**

A technology provider's website shall include the following content in the order set out in this Rule:

- ...
- (9) either the disclosures required by the following rules in this Subchapter or a link to them:
- (a) Rule .1208;
 - (b) Rule .1427;
 - (c) ~~Rule .1611;~~ Rule .1613
 - (d) Rule .1812; and
 - (e) Rule .2021; . . .

18 NCAC 07J .0608: *As written, the “them” and the end of the first line of item 9 could mean either the disclosures or the rules. I believe you mean the disclosures, if so replace with “a link to the disclosures.”*

The issue has been addressed as highlighted in **green**:

18 NCAC 07J .0608 WEBSITE CONTENT

A technology provider's website shall include the following content in the order set out in this Rule:

- ...
- (9) either the disclosures required by the following rules in this Subchapter or a link to **them** ~~them~~ ~~those disclosures~~:
- (a) Rule .1208;
 - (b) Rule .1427;
 - (c) ~~Rule .1611;~~ Rule .1613
 - (d) Rule .1812; and
 - (e) Rule .2021 . . .

RFC # 11:**18 NCAC 07J .0616 CONFIGURATION MANAGEMENT PLAN**

A technology provider shall maintain a configuration management plan for systems supporting the electronic notary solution that addresses:

- (1) maintenance of an accurate inventory of items including:
 - (a) software;
 - (b) hardware; and
 - (c) network components;
- (2) establishment of configuration settings that reflect the most restrictive mode consistent with its operational requirements;
- (3) use of automated mechanisms to detect inventory and configuration changes;
- (4) prevention of unauthorized changes to the systems; and
- (5) evaluation of the potential security impact of proposed changes.

18 NCAC 07J .0616: *What is “the most restrictive mode” in item 2?*

To improve understanding, the Department proposes the change highlighted in **green**:

18 NCAC 07J .0616 CONFIGURATION MANAGEMENT PLAN

A technology provider shall maintain a configuration management plan for systems supporting the electronic notary solution that addresses:

- (1) maintenance of an accurate inventory of items including:
 - (a) software;
 - (b) hardware; and
 - (c) network components;

- ~~(2) establishment of configuration settings that reflect the most restrictive mode consistent with its operational requirements;~~
 (2) implementation of configuration settings which represent the most restrictive security settings compatible with the systems' operational requirements.

RFC # 12:**18 NCAC 07J .0619 VULNERABILITY DETECTION AND REMEDIATION**

A technology provider shall:

- (1) scan for vulnerabilities of the systems supporting the electronic notary solution at least weekly; and
- (2) detect and remediate IT security vulnerabilities.

18 NCAC 07J .0619: *What do you mean by scan here? Use 3rd party software? Examine?*

To improve clarity for lay readers, the Department proposes the following change:

18 NCAC 07J .0619 VULNERABILITY DETECTION AND REMEDIATION

A technology provider shall:

~~(1) scan for vulnerabilities of the systems supporting the electronic notary solution at least weekly; and~~

- (1) at least weekly execute or cause to be executed a 3rd party security program which shall evaluate each system endpoint for indications of malware, known security risks, and other vulnerabilities; and . . .

Is there a timeline for remediating IT vulnerabilities in item 2?

It is not practicable or even possible for rules to establish the times within which the nearly infinite number of vulnerabilities can reasonably be expected to be corrected. Whether and when vulnerabilities must be corrected is dependent upon a wide variety of factors that are likely to be unique to the problem and the technology provider. 18 NCAC 07J .0629(2) requires that the technology provider establish a projected timeline:

18 NCAC 07J .0629 CONTENTS OF CONTINGENCY PLAN

A technology provider's contingency plan shall include:

- (1) the manner in which it will recover its authorized services to a functional state;
- (2) a projected timeline for recovery to a functional state; and . . .

RFC # 13:**18 NCAC 07J .0624 SECURITY PLAN**

A technology provider shall maintain a security plan specifying how it will comply with laws, rules, and the Department's protocols related to:

- (1) physical security; and
- (2) IT security.

18 NCAC 07J .0624: *Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. The easiest solution would be to remove the reference to Department protocols from this rule.*

Please see our Protocol-related separate memo.

TCR # 14:

18 NCAC 07J .0625 SECURITY BOUNDARY AND THREAT PROTECTION TECHNOLOGY
A technology provider shall use security boundary and threat protection technology

18 NCAC 07J .0625: *What are “security boundary” and “threat protection” technologies?*

Defining these terms by rule is not practical, as they are terms of art commonly used and understood in the technology industry. The Department proposes striking 18 NCAC 07J .0625 and will address the requirements within the protocols.

TCR # 15:

18 NCAC 07J .0811 18 NCAC 07J .0810 SEGREGATION OF ENTRIES

An IPEN or platform provider shall ensure that entries in its electronic journals can be designated separately from other entries. Note: An example of separate designation would be flagging entries subject to a litigation hold.

18 NCAC 07J .0810: *I understand the example in the note, but I’m not sure what “designate” means here. Would a more concrete verb work, such as categorize, annotate, or flag?*

The proposed change is implemented as highlighted in green:

18 NCAC 07J .0811 18 NCAC 07J .0810 SEGREGATION OF ENTRIES

An IPEN or platform provider shall ensure that entries in its electronic journals can be designated separately, annotated, and distinguished from other entries. Note: An example of separate and distinguishing annotation would be flagging entries subject to a litigation hold.

TCR # 16:

18 NCAC 07J .0904 VIDEO CUSTOMIZATION STANDARD

A platform provider's communication technology shall include a feature that:

- (1) allows each participant to lock the size and position of a priority video window; and
- (2) can be located easily by a participant in a notarial transaction.

18 NCAC 07J .0904: *I do not see how this rule works as a list, since item 2 is dependent on item 1. Rewrite as one sentence.*

The change you requested is highlighted in green:

18 NCAC 07J .0904 VIDEO CUSTOMIZATION STANDARD

A platform provider's communication technology shall include a feature that

1. —allows each participant to lock the size and position of a priority video window; and
2. —can be located easily by a participant in a notarial transaction.

TCR # 17:

18 NCAC 07J .1004 SESSION RECORD PRESUMPTION

The Department shall consider a session record to be the presumptive record of a notarial act if the session record:

- (1) is unmodified and intact; and
- (2) documents the circumstances of each notarial act occurring within the session.

18 NCAC 07J .1004: *Why is the department making a presumption about the record of a notarial act? I am aware of 10B-99 and the presumption by courts, but am not sure what the Department’s role would be in authenticating specific records.*

The Department will delete the adopted rule text in 18 NCAC 07J .1004 and mark the rule number as reserved for future codification.

TCR # 18:**18 NCAC 07J .1006 SEARCHABLE SESSION RECORD FIELDS**

A depository shall make session records searchable and identifiable by the following fields:

- (1) the session identifier required pursuant to Rule .1005 of this Section;
- (2) the commission name of the notary public;
- (3) the county of the notary's commission;
- ~~(4) the number of notarial acts performed as entered by the notary public;~~
- ~~(5)~~(4) the names of the remotely located principals as they appear on the credentials presented for credential analysis;
- ~~(6)~~(5) the time of day when the session ended . . .

18 NCAC 07J .1006: *In item 5, "time of day" is potentially vague. Do you just mean time? Or something else?*

The Department will revise the rule as highlighted in **green**:

18 NCAC 07J .1006 SEARCHABLE SESSION RECORD FIELDS

A depository shall make session records searchable and identifiable by the following fields:

- (1) the session identifier required pursuant to Rule .1005 of this Section;
- (2) the commission name of the notary public;
- (3) the county of the notary's commission;
- ~~(4) the number of notarial acts performed as entered by the notary public;~~
- ~~(5)~~(4) the names of the remotely located principals as they appear on the credentials presented for credential analysis;
- ~~(6)~~(5) the time **of day** when the session ended . . .

RFC # 19:**18 NCAC 07J .1104 APPLICATION REQUIRED UPON CHANGES**

If an existing technology provider operating pursuant to Rule .1101 of this Section undergoes a change reportable pursuant to Rule .0201 of this Subchapter, it shall file an application pursuant to Section .1300 of this Subchapter.

18 NCAC 07J .0202 IMPLEMENTATION OF MATERIAL CHANGES PROHIBITED PENDING DEPARTMENTAL APPROVAL

No material change to an electronic notary solution shall be implemented and offered to a notary public until the technology provider:

- (1) files written notice pursuant to the rules in this Section;
- (2) complies with Section .0500 of this Subchapter; and
- (3) receives approval from the ~~Department~~ Department upon its determination that the material change does not adversely affect the provider's continued compliance with the standards established in the rules in this Subchapter and the Protocols.

18 NCAC 07J .1104: *What is the timeframe for filing the application under this rule? .0201 and the other rules in that section suggest that the application has to be before the change is implemented, but the phrasing of this rule suggests the application would be filed after the change. Please clarify.*

The timeframe is set out in 18 NCAC 07J .0202(3); however, additional clarity can be achieved by the change shown in **green**:

18 NCAC 07J .1104 APPLICATION REQUIRED UPON CHANGES

If an existing technology provider operating pursuant to Rule .1101 of this Section undergoes a change reportable pursuant to Rule .0201 of this Subchapter, it shall file an application pursuant to Section .1300 of this **Subchapter, Subchapter and not implement the change without Departmental approval of the application.**

TCR # 20:**18 NCAC 07J .1401 REQUIRED GENERAL PLATFORM FUNCTIONS**

A platform provider shall integrate into its platform each of the following functions:

- (1) use of communication ~~technology~~; technology as defined in G.S. 10B-134.1(2) that complies with Section .0900 of this Subchapter . . .

18 NCAC 07J .1401: In item 1, I believe the reference should be G.S. 10B-134.1(1).

You are correct and we have revised the rule as highlighted in green:

18 NCAC 07J .1401 REQUIRED GENERAL PLATFORM FUNCTIONS

A platform provider shall integrate into its platform each of the following functions:

- (1) use of communication ~~technology~~; technology as defined in G.S. ~~10B-134.1(2)~~ **10B-134.1(1)** that complies with Section .0900 of this Subchapter: . . .

TCR # 21:**18 NCAC 07J .1406 GEOLOCATION DETECTION**

A platform provider shall detect whether any device used by a principal during the notarial transaction process is:

- (1) GPS-enabled; and
 (2) capable of geolocation at the time of the remote electronic notarial act.

18 NCAC 07J .1406: As written, this would require the platform provider to detect the features of a device used by a notary that is not connected to a platform. Is that the intent? If not, rephrase to something like "any device connected to the platform during the notarial transaction process."

We have revised the rule as indicated in green:

18 NCAC 07J .1406 GEOLOCATION DETECTION

A platform provider shall detect whether any device used by a principal **connected with the platform** during the notarial transaction process is:

- (1) GPS-enabled; and
 (2) capable of geolocation at the time of the remote electronic notarial act.

RFC # 22:**18 NCAC 07J .1419 NOTARY COUNT OF NOTARIAL ACTS**

~~(a) A platform shall require the notary public to enter the number of notarial acts performed during a notarial session. oaths or affirmations administered without a principal's signature.~~

~~(b) A platform shall not populate the entry field in Paragraph (a) of this Rule nor disclose its automatic tabulation of notarial acts to the notary public before the end of the notarial session.~~

18 NCAC 07J .1420 PLATFORM COUNT OF NOTARIAL ACTS FIELD FOR COUNT OF OATHS OR AFFIRMATIONS WITHOUT PRINCIPAL SIGNATURES

A platform shall design its system to provide a field for a notary public to enter the count of oaths or affirmations administered to principals without principal signatures.

~~A platform provider shall automatically tabulate the number of notarial acts completed during each notarial session by:~~

- (1) ~~tabulating the number of all journal entries associated with the session; and~~
 (2) ~~subtracting from the number in Item (1) of this Rule:~~
 (a) ~~the number of journal entries for cancelled notarial transactions; and~~
 (b) ~~the number of supplemental journal entries.~~

18 NCAC 07J .1420: Do you need this rule? Isn't this effectively covered by .1419?

We need 07J .1420 because the two rules require different platform activities. The first, 07J .1419, requires the platform to make it mandatory that the notary administering oaths or affirmations without principal signatures counts and enters the number of such acts. The second, 07J .1420, requires the platform to program a feature into its solution to accommodate the entry

of the count by the notary. These rules are required to establish an accurate count of notarial acts in order to both facilitate collection of the statutory \$5.00 platform fee per notarial act and make the count auditable according to NC law.

RFC # 23:

18 NCAC 07J .1428 CONTENT OF ADDITIONAL PLATFORM DISCLOSURES

A platform's additional disclosures pursuant to Rule .1427 of this Section shall include information regarding:

...

- (5) the platform provider's technical issue resolution targets, which shall include:
- (a) categorization of service disruptions based on a numeric scale or denoted by single words such as "critical," "high," "medium," and "low;"
 - (b) a plain language description of each category; and
 - (c) the maximum projected response time for issues encountered in each category.

18 NCAC 07J .1428: *Item 5 as written allows the provider to define how many categories, what fits into each category, and projected response time however they want. Is this the intent?*

Yes. The purpose of the rule is disclosure. This will enable notaries and their employers to compare products. They will then have available the information needed to make an informed decision about which product best meets their needs. It is possible, for example, that some remote electronic notarial acts will be of such high priority that the maximum projected response times will be critical to the notary. For others, a longer projected response time may not be mission critical.

RFC # 24:

18 NCAC 07J .1501 PLATFORM LICENSURE REQUIREMENTS

A platform provider applicant shall establish through its application and demonstration that its platform meets all requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable provisions of the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Section .1100;
 - (b) Section .1200;
 - (c) Section .1300;
 - (d) Section .2000;
 - (e) Section .2100; and
 - (f) Section .2200.

18 NCAC 07J .1501: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our [Protocol-related separate memo](#).

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our [Protocol-related separate memo](#).

RFC # 25:

18 NCAC 07J Section .1600: *It appears that this section requires a provider to perform certain tests to measure the success rates of their credential analysis solution (.1602 and .1603) and publish those results (.1612 and .1613). Neither this section nor the underlying statute appears to establish minimum success rates for approval. Is this correct? If not, what am I missing?*

You are correct. These are disclosure rules. Therefore, the rules do not establish a minimum acceptable success rate. The Department conducted a 50-state survey, a literature search, and solicited stakeholder input. After that research, we determined that acceptable success rates are not an industry standard nor is there industry standard testing. Success rates seemed to vary, at least as advertised, among stakeholders and the markets served. We found no grounds on which to establish a single minimum acceptable success rate.

The purpose of the disclosure is to allow the consumer to compare products and have available the information needed to make an informed decision about which product best meets the needs of that consumer. The market will then have the information to decide an appropriate success rate for any given sector or activity.

RFC # 26:**18 NCAC 07J .1603 CREDENTIAL ANALYSIS SOLUTION TRIAL PROCESS**

A credential analysis solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to the population of ~~North Carolina~~ the United States as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and . . .

18 NCAC 07J .1603: *In item (1)(a), what does it mean to be “generally proportionate” mean? That term is potentially vague.*

We have chosen to further clarify the rule as highlighted in **green**:

18 NCAC 07J .1603 CREDENTIAL ANALYSIS SOLUTION TRIAL PROCESS

A credential analysis solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are **generally proportionate to within five percent of the proportion of ages, races, and sexes of the population of North Carolina the United States that is 18 years or older** as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and . . .

RFC # 27:**18 NCAC 07J .1701 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE CREDENTIAL ANALYSIS SERVICES**

A credential analysis provider applicant shall meet requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Sections .0700-.1500; and
 - (b) Sections .1800-.2200.

18 NCAC 07J .1701: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our Protocol-related separate memo.

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our Protocol-related separate memo.

RFC # 28:

18 NCAC 07J Section .1800: *It appears that this section requires a provider to perform certain tests to measure the success rates of their identity proofing (.1802 and .1803) and publish those results (.1812 and .1813). Neither this section nor the underlying statute appears to establish minimum success rates for approval. Is this correct? If not, what am I missing?*

See our response to RFC # 25.

RFC # 29:**18 NCAC 07J .1803 IDENTITY PROOFING SOLUTION TRIAL PROCESS**

An identity proofing solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to the adult population of ~~North Carolina~~ the United States as established by the most recent United States decennial census; and...

18 NCAC 07J .1803: *In item (1)(a), what does it mean to be “generally proportionate” mean? That term is potentially vague.*

See our response to RFC # 25 and revision of the rule as highlighted in green:

18 NCAC 07J .1803 IDENTITY PROOFING SOLUTION TRIAL PROCESS

An identity proofing solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to within five percent of the proportion of ages, races, and sexes to that of the adult population of North Carolina the United States that is 18 years or older as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and...

RFC # 30:**18 NCAC 07J .1901 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE IDENTITY
PROOFING SERVICES**

An identity proofing provider applicant shall meet requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Sections .0700-.1700; and
 - (b) Sections .2000-.2200.

18 NCAC 07J .1901: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our [Protocol-related separate memo](#).

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our [Protocol-related separate memo](#).

RFC # 31:**18 NCAC 07J .2002 RECEIPT FROM CUSTODIAN TRANSFEREE**

A custodian transferee shall create a receipt and provide it to the transferor confirming that:

- (1) the custodian has received from the depository or custodian transferor:
 - (a) one or more session records; and
 - (b) a copy of the session record logs associated with the session records; and
- (2) the session records and associated session record logs have been:
 - (a) received; and
 - (b) validated.

18 NCAC 07J .2002: *What does it mean to be "validated" in item (2)(b)?*

We have revised the rule as highlighted in [green](#):

18 NCAC 07J .2002 RECEIPT FROM CUSTODIAN TRANSFEREE

A custodian transferee shall create a receipt and provide it to the transferor confirming that:

- (1) the custodian has received from the depository or custodian transferor:
 - (a) one or more session records; and
 - (b) a copy of the session record logs associated with the session records; and
- (2) the session records and associated session record logs have been:
 - (a) received; and
 - (b) validated/verified as unmodified and uncorrupted.

RFC # 32:**18 NCAC 07J .2009 SESSION RECORD DELETION BY CUSTODIAN UPON TRANSFER**

A custodian that transfers a session record to another custodian shall delete the record only after receiving confirmation from the ~~custodian transferee~~ that the record has been:

- (1) accepted; and
- (2) validated.

18 NCAC 07J .2009: *What does it mean to be "validated" in item (2)(b)?*

We have revised the rule as highlighted in **green**:

18 NCAC 07J .2009 SESSION RECORD DELETION BY CUSTODIAN UPON TRANSFER

A custodian that transfers a session record to another custodian shall delete the record only after receiving confirmation from the ~~custodian transferee~~ that the record has been:

- (1) accepted; and
- (2) **validated, verified as unmodified and uncorrupted.**

RFC # 33:**18 NCAC 07J .2021 CONTENT OF ADDITIONAL CUSTODIAN DISCLOSURES**

A custodian's additional disclosure pursuant to Rule .2020 of this Section shall include information regarding:

...

- ~~(2)~~(4) the custodian's technical issues resolution targets, which shall include:
 - (a) categorization of service disruptions based on a numeric scale or denoted by single words such as "critical," "high," "medium," and "low;"
 - (b) a plain language description of each category; and
 - (c) the maximum projected resolution time for issues encountered in each category.

18 NCAC 07J .2021: *Item 4 as written allows the provider to define how many categories, what fits into each category, and projected response time however they want. Is this the intent?*

Yes. See our response to RFC #23. This is a disclosure rule.

RFC # 34:**18 NCAC 07J .2101 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE CUSTODIAL SERVICES**

A custodial services applicant shall meet the requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter, except:
 - (a) Sections .0700-.1900; and
 - (b) Section .2200.

18 NCAC 07J .2101: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our Protocol-related separate memo.

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our Protocol-related separate memo.

Burgos, Alexander N

Subject: FW: [External] Update re 07J
Attachments: Staff Opinion 18 NCAC 07J.doc

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, April 17, 2025 4:33 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] Update re 07J

Ann and Ann,

Attached is my staff opinion regarding the protocol issue in subchapter 07J.

Note that it is my intent to recommend approval of the final revised versions of these rules, assuming the changes described in your responses are made.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Update re 07J

From: Ann Wall <awall@sosnc.gov>
Sent: Thursday, April 17, 2025 2:05 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: Re: [External] Update re 07J

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Excellent thanks. We'll try to have the formatted changed rules to you as early as we can on Monday.

Have a good holiday,

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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I think that works.

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

From: Ann Wall <awall@sosnc.gov>
Sent: Thursday, April 17, 2025 1:58 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Update re 07J

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.

We've decided to go with this for 18 NCAC 07J .0101(9):

18 NCAC 07J .0101 DEFINITIONS

For purposes of this Subchapter:

.

(9) "Geolocation" means technology that identifies the location of remotely located principals connecting to a platform. ~~platform using a GPS-enabled device with an accuracy rate of within 100 feet.~~

If that's an issue for you, please let us know as soon as possible.

Thanks, and have a good holiday,

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

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:58 AM
To: Burgos, Alexander N
Subject: Fw: [External] Quick question

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: Wednesday, April 16, 2025 11:36 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: [External] Quick question

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.

I just realized that I sent you the protocol memo with a footer with the location of the document in our file system.

Would it be okay if I re-send it to you with the footer deleted and no other change? (One of the perils of not having an administrative assistant.)

It just seems to me that the location of a document should probably not be part of the public record.

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] Our response regarding the protocols
Attachments: 4.15.25 SOS memo re Protocols comments from Seth (aw).docx

From: Ann Wall
Sent: Wednesday, April 16, 2025 11:52 AM
To: Ascher, Seth M
Cc: Elmore, Ann M; Toole, William W
Subject: [External] Our response regarding the protocols

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.

Hi, Seth. Attached to this email is our response to the issues you have raised regarding our rule references to the protocols.

When you have completed your review of the memo, please call Bill or me and let's talk.

Note: If you call on Wednesday, between 1 and 5, please call my cell phone (XXX-XXX-XXXX). We'll be in a meeting.

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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**Re RFCs #3 18 NCAC 07J .0111
13 18 NCAC 07J .0624
24 18 NCAC 07J .1501
27 18 NCAC 07J .1701
30 18 NCAC 07J .1901
34 18 NCAC 07J .2101**

Dear Seth,

Thank you for the invitation to address concerns about protocols referenced in the Department's technology provider rules. The rule numbers subject to requests for change expressly involving protocols are set out above. Your comments and questions are set out in *black italics*. Our authority, context, and explanation are set out in blue.

HOW NON-RULES FIT WITHIN APA RULE-MAKING

Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. Explain if I've missed something.

G.S. 150B-2(8a)h of the Administrative Procedure Act provides that scientific, architectural, and engineering standards, forms, or procedures, including design criteria and construction standards are not subject to rulemaking. One reason for this exclusion that is particularly appropriate in the software context is that the rules adoption process cannot keep up with the rapidly changing standards that assure software security and data integrity.

The Department's protocols are scientific and engineering standards that address subjects such as application programming interfaces between the Department notary database and platforms; cyber- and software security measures to be adopted and implemented by technology providers that are generally accepted industry practice; accommodations for users with vision, hearing or speech impairment; and assuring data integrity at rest and after transfer.

The exceptions to the definition of a "rule" found in G.S. 150B-2(8a) are enforceable and have the weight of law, regardless of whether they are included in a rule. However, the General Assembly has definitively demonstrated its intent that their mention in rules is permissible. See G.S. § 150B-19(4), which provides explicit permission for reference to other laws, rules, and regulations "that informs the public of a requirement imposed by law". The purpose of this exception is to allow agencies to give notice in rule of other legal requirements. That the RRC has long recognized the ability of agencies to enforce non-rules by reference within a rule is demonstrated by the exemplar rules provided below.

Notably, G.S. 10B-134.21 provides that the Secretary shall adopt rules necessary to establish standards, procedures, practices relating to any aspect of the remote notarial act, including without limitation security standards, features, qualifications, measures, storage, and any other matter related to the products and services provided by technology service providers. Elsewhere, G.S. 10B-134.23 provides that technology service providers shall meet all standards established by the Secretary and that if the Secretary has not established any

such standards, then service providers must meet security standards generally accepted within the industry for that service. The General Assembly's declaration of its purpose in enacting the Notary Act, G.S. 150B-2, buttresses the breadth and depth of the Department's rulemaking authority. These authorities, coupled with the general power found in the APA to adopt and apply scientific and engineering standards, provides the Department with the authority to establish and enforce the scientific and engineering standards found in the protocols. Please find below multiple citations establishing the authority of the Department to establish rules and standards that provide for the security of the products and services offered by technology providers.

It is not uncommon for rules approved by the Rules Review Commission to require compliance with scientific and engineering standards that the regulatory agency has written. As set out below, the Rules Review Commission has approved multiple instances where the North Carolina Department of Transportation, for example, references and enforces in rule scientific and engineering standards that are established outside the rulemaking process pursuant to the Administrative Procedure Act. See, e.g., 19A NCAC 02D .0421 ("commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways").

The easiest solution would be to remove the reference to Department protocols from this rule.

Removing references to the protocols from the rules would deprive the regulated community of the notice required by Due Process and is not consistent with prior practice of the Rules Review Commission.

[H]ow does an applicant know what provisions of the protocols are applicable?

A reading of the protocols will inform the applicant of the applicable provisions. In addition, the protocols include a table of contents and a preface specifying that the protocols are adopted pursuant to the exception in G.S. 150B-2(8a)h. Each technology provider is required to have a compliance contact who must successfully complete the Department's technology provider course. 18 NCAC 07J .0406(4). That course will acquaint the applicant further with the protocols. The protocols cite the rules and statute underpinning them. As part of the approval/licensing process, the providers will demonstrate the electronic notary solution to the Department to enable it to evaluate the compliance with applicable laws, rules, and protocols. 18 NCAC 07J .0301(2). Discussion of compliance with the protocols will be an inherent part of the demonstration process. And, of course, the Department plans to modify its website to provide information specific to providers including the rules in 18 NCAC 07J and the protocols.

AUTHORITY FOR ADOPTING STANDARDS

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Given the stakes and the fast-changing nature of technology, the General Assembly provided abundant authority to promulgate rules and adopt and set standards. Key provisions include:

- **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. G.S. §10B-2 (**emphasis added**).
- **G.S. 10B-4** The Secretary may adopt rules necessary to administer and enforce this Chapter in order to achieve the purposes of the Act.
- **G.S. 10B-134.21. Rules.**
The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to remote electronic notarial acts to implement this Part, including at least all of the following: . . .
 - (3) The security standards, features, qualifications, measures, storage, and any other matter related to communication technology, credential analysis, identity proofing, and depository and custodial services.
- **10B-134.23. Standards for services provided to electronic notaries; enforcement.**
 - (a) All licensees and third-party vendors shall meet all standards established by the Secretary under this Part for the provision of services to electronic notaries in this State for remote electronic notarization services. If the Secretary has not adopted rules establishing standards for a service, a licensee or third-party vendor may not furnish that service to an electronic notary public until the Secretary has determined that the provided service meets security standards generally accepted within the industry for that service.
 - (b) The Secretary may adopt rules establishing, supplementing, or amending third-party vendor guidelines for standards and processes for identity proofing and credential analysis services so that third-party vendors interacting with electronic notaries satisfy the security qualifications of establishing the identity of the remotely located principal.

- **G.S. 10B-134.19 (e)** The Secretary shall award a license only to applicants who are of good moral character and who provide a communication technology capable of all of the following:

...

(2) Securely creating and storing, or transmitting securely to be securely stored, the communication technology recording, keeping confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis.

(3) A manner of ensuring that real-time communications are secure from unauthorized interception, access, or viewing.

(4) Reasonable security measures to prevent unauthorized access to all of the following:

- The live transmission of the remote electronic notarial act.
- Any communication technology recording of the remote electronic notarial act.
- The verification methods and credentials used to verify the identity of the remotely located principal.
- The electronic documents presented for remote electronic notarization.

(5) Geolocation of the remotely located ~~principal~~principal when the remotely located principal is conducting the remote electronic notarization via a device capable of identifying the geographic location of the remotely located principal at the time of the remote electronic notarization. [The ~~strikeout and underlining~~ appears in S.L. 2024-47.]

OTHER INSTANCES OF RULE-DIRECTED COMPLIANCE WITH DEPARTMENTAL STANDARDS

Examples where RRC previously has approved language conditioning approval based on compliance with departmental standards include:

- **19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE**

...

(2) applications for commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways. This policy may be accessed at no cost to the public by visiting <https://connect.ncdot.gov/projects/Roadway/RoadwayDesignAdministrativeDocuments/Policy%20on%20Street%20and%20Driveway%20Access.pdf>; and. . .

- **15A NCAC 02H .1017(13)**, providing a compliance option to "design its own post-construction practices based on the Department's guidance on scientific and engineering standards for SCMs."

- **19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS**

Approval of curb and gutter or underground storm drainage facilities that are located along the State highway system, where no construction projects are proposed, shall be determined according to the engineering standards of the Department, and based on....

- **19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED**

When any railroad changes the grades of its tracks where the tracks cross or intersect any road, street, or highway of the State highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the road, street or highway shall be made in accordance with Departmental engineering standards.

CONCLUSION

Note that I recognize that this is an overarching issue applicable to several rules. I have identified several other rules where this issue is presented, but depending on the resolution of this question, there may be follow-up for other rules referencing the protocols.

Under the circumstances outlined above, the Department has both the authority and the pressing need for technology standards to be included in a separate public-access document that is clearly referenced in the rules.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:58 AM
To: Burgos, Alexander N
Subject: Fw: [External] Response to non-protocol related technical corrections, comments and questions

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: Wednesday, April 16, 2025 12:02 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: Re: [External] Response to non-protocol related technical corrections, comments and questions

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Okay. Will do it right now.

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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Ann,

For the purposes of posting for the Commission, please send me the technical corrections memo without the protocols (or at least the note on page 17) at the end.

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: Wednesday, April 16, 2025 11:37 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>; Toole, William W <WToole@sosnc.gov>
Subject: [External] Response to non-protocol related technical corrections, comments and questions

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.

Hi, Seth.

Attached please find our response to all of your technical corrections, comments and questions regarding our 18 NCAC 07J rules.

This memo does not include our responses related to your comments on the protocol-related rules, as that was sent to you separately.

Please call me or Bill if you have any questions.

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

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:57 AM
To: Burgos, Alexander N
Subject: Fw: [External] I didn't get to Bill - will see him in meeting at 1

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: Wednesday, April 16, 2025 12:01 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: [External] I didn't get to Bill - will see him in meeting at 1

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Thanks for the call, I really appreciate it.

Ann

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

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Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:55 AM
To: Burgos, Alexander N
Subject: Fw: [External] Thank you, Seth! Re: Changes
Attachments: 4.16.24 Response to 18 NCAC 07J non-protocol TCRs final.3.docx

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: Wednesday, April 16, 2025 6:00 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Wall, Ann B <awall@sosnc.gov>
Subject: [External] Thank you, Seth! Re: Changes

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.

Hi, Seth.

Thank you. What a relief--for our formatter, too!

Meanwhile, tomorrow we look forward to your final decisions about our responses to the technical corrections. We sent the non-protocol changes today at 12:42PM. They are also enclosed here for your convenience.

AnnE

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>>> "Ascher, Seth M" <seth.ascher@oah.nc.gov> 4/16/2025 5:51 PM >>>
Ann,

It should be fine to get the updated filing on Monday, given that you've forecast the planned changes in your response.

I also lost track of the fact that Friday was a holiday until your email. I will plan to get you any final thoughts on the non-protocol section tomorrow before noon to minimize the need for anyone to work on the holiday weekend (for this project at least).

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: Wednesday, April 16, 2025 5:26 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Changes

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.

Seth, given that Friday is actually a holiday and we have not yet received the final yea or nay with regard to our responses to the technical corrections, comments and questions on the non-protocol issues, we have not give Dennis (our formatter) any of our proposed changes to format so we can file the final version. I doubt that we will be able to get the formatted final rules back to you and Alex tomorrow. (Dennis has a full-time job.)

If you do get back to us tomorrow (Thursday) with the changes you okay or other changes you want, we can certainly expect to be able to give them to Dennis at the end of the day tomorrow. He may be able to get them back to us, and us then to you, on Friday. However, that means Ann or I would have to work on the holiday and OSHR rules would require that we be paid overtime for that work time (comp time is not allowed apparently - an issue I've fought and lost in the past). One option would be if we got them back from Dennis on Friday or Saturday and then one or both of us turned them around to you and Alex on Saturday. Would that be okay? Or would Monday be okay?

Thanks for considering this,

Ann

Ann B. Wall
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April 16, 2025

Dear Seth,

Thank you for the invitation to address concerns and questions about specified rules within 18 NCAC 07J. To facilitate review, we have:

1. Numbered the requests for change in black and bold;
2. Provided the entire rule or the relevant portion of the rule in black;
3. Provided your comments, questions and requests for changes in *black italics*; and
4. Provided our authority, context, explanation, or proposed change for your approval in blue.

Among the rules called out are those referring to the protocols. In order to ease review of our responses regarding your protocol-related comments and questions, we have provided a separate protocol-related memo. In that memo, we have consolidated your questions and concerns and our authority, rationale, and context.

RFC #1:

18 NCAC 07J .0105 PERMISSIBLE PROVIDER DESIGNATIONS

An authorized technology provider may use the applicable following designations for its authorized electronic notary solutions only during the period that each approval or license is effective:

- (1) "approved North Carolina in-person electronic notary solution" or "approved North Carolina IPEN solution";
- (2) "licensed North Carolina electronic notary platform";
- (3) "approved North Carolina identity proofing solution";
- (4) "approved North Carolina credential analysis solution"; and
- (5) "approved North Carolina custodial services solution."

Note: An authorized technology provider may use "NC" or "N.C." as well as "North Carolina."

18 NCAC 07J .0105: *I'm not sure I understand what this rule is supposed to do.*

This rule establishes permissible disclosure language that will not mislead the public into concluding the Department endorses a particular technology provider. The list is not exhaustive list of permissible statements.

Do you have the authority to prevent use of these phrases by unauthorized technology providers?

Use of any of these permitted statements provides notice to the public of the legal status of a provider. G.S. § 10B-4 authorizes the Department to “adopt rules necessary to administer and enforce this Chapter in order to achieve the purposes of the Act.” G.S. § 10B-2, Purpose, is the General Assembly’s directive that the Notary Act “shall be construed and applied to advance its underlying purposes, which are the following:

- (1) To promote, serve, and protect the public interests.

. . . .

- (3) To prevent fraud and forgery.

- (4) To foster ethical conduct among notaries”

Provider statements that imply or state endorsement by the Department are deceptive and against the public interest. Impermissible statements may be prosecuted under the Unfair and Deceptive Trade Practices Act, Chapter 75 of the N.C. General Statutes and common law. The Department's use of the provisions of Chapter 75 is sanctioned by G.S. § 10B-60(k): "The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting."

The note seems to suggest that you are intending technology providers to use exactly these phrases. Is that correct? If so, are there phrases (or types of phrases) they can't use?

The list is permissive ("may use") and is not exhaustive. 18 NCAC 07J .0106 specifies that "[a] technology provider shall not state or imply that the Department endorses the services of the technology provider." Thus, any statement violating 07J .0106 or otherwise indicating that the provider is endorsed by the Department or the State of North Carolina is not allowed.

Alternatively, is this rule meant to require the use of these phrases? If so, change may to shall and indicate where the phrases have to appear.

The specified phrases are neither exclusive nor required. Technology providers advertising their products using this language are assured that they are neither implying endorsement from the Department nor engaged in deceptive trade practices. They can choose to use this language or take their chances with something different. See above.

RFC #2:

18 NCAC 07J .0107 TIMELY RESPONSE REQUIRED

A technology provider or applicant shall respond to any inquiry from the Department in the manner and within the time set by the Department. Extensions may be requested and granted pursuant to 18 NCAC 07B .0313 and .0314, respectively.

***18 NCAC 07J .0107:** How will the department determine the manner and time for response?*

The Department will set a time and manner of response based on the considerations set out in 18 NCAC 07B .0305, Response To Questions And Requests For Information.

Is that set out in rule or statute somewhere?

See immediately preceding reply. Also, if additional time is needed, relief is available via 18 NCAC 07B .0313, Extension Request To Department.

RFC #3:

~~18 NCAC 07J .0112~~ 18 NCAC 07J .0111 COMPLIANCE WITH TECHNOLOGY PROVIDER PROTOCOLS REQUIRED

Technology providers shall comply with applicable provisions of the Department's Scientific, Architectural, and Engineering Protocols for Technology Providers. The protocols may be accessed on the Department's website at no cost.

***18 NCAC 07J .0111:** Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. Explain if I've missed something.*

Please see our Protocol-related separate memo.

RFC #4:**18 NCAC 07J .0201 ~~ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION NOTICE OF MATERIAL CHANGE TO ELECTRONIC NOTARY SOLUTION~~**

...[stricken old language omitted]

After authorization by the Department and before implementation, a technology provider shall notify the Department of any material change to its authorized electronic notary solution.

Note: For purposes of this Section, a material change is one affecting the electronic notary solution's core:

- (1) functionality;
- (2) security; or
- (3) reliability.

18 NCAC 07J .0201: Pursuant to 26 NCAC 02C .0110 Notes are “merely examples or clarifications which, when not read, do not change the meaning of the rule”. It appears to me that the definition of “material change” here is necessary for the rule to be clear, so it would not be appropriate as a note. Strike “Note:” or otherwise incorporate the definition into the text of the rule.

Applying that guidance, the Department proposes the changes highlighted in green:

(b) After authorization by the Department and before implementation, a technology provider shall notify the Department of any material change to its authorized electronic notary solution.

(b) Note: For purposes of this Section, a material change is one affecting the electronic notary solution's core:

- (1) functionality;
- (2) security; or
- (3) reliability.

RFC # 5:**18 NCAC 07J .0202 IMPLEMENTATION OF MATERIAL CHANGES PROHIBITED PENDING DEPARTMENTAL APPROVAL**

No material change to an electronic notary solution shall be implemented and offered to a notary public until the technology provider:

- (1) files written notice pursuant to the rules in this Section;
- (2) complies with Section .0500 of this Subchapter; and
- (3) receives approval from the ~~Department.~~ Department upon its determination that the material change does not adversely affect the provider's continued compliance with the standards established in the rules in this Subchapter and the Protocols.

18 NCAC 07J .0202: For this rule to be clear, it needs a definition of “material change”. Making the suggested change in .0201 would solve the issue without needed to change this rule.

The Department has changed .0201 as recommended. See RFC #4 above.

RFC # 6:**18 NCAC 07J .0208 NOTICE OF REPORTABLE INCIDENT**

Within 72 hours of discovery of a reportable incident, a technology provider shall notify the Department.

Note: For purposes of the rules in this Section of this Subchapter, a reportable incident is one that involves:

- (1) a technology provider's electronic notary solution, a notary public's records, ~~a~~ an electronic notary's electronic seal or signature, or a principal's records or information;
- (2) any of the following affecting data or access:
 - (a) unauthorized access, use, alteration, or disclosure;
 - (b) theft;
 - (c) loss; or
 - (d) compromise; or
- (3) a cybersecurity incident.

18 NCAC 07J .0208: Pursuant to 26 NCAC 02C .0110 Notes are “merely examples or clarifications which, when not read, do not change the meaning of the rule”. It appears to me that the definition of “reportable incident” here is necessary for the rule to be clear, so it would not be appropriate as a note. Strike “Note:” or otherwise incorporate the definition into the text of the rule.

The change indicated has been made and is highlighted in green:

18 NCAC 07J .0208 NOTICE OF REPORTABLE INCIDENT

(a) Within 72 hours of discovery of a reportable incident, a technology provider shall notify the Department.

(b) For purposes of the rules in this Section of this Subchapter, a reportable incident is one that involves:

- (1) a technology provider's electronic notary solution, a notary public's records, a an electronic notary's electronic seal or signature, or a principal's records or information;
- (2) any of the following affecting data or access:
 - (a) unauthorized access, use, alteration, or disclosure;
 - (b) theft;
 - (c) loss; or
 - (d) compromise; or
- (3) a cybersecurity incident.

RFC # 7:

18 NCAC 07J .0301 APPLICATION PROCESS

A technology provider applicant for authorization of an electronic notary solution shall:

- (1) submit a complete electronic application to the Department;
- (2) demonstrate the electronic notary solution to the Department to enable it to evaluate ~~the~~ compliance with applicable laws, rules, and protocols; and
- (3) submit the filing fee, if applicable, with the application.

18 NCAC 07J .0305 LIMIT ON DESIGNATION OF TRADE SECRET OR CONFIDENTIAL INFORMATION

A technology provider applicant shall not designate its entire application as:

- (1) a trade secret; or
- (2) confidential information.

18 NCAC 07J .0306 DESIGNATION OF CONFIDENTIAL OR TRADE SECRET INFORMATION

A technology provider applicant shall designate each specific item on its application, attachments, and other filings for which confidentiality or trade secret protection is claimed. Each designation shall comply with:

- (1) the North Carolina Trade Secrets Protection Act, Chapter 66, Article 24 of the General Statutes; or
- (2) the confidentiality provisions of G.S. 132-1.2.

18 NCAC 07J .0309 GOOD FAITH BASIS FOR CONFIDENTIAL OR TRADE SECRET DESIGNATION

If a technology provider designates items on its application as confidential or trade secret, the applicant shall certify on the application that it has formed a good faith opinion that the information claimed as confidential or trade secret meets the requirements for designation under the laws specified in Rule .0306 of this Section.

18 NCAC 07J .0310 SOURCES OF CONFIDENTIAL INFORMATION

If designated as confidential or trade secret, the Department shall presume that the following plans and documents are confidential information or trade secrets:

- (1) configuration management plan required by Rule .0616 of this Subchapter;
- (2) information technology security audit and summary required by Rules .0620 and .0621 of this Subchapter;
- (3) security plan required by Rule .0624 of this Subchapter;
- (4) security incident response plan required by Rule .0626 of this Subchapter; and
- (5) contingency plan required by Rule .0628 of this Subchapter.

18 NCAC 07J.0301: *Under .0309, can't an applicant designate items other than those listed as confidential or trade secret?*

Yes, Rule .0306 establishes that an applicant can designate any item it files with the Department as either trade secret or confidential. Rule .0310 establishes a list for which there is an internal departmental presumption that the designation is correct. Rule .0310 does not establish an exclusive list for which trade secret or confidential treatment may apply, if so designated.

If something is designated, but not on the .0309 list, what happens?

The list does not purport to be exhaustive. Under Rule .0306, other items filed with the Department can be designated as confidential or trade secret, but no internal departmental presumption attaches as is the case with the filings listed in Rule .0310.

The Rule .0310 list describes those documents that typically include trade secrets and confidential information. It is also intended to alert applicants that they may wish to consider and designate, as appropriate and consistent with Rule .0309, the parts that are confidential or trade secret, and offers a departmental presumption that such designations are appropriate.

Assuming designation, under Rule .0310 the Department will presume to be trade secret or confidential those listed items that are so designated.

RFC # 8:

18 NCAC 07J .0402 ~~CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS~~ PROVIDER NAME

...[old deleted text is omitted here]

All technology provider applications shall include:

- (1) the provider's name in its state or jurisdiction of formation; and
- (2) the names required by 18 NCAC 07B .0422(3)(c).

18 NCAC 07J .0301 APPLICATION PROCESS

A technology provider applicant for authorization of an electronic notary solution shall:

- (1) submit a complete electronic application to the Department;
- (2) demonstrate the electronic notary solution to the Department to enable it to evaluate the compliance with applicable laws, rules, and protocols; and
- (3) submit the filing fee, if applicable, with the application.

18 NCAC 07J .0402: *This rule appears to duplicate requirements that are already in 18 NCAC 07J .0301. Why is this necessary?*

07J .0402 does not duplicate 07J .0301. 07J .0402 provides an overview of each step in the application process. 07J .0301, on the other hand, provides more detail regarding what must be put in the actual application.

For your information, requirements related to the names of a technology provider are located in several places in the rules. 18 NCAC 07B .0402(2)(a) requires that contact information for all businesses include what is often referred to as their legal names – that is their names in the state or jurisdiction in which the entities are legally formed or created. G.S. § 55D, Article 3, governs the names of entities including foreign (non-NC) entities. 18 NCAC

07J .0402 requires that regardless of location within the 18 NCAC 07 rules, technology provider applicants must provide all names they use: legal name, assumed business names, and fictitious names used by foreign entities when their legal name is already in use in NC when they get their Certificate of Authority. 18 NCAC 07B .0422(3)(c) relates only to “all assumed business names, trade names, or "doing business as" names used by the applicant in North Carolina, other states, or nations;...” However, your question has pointed out that we inadvertently omitted inclusion of 18 NCAC 07B .0422(3)(d). To further clarify, the Department proposes the change shown in green:

18 NCAC 07J .0402 ~~CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS PROVIDER NAME~~

...[old deleted text is omitted here]

All technology provider applications shall include:

- (1) the provider's name in its state or jurisdiction of ~~formation;~~ **formation as required by 18 NCAC 07B .0402(2)(a)** and
- (2) the names required by 18 NCAC 07B ~~.0422(3)(c); .0422(3)(c) and (d)~~

RFC # 9:

18 NCAC 07J .0606 TECHNOLOGY PROVIDER WEB PAGE

A technology provider shall create a publicly accessible web page or pages containing the information required by Rule .0607 of this Section.

18 NCAC 07J .0607 SINGLE LINK AND SUBMISSION TO DEPARTMENT

A technology provider shall ensure that the primary website page required by Rule .0606 of this Section is accessible through a single link provided to the Department:

- (1) for inclusion on the Department's authorized technology provider web page; and
- (2) with any sub-pages directly accessible through the single linked page.

18 NCAC 07J .0608 WEBSITE CONTENT

A technology provider's website shall include the following content in the order set out in this Rule: . . .

18 NCAC 07J .0606: I believe you mean to reference Rule .0608, not .0607.

The purpose of the rule is to establish a single URL that will be available on the Department's website and on which a consumer can click and go to the provider's website. The consumer may then find all of the other required content on the provider's website. The content in Rule .0608 might well be spread across multiple web pages. Rule .0606 has been modified as highlighted green to make this clearer.

18 NCAC 07J .0607 SINGLE LINK AND SUBMISSION TO DEPARTMENT

A technology provider shall ensure that the ~~primary~~ website page ~~or pages~~ required by Rule .0606 ~~and website content required by Rule .0608~~ of this Section ~~are~~ accessible through a single link provided to the Department:

- (1) for inclusion on the Department's authorized technology provider web page; and
- (2) with any sub-pages directly accessible through the single linked page.

RFC # 10:**18 NCAC 07J .0608 WEBSITE CONTENT**

A technology provider's website shall include the following content in the order set out in this Rule:

- ...
- (9) either the disclosures required by the following rules in this Subchapter or a link to them:
- (a) Rule .1208;
 - (b) Rule .1427;
 - (c) ~~Rule .1611;~~ Rule .1613
 - (d) Rule .1812; and
 - (e) Rule .2021; . . .

18 NCAC 07J .0608: *As written, the “them” and the end of the first line of item 9 could mean either the disclosures or the rules. I believe you mean the disclosures, if so replace with “a link to the disclosures.”*

The issue has been addressed as highlighted in **green**:

18 NCAC 07J .0608 WEBSITE CONTENT

A technology provider's website shall include the following content in the order set out in this Rule:

- ...
- (9) either the disclosures required by the following rules in this Subchapter or a link to **them**; **those disclosures**:
- (a) Rule .1208;
 - (b) Rule .1427;
 - (c) ~~Rule .1611;~~ Rule .1613
 - (d) Rule .1812; and
 - (e) Rule .2021 . . .

RFC # 11:**18 NCAC 07J .0616 CONFIGURATION MANAGEMENT PLAN**

A technology provider shall maintain a configuration management plan for systems supporting the electronic notary solution that addresses:

- (1) maintenance of an accurate inventory of items including:
 - (a) software;
 - (b) hardware; and
 - (c) network components;
- (2) establishment of configuration settings that reflect the most restrictive mode consistent with its operational requirements;
- (3) use of automated mechanisms to detect inventory and configuration changes;
- (4) prevention of unauthorized changes to the systems; and
- (5) evaluation of the potential security impact of proposed changes.

18 NCAC 07J .0616: *What is “the most restrictive mode” in item 2?*

To improve understanding, the Department proposes the change highlighted in **green**:

18 NCAC 07J .0616 CONFIGURATION MANAGEMENT PLAN

A technology provider shall maintain a configuration management plan for systems supporting the electronic notary solution that addresses:

- (1) maintenance of an accurate inventory of items including:
 - (a) software;
 - (b) hardware; and
 - (c) network components;

- ~~(2) establishment of configuration settings that reflect the most restrictive mode consistent with its operational requirements;~~
 (2) implementation of configuration settings which represent the most restrictive security settings compatible with the systems' operational requirements.

RFC # 12:

18 NCAC 07J .0619 VULNERABILITY DETECTION AND REMEDIATION

A technology provider shall:

- (1) scan for vulnerabilities of the systems supporting the electronic notary solution at least weekly; and
- (2) detect and remediate IT security vulnerabilities.

18 NCAC 07J .0619: *What do you mean by scan here? Use 3rd party software? Examine?*

To improve clarity for lay readers, the Department proposes the following change:

18 NCAC 07J .0619 VULNERABILITY DETECTION AND REMEDIATION

A technology provider shall:

~~(1) scan for vulnerabilities of the systems supporting the electronic notary solution at least weekly; and~~

- (1) at least weekly execute or cause to be executed a 3rd party security program which shall evaluate each system endpoint for indications of malware, known security risks, and other vulnerabilities; and . . .

Is there a timeline for remediating IT vulnerabilities in item 2?

It is not practicable or even possible for rules to establish the times within which the nearly infinite number of vulnerabilities can reasonably be expected to be corrected. Whether and when vulnerabilities must be corrected is dependent upon a wide variety of factors that are likely to be unique to the problem and the technology provider. 18 NCAC 07J .0629(2) requires that the technology provider establish a projected timeline:

18 NCAC 07J .0629 CONTENTS OF CONTINGENCY PLAN

A technology provider's contingency plan shall include:

- (1) the manner in which it will recover its authorized services to a functional state;
- (2) a projected timeline for recovery to a functional state; and . . .

RFC # 13:

18 NCAC 07J .0624 SECURITY PLAN

A technology provider shall maintain a security plan specifying how it will comply with laws, rules, and the Department's protocols related to:

- (1) physical security; and
- (2) IT security.

18 NCAC 07J .0624: *Since the protocols, by definition, are not rules, I don't see how you can require them to be followed by rule. Effectively this would allow non-rules to be enforced as rules, which would sidestep the Administrative Procedure Act. The easiest solution would be to remove the reference to Department protocols from this rule.*

Please see our Protocol-related separate memo.

TCR # 14:

18 NCAC 07J .0625 SECURITY BOUNDARY AND THREAT PROTECTION TECHNOLOGY
A technology provider shall use security boundary and threat protection technology

18 NCAC 07J .0625: *What are “security boundary” and “threat protection” technologies?*

Defining these terms by rule is not practical, as they are terms of art commonly used and understood in the technology industry. The Department proposes striking 18 NCAC 07J .0625 and will address the requirements within the protocols.

TCR # 15:

18 NCAC 07J .0811 18 NCAC 07J .0810 SEGREGATION OF ENTRIES

An IPEN or platform provider shall ensure that entries in its electronic journals can be designated separately from other entries. Note: An example of separate designation would be flagging entries subject to a litigation hold.

18 NCAC 07J .0810: *I understand the example in the note, but I’m not sure what “designate” means here. Would a more concrete verb work, such as categorize, annotate, or flag?*

The proposed change is implemented as highlighted in green:

18 NCAC 07J .0811 18 NCAC 07J .0810 SEGREGATION OF ENTRIES

An IPEN or platform provider shall ensure that entries in its electronic journals can be designated separately annotated and distinguished from other entries. Note: An example of separate and distinguishing annotation would be flagging entries subject to a litigation hold.

TCR # 16:

18 NCAC 07J .0904 VIDEO CUSTOMIZATION STANDARD

A platform provider's communication technology shall include a feature that:

- (1) allows each participant to lock the size and position of a priority video window; and
- (2) can be located easily by a participant in a notarial transaction.

18 NCAC 07J .0904: *I do not see how this rule works as a list, since item 2 is dependent on item 1. Rewrite as one sentence.*

The change you requested is highlighted in green:

18 NCAC 07J .0904 VIDEO CUSTOMIZATION STANDARD

A platform provider's communication technology shall include a feature that

1. —allows each participant to lock the size and position of a priority video window; and
2. —can be located easily by a participant in a notarial transaction.

TCR # 17:

18 NCAC 07J .1004 SESSION RECORD PRESUMPTION

The Department shall consider a session record to be the presumptive record of a notarial act if the session record:

- (1) is unmodified and intact; and
- (2) documents the circumstances of each notarial act occurring within the session.

18 NCAC 07J .1004: *Why is the department making a presumption about the record of a notarial act? I am aware of 10B-99 and the presumption by courts, but am not sure what the Department’s role would be in authenticating specific records.*

The Department will delete the adopted rule text in 18 NCAC 07J .1004 and mark the rule number as reserved for future codification.

TCR # 18:**18 NCAC 07J .1006 SEARCHABLE SESSION RECORD FIELDS**

A depository shall make session records searchable and identifiable by the following fields:

- (1) the session identifier required pursuant to Rule .1005 of this Section;
- (2) the commission name of the notary public;
- (3) the county of the notary's commission;
- ~~(4) the number of notarial acts performed as entered by the notary public;~~
- ~~(5)~~(4) the names of the remotely located principals as they appear on the credentials presented for credential analysis;
- ~~(6)~~(5) the time of day when the session ended . . .

18 NCAC 07J .1006: *In item 5, "time of day" is potentially vague. Do you just mean time? Or something else?*

The Department will revise the rule as highlighted in **green**:

18 NCAC 07J .1006 SEARCHABLE SESSION RECORD FIELDS

A depository shall make session records searchable and identifiable by the following fields:

- (1) the session identifier required pursuant to Rule .1005 of this Section;
- (2) the commission name of the notary public;
- (3) the county of the notary's commission;
- ~~(4) the number of notarial acts performed as entered by the notary public;~~
- ~~(5)~~(4) the names of the remotely located principals as they appear on the credentials presented for credential analysis;
- ~~(6)~~(5) the time **of day** when the session ended . . .

RFC # 19:**18 NCAC 07J .1104 APPLICATION REQUIRED UPON CHANGES**

If an existing technology provider operating pursuant to Rule .1101 of this Section undergoes a change reportable pursuant to Rule .0201 of this Subchapter, it shall file an application pursuant to Section .1300 of this Subchapter.

18 NCAC 07J .0202 IMPLEMENTATION OF MATERIAL CHANGES PROHIBITED PENDING DEPARTMENTAL APPROVAL

No material change to an electronic notary solution shall be implemented and offered to a notary public until the technology provider:

- (1) files written notice pursuant to the rules in this Section;
- (2) complies with Section .0500 of this Subchapter; and
- (3) receives approval from the ~~Department~~ Department upon its determination that the material change does not adversely affect the provider's continued compliance with the standards established in the rules in this Subchapter and the Protocols.

18 NCAC 07J .1104: *What is the timeframe for filing the application under this rule? .0201 and the other rules in that section suggest that the application has to be before the change is implemented, but the phrasing of this rule suggests the application would be filed after the change. Please clarify.*

The timeframe is set out in 18 NCAC 07J .0202(3); however, additional clarity can be achieved by the change shown in **green**:

18 NCAC 07J .1104 APPLICATION REQUIRED UPON CHANGES

If an existing technology provider operating pursuant to Rule .1101 of this Section undergoes a change reportable pursuant to Rule .0201 of this Subchapter, it shall file an application pursuant to Section .1300 of this **Subchapter, Subchapter and not implement the change without Departmental approval of the application.**

TCR # 20:**18 NCAC 07J .1401 REQUIRED GENERAL PLATFORM FUNCTIONS**

A platform provider shall integrate into its platform each of the following functions:

- (1) use of communication ~~technology~~; technology as defined in G.S. 10B-134.1(2) that complies with Section .0900 of this Subchapter . . .

18 NCAC 07J .1401: In item 1, I believe the reference should be G.S. 10B-134.1(1).

You are correct and we have revised the rule as highlighted in green:

18 NCAC 07J .1401 REQUIRED GENERAL PLATFORM FUNCTIONS

A platform provider shall integrate into its platform each of the following functions:

- (1) use of communication ~~technology~~; technology as defined in G.S. ~~10B-134.1(2)~~ **10B-134.1(1)** that complies with Section .0900 of this Subchapter: . . .

TCR # 21:**18 NCAC 07J .1406 GEOLOCATION DETECTION**

A platform provider shall detect whether any device used by a principal during the notarial transaction process is:

- (1) GPS-enabled; and
 (2) capable of geolocation at the time of the remote electronic notarial act.

18 NCAC 07J .1406: As written, this would require the platform provider to detect the features of a device used by a notary that is not connected to a platform. Is that the intent? If not, rephrase to something like "any device connected to the platform during the notarial transaction process."

We have revised the rule as indicated in green:

18 NCAC 07J .1406 GEOLOCATION DETECTION

A platform provider shall detect whether any device used by a principal **connected with the platform** during the notarial transaction process is:

- (1) GPS-enabled; and
 (2) capable of geolocation at the time of the remote electronic notarial act.

RFC # 22:**18 NCAC 07J .1419 NOTARY COUNT OF NOTARIAL ACTS**

~~(a) A platform shall require the notary public to enter the number of notarial acts performed during a notarial session. oaths or affirmations administered without a principal's signature.~~

~~(b) A platform shall not populate the entry field in Paragraph (a) of this Rule nor disclose its automatic tabulation of notarial acts to the notary public before the end of the notarial session.~~

18 NCAC 07J .1420 PLATFORM COUNT OF NOTARIAL ACTS FIELD FOR COUNT OF OATHS OR AFFIRMATIONS WITHOUT PRINCIPAL SIGNATURES

A platform shall design its system to provide a field for a notary public to enter the count of oaths or affirmations administered to principals without principal signatures.

~~A platform provider shall automatically tabulate the number of notarial acts completed during each notarial session by:~~

- (1) ~~tabulating the number of all journal entries associated with the session; and~~
 (2) ~~subtracting from the number in Item (1) of this Rule:~~
 (a) ~~the number of journal entries for cancelled notarial transactions; and~~
 (b) ~~the number of supplemental journal entries.~~

18 NCAC 07J .1420: Do you need this rule? Isn't this effectively covered by .1419?

We need 07J .1420 because the two rules require different platform activities. The first, 07J .1419, requires the platform to make it mandatory that the notary administering oaths or affirmations without principal signatures counts and enters the number of such acts. The second, 07J .1420, requires the platform to program a feature into its solution to accommodate the entry

of the count by the notary. These rules are required to establish an accurate count of notarial acts in order to both facilitate collection of the statutory \$5.00 platform fee per notarial act and make the count auditable according to NC law.

RFC # 23:

18 NCAC 07J .1428 CONTENT OF ADDITIONAL PLATFORM DISCLOSURES

A platform's additional disclosures pursuant to Rule .1427 of this Section shall include information regarding:

...

- (5) the platform provider's technical issue resolution targets, which shall include:
- (a) categorization of service disruptions based on a numeric scale or denoted by single words such as "critical," "high," "medium," and "low;"
 - (b) a plain language description of each category; and
 - (c) the maximum projected response time for issues encountered in each category.

18 NCAC 07J .1428: *Item 5 as written allows the provider to define how many categories, what fits into each category, and projected response time however they want. Is this the intent?*

Yes. The purpose of the rule is disclosure. This will enable notaries and their employers to compare products. They will then have available the information needed to make an informed decision about which product best meets their needs. It is possible, for example, that some remote electronic notarial acts will be of such high priority that the maximum projected response times will be critical to the notary. For others, a longer projected response time may not be mission critical.

RFC # 24:

18 NCAC 07J .1501 PLATFORM LICENSURE REQUIREMENTS

A platform provider applicant shall establish through its application and demonstration that its platform meets all requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable provisions of the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Section .1100;
 - (b) Section .1200;
 - (c) Section .1300;
 - (d) Section .2000;
 - (e) Section .2100; and
 - (f) Section .2200.

18 NCAC 07J .1501: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our [Protocol-related separate memo](#).

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our [Protocol-related separate memo](#).

RFC # 25:

18 NCAC 07J Section .1600: *It appears that this section requires a provider to perform certain tests to measure the success rates of their credential analysis solution (.1602 and .1603) and publish those results (.1612 and .1613). Neither this section nor the underlying statute appears to establish minimum success rates for approval. Is this correct? If not, what am I missing?*

You are correct. These are disclosure rules. Therefore, the rules do not establish a minimum acceptable success rate. The Department conducted a 50-state survey, a literature search, and solicited stakeholder input. After that research, we determined that acceptable success rates are not an industry standard nor is there industry standard testing. Success rates seemed to vary, at least as advertised, among stakeholders and the markets served. We found no grounds on which to establish a single minimum acceptable success rate.

The purpose of the disclosure is to allow the consumer to compare products and have available the information needed to make an informed decision about which product best meets the needs of that consumer. The market will then have the information to decide an appropriate success rate for any given sector or activity.

RFC # 26:**18 NCAC 07J .1603 CREDENTIAL ANALYSIS SOLUTION TRIAL PROCESS**

A credential analysis solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to the population of ~~North Carolina~~ the United States as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and . . .

18 NCAC 07J .1603: *In item (1)(a), what does it mean to be “generally proportionate” mean? That term is potentially vague.*

We have chosen to further clarify the rule as highlighted in **green**:

18 NCAC 07J .1603 CREDENTIAL ANALYSIS SOLUTION TRIAL PROCESS

A credential analysis solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are **generally proportionate to within five percent of the proportion of ages, races, and sexes of the population of North Carolina the United States that is 18 years or older** as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and . . .

RFC # 27:**18 NCAC 07J .1701 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE CREDENTIAL ANALYSIS SERVICES**

A credential analysis provider applicant shall meet requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Sections .0700-.1500; and
 - (b) Sections .1800-.2200.

18 NCAC 07J .1701: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our Protocol-related separate memo.

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our Protocol-related separate memo.

RFC # 28:

18 NCAC 07J Section .1800: *It appears that this section requires a provider to perform certain tests to measure the success rates of their identity proofing (.1802 and .1803) and publish those results (.1812 and .1813). Neither this section nor the underlying statute appears to establish minimum success rates for approval. Is this correct? If not, what am I missing?*

See our response to RFC # 25.

RFC # 29:**18 NCAC 07J .1803 IDENTITY PROOFING SOLUTION TRIAL PROCESS**

An identity proofing solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to the adult population of ~~North Carolina~~ the United States as established by the most recent United States decennial census; and...

18 NCAC 07J .1803: *In item (1)(a), what does it mean to be “generally proportionate” mean? That term is potentially vague.*

See our response to RFC # 25 and revision of the rule as highlighted in green:

18 NCAC 07J .1803 IDENTITY PROOFING SOLUTION TRIAL PROCESS

An identity proofing solution provider shall conduct, or have a third-party conduct, a trial of its solution by presenting the solution with no less than 100 subjects to be evaluated:

- (1) who are real individuals:
 - (a) whose ages, races, and genders sexes are generally proportionate to within five percent of the proportion of ages, races, and sexes to that of the adult population of North Carolina the United States that is 18 years or older as established by the most recent United States decennial census; and
 - (b) at least 18 years old; and...

RFC # 30:**18 NCAC 07J .1901 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE IDENTITY
PROOFING SERVICES**

An identity proofing provider applicant shall meet requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter except:
 - (a) Sections .0700-.1700; and
 - (b) Sections .2000-.2200.

18 NCAC 07J .1901: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our [Protocol-related separate memo](#).

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our [Protocol-related separate memo](#).

RFC # 31:**18 NCAC 07J .2002 RECEIPT FROM CUSTODIAN TRANSFEREE**

A custodian transferee shall create a receipt and provide it to the transferor confirming that:

- (1) the custodian has received from the depository or custodian transferor:
 - (a) one or more session records; and
 - (b) a copy of the session record logs associated with the session records; and
- (2) the session records and associated session record logs have been:
 - (a) received; and
 - (b) validated.

18 NCAC 07J .2002: *What does it mean to be “validated” in item (2)(b)?*

We have revised the rule as highlighted in [green](#):

18 NCAC 07J .2002 RECEIPT FROM CUSTODIAN TRANSFEREE

A custodian transferee shall create a receipt and provide it to the transferor confirming that:

- (1) the custodian has received from the depository or custodian transferor:
 - (a) one or more session records; and
 - (b) a copy of the session record logs associated with the session records; and
- (2) the session records and associated session record logs have been:
 - (a) received; and
 - (b) validated/verified as unmodified and uncorrupted.

RFC # 32:**18 NCAC 07J .2009 SESSION RECORD DELETION BY CUSTODIAN UPON TRANSFER**

A custodian that transfers a session record to another custodian shall delete the record only after receiving confirmation from the ~~custodian transferee~~ that the record has been:

- (1) accepted; and
- (2) validated.

18 NCAC 07J .2009: *What does it mean to be "validated" in item (2)(b)?*

We have revised the rule as highlighted in **green**:

18 NCAC 07J .2009 SESSION RECORD DELETION BY CUSTODIAN UPON TRANSFER

A custodian that transfers a session record to another custodian shall delete the record only after receiving confirmation from the ~~custodian transferee~~ that the record has been:

- (1) accepted; and
- (2) **validated, verified as unmodified and uncorrupted.**

RFC # 33:**18 NCAC 07J .2021 CONTENT OF ADDITIONAL CUSTODIAN DISCLOSURES**

A custodian's additional disclosure pursuant to Rule .2020 of this Section shall include information regarding:

...

- ~~(2)~~(4) the custodian's technical issues resolution targets, which shall include:
 - (a) categorization of service disruptions based on a numeric scale or denoted by single words such as "critical," "high," "medium," and "low;"
 - (b) a plain language description of each category; and
 - (c) the maximum projected resolution time for issues encountered in each category.

18 NCAC 07J .2021: *Item 4 as written allows the provider to define how many categories, what fits into each category, and projected response time however they want. Is this the intent?*

Yes. See our response to RFC #23. This is a disclosure rule.

RFC # 34:**18 NCAC 07J .2101 REQUIREMENTS FOR AUTHORIZATION TO PROVIDE CUSTODIAL SERVICES**

A custodial services applicant shall meet the requirements established in:

- (1) Article 2 of Chapter 10B of the General Statutes;
- (2) the applicable standards set forth in the Department's Protocols; and
- (3) the rules in this Subchapter, except:
 - (a) Sections .0700-.1900; and
 - (b) Section .2200.

18 NCAC 07J .2101: *With reference to item 2, how does an applicant know what provisions of the protocols are applicable?*

Please see our Protocol-related separate memo.

Assuming this is your plan, what is your authority to reject applications that do not meet standards outside of the rules (i.e. protocols)?

Please see our Protocol-related separate memo.

Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:55 AM
To: Burgos, Alexander N
Subject: Fw: [External] Error in non-protocol memo

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: Wednesday, April 16, 2025 12:07 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Elmore, Ann M <aelmore@sosnc.gov>
Subject: [External] Error in non-protocol memo

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Right after I sent you the part with pages 17+ removed, Ann notified me that she found two or three small errors, including one re wording. She is going to fix them and send you the corrected copy momentarily.

My apologies.

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

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:52 AM
To: Elmore, Ann M
Cc: Wall, Ann B; Burgos, Alexander N
Subject: Re: [External] Responses to Non-Protocol Technical Corrections, Comments, and Questions re 18 NCAC 07J

Ann and Ann,

I have finished my review of both memos, and here is where we stand:

1. The non-protocol memo and proposed changes addresses any concerns I had in the relevant rules. Please proceed to make the changes and file final versions of the impacted rules. Given the holiday Friday, it will not be a problem to file those updates on Monday.
2. As we discussed on the phone, I will be writing a staff opinion related to the protocols. I plan to have that out today.
3. Pursuant to the discussion of "geolocation" that came up, I agree that the level of accuracy could fall within the "scientific, architectural, or engineering standards" exception and thus be more appropriate for your protocols. I do think that some kind of definition would still be helpful, even if it just points to the statute. Particularly, I think the term geolocation likely is a sufficiently common industry term for software developers that it would not require a definition, but may not be in common enough usage that you can assume a notary would understand its meaning. Consider updating the definition of "geolocation" in 18 NCAC 07J .0101 to remove the accuracy requirement, or to just point to the statutory definition.
4. Pending the final filing reflecting the changes described in your memos, I anticipate recommending approval of 7J , noting the possibility of a narrow objection on the protocol issue which I will flesh out in the forthcoming staff opinion. I will request an extension of review for the remaining subchapters.

Let me know if you have any questions.

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: Wednesday, April 16, 2025 12:42 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Wall, Ann B <awall@sosnc.gov>
Subject: [External] Responses to Non-Protocol Technical Corrections, Comments, and Questions re 18 NCAC 07J

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Good afternoon, Seth,

Enclosed are the Department's responses to non-protocol technical corrections, comments, and questions regarding 18 NCAC 07J. It is a 16-page document. This document references but does not include the separate protocols-related memo that Ann Wall submitted earlier.

I am sending this to you at the express request of Ann B. Wall, General Counsel and Rulemaking Coordinator.

Please confirm receipt.

Thank you, Seth!

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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Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, April 17, 2025 10:53 AM
To: Burgos, Alexander N
Subject: Fw: [External] Definition we may not need

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: Wednesday, April 16, 2025 4:09 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: [External] Definition we may not need

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As I mentioned, after looking at your questions about the protocols and then our response, as well as [S.L. 2024 -47, Section 5\(a\)](#), we are now thinking the definition of "geolocation" in 18 NCAC 07J .0101(9) is not needed in the rules, and may more appropriately belong in the protocols because it references a specific scientific standard of 100 feet.

18 NCAC 07J .0101 DEFINITIONS
[For purposes of this Subchapter:](#)

[\(9\) "Geolocation" means technology that identifies the location of remotely located principals connecting to a platform using a GPS-enabled device with an accuracy rate of within 100 feet.](#)

Thanks. Let me know if you have any questions,

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] Link for Friday 10AM Meeting Re: RFC for 18 NCAC 07J

From: Ann Elmore <aelmore@sosnc.gov>

Sent: Thursday, April 10, 2025 3:33 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] Link for Friday 10AM Meeting Re: RFC for 18 NCAC 07J

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Hi, Seth.

Thank you for the speedy reply. Below is the link, in the event WebEx is slow sending the invitation.

Deputy Secretary Bill Toole, Ann Wall, & I will attend.

We look forward to seeing you tomorrow.

Truly,

AnnE

18 NCAC 07J RFC Meeting
Hosted by Executive WebEx

<https://sosnc.webex.com/sosnc/j.php?MTID=m7e67fdc5fd4a2ddfd7b9951230cfa23f>

Friday, April 11, 2025 10:00 AM | 1 hour | (UTC-04:00) Eastern Time (US & Canada)

Meeting number: 2864 741 7661

Password: [k3MgiqkR3@6](#) (53644757 when dialing from a phone or video system)

Agenda: 18 NCAC 07J RFC Meeting

Join by video system

Dial [28647417661@sosnc.webex.com](tel:28647417661@sosnc.webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-408-418-9388 United States Toll

Access code: 286 474 17661

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>>> "Ascher, Seth M" <seth.ascher@oah.nc.gov> 4/10/2025 3:22 PM >>>
Yes, that works for me. Feel free to send me an invite.

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: Thursday, April 10, 2025 3:14 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] Meet Friday at 10AM? Re: RFC for 18 NCAC 07J

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Good afternoon, Seth.

Thank you for inviting discussion about RFCs for 18 NCAC 07J. **Are you available to meet via WebEx at 10AM tomorrow? If not, please identify what time(s) currently will work for you. May I schedule a WebEx meeting for an hour?** An hour in an abundance of caution--not that we're likely to need that long.

Thank you also for the way you approached handling the RFCs for this large rule group. The single-list approach facilitates expeditious handling by all involved.

Looking forward to talking further.

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

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:(919)814-5521)
Fax: 919 814-5596

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Burgos, Alexander N

Subject: FW: [External] Re: RFC for 18 NCAC 07J

From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, April 9, 2025 5:18 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>; Toole, William W <WToole@sosnc.gov>

Subject: [External] Re: RFC for 18 NCAC 07J

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Seth, I've just read your first comment on the protocols and I think we will definitely want to talk with you on Friday regarding the rules that mention protocols.

At this moment, it looks like afternoon would be best for us. However, I will speak with Bill and Ann tomorrow and tomorrow afternoon, we'll propose a specific time.

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

From: Ann Wall <awall@sosnc.gov>
Sent: Wednesday, April 9, 2025 5:13 PM
To: Ascher, Seth M
Cc: Burgos, Alexander N; Elmore, Ann M; Toole, William W
Subject: [External] Re: RFC for 18 NCAC 07J

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Thanks, Seth.

We are not available on the 10th. We may be available on the 11th.

We'll let you know tomorrow after we've looked through what you've sent us.

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.

Good afternoon,

Attached is my request for changes for 18 NCAC 07J. In the interest of moving forward with this sizeable section, I have handled this slightly differently than our normal practice, and I wanted to make you aware of this.

- 1) The majority of this substantive feedback is based on the consolidated version of the rules, not the official filing. Given the small size of each rule and the number of rules, this seemed an appropriate time-saving method. As a result, I do not provide specific line numbers. Also note that you will need to make any changes on the formal filings following the appropriate formatting. I will be looking over the formal filings with their updates prior to the meeting.
- 2) I have put all of the feedback into a single list instead of starting a new page for each rule, as is our usual practice.
- 3) I know that we have discussed the issue of the protocols and the G.S. 150B-2(8a)h. exception in the past, and it comes up in several places throughout this subchapter. I am happy to discuss this further with you.

4) I have given you until April 17th , 2025 to respond, but to avoid a potential extension it may be worth touching base before then. For any complicated issues (and I am particularly thinking about the protocols), I will need to have sufficient time to review and advise the Commission. Towards that end, my schedule is fairly flexible on Thursday the 10th and Friday the 11th if you would like to set up a time to discuss this subchapter.

Let me know if you have additional questions or need clarification on any of this.

Seth Ascher

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

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Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Tuesday, April 1, 2025 3:31 PM
To: Ascher, Seth M; Elmore, Ann M
Cc: Burgos, Alexander N
Subject: Re: [External] Preparing for TCRs for 18 NCAC 07 Rules

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Thanks.

Ann B. Wall
General Counsel
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Fax 919-814-5391

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Ann,

I did receive the table of contents.

I making progress on subchapter J and plan to get you as much as I can from it early next week.

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: Tuesday, April 1, 2025 2:10 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] Preparing for TCRs for 18 NCAC 07 Rules

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Hi, Seth.

Just checking in with you re

(1) Did you receive the table of contents for all the rules, both already approved & submitted on 3/19?

(2) Are y'all in a position to send TCRs section-by-section? As mentioned after last week's RRC meeting, we believe that will facilitate more timely completion of needed corrections.

Alternatively, if you've discovered a more efficient process for working through large groups of rules (as likely you will be if you haven't already for ERR), please let us know what you have in mind so we may schedule our internal meetings to accommodate.

Thank you for your efforts to manage the challenges.

Truly,
AnnE

Ann McNellis Elmore, Agency Legal Consultant

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