

Burgos, Alexander N

Subject: FW: [External] Request to remove Notary Rules from ERR schedule

From: Ann Wall <awall@sosnc.gov>

Sent: Wednesday, March 20, 2024 4:30 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>; Baughman, Jennell L <jbaughman@sosnc.gov>

Subject: RE: [External] Request to remove Notary Rules from ERR schedule

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Thanks so very much, Seth.

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] Request to remove Notary Rules from ERR schedule

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

Sent: Monday, March 18, 2024 2:13 PM

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

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

Subject: RE: [External] Request to remove Notary Rules from ERR schedule

Ann,

To close the loop on this, I anticipate recommending approval of removing 18 NCAC 07B, 07C, 07D, 07E, 07F, 07I, and 07K from the periodic review schedule. And I anticipate recommending that the RRC change the periodic review deadline for 18 NCAC 07J to June 2025. Currently, I do not plan to draft a staff opinion on this issue. I will let you know if anything changes between now and the meeting next week.

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] ERR Removal Request by SOS: Interested Parties Notified
Attachments: Notice re Remote Electronic Notarization Act

From: Ann Elmore <aelmore@sosnc.gov>
Sent: Friday, March 15, 2024 2:26 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Wall, Ann B <awall@sosnc.gov>
Subject: [External] ERR Removal Request by SOS: Interested Parties Notified

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Hi, Seth.

Enclosed is the notice that went out this morning providing our interested parties with Notice of Request for Removal from Existing Rules Review, as well as other RENA-rulemaking updates. This is being sent to you at the request of Rulemaking Coordinator Ann Wall. She asked me to send you confirmation that "we have notified our interested persons list of our request for removal of the rules from the ERR schedule and the date of the RRC meeting at which the request will be considered." We have.

As you're aware, AnnW is on emergency leave & her availability is limited & unpredictable.

If there is anything else that you need, please include me in the email so I may assist.

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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From: North Carolina Secretary of State <rules@sosnc.gov>
Sent: Friday, March 15, 2024 9:11 AM
To: Elmore, Ann M
Subject: Notice re Remote Electronic Notarization Act



March 15, 2024

I. Notice of Request for Removal from Existing Rules Review

The NC Department of the Secretary of State has renewed its request for removal from the 2024-2027 Existing Rules Review calendar in light of recently-completed and ongoing rulemaking affecting all notary rules. The Department anticipates that this request will come before the Rules Review Commission (RRC) March 27th. For the request, go [here](#). For the RRC agenda with the request and meeting link, go [here](#).

II. Notice of Text of Effective Date Changes for Certain Rules

The Public Comment Period for Proposed Delay in Effective Date Is Open Now:

The NC Department of the Secretary of State seeks your comment on its proposal to delay the effective date to March 1, 2025 of specified rules, which otherwise would become effective July 1, 2024. The purpose of the proposed delay in effective date is to permit time to adopt an additional group of rules that are necessary to implement rule changes that have been approved by the RRC between December 2023 and February 2024. No changes to the text of the rules has been proposed. For more information on which rules are affected, go [here](#) or to the [March 15th North Carolina Register](#) (Volume 38, Issue 18). The public comment period ends on **May 14, 2024**. For more information on how to submit comments, go to sosnc.gov/rulemaking_comments.

It is the Department's intent to file rule effective date changes for adoption so they may be heard at the June 26th meeting of the Rules Review Commission.

III. Notice of Approval of Phase Two Notary Rules

The Department of the Secretary of State is pleased to announce the North Carolina Rules Review Commission has approved the second of three sets of rules implementing the Remote Electronic Notarization Act (RENA) and addressing the mandate found at G.S. 150B-21.3A requiring the review of existing rules every ten years. These rules deal with issues related to:

- 18 NCAC 07B - general requirements for the regulated community (i.e. notaries, instructors, and approved technology providers),
- 18 NCAC 07C - the process to become a notary and renew a notary commission,
- 18 NCAC 07D - continuing obligations of notaries, and
- 18 NCAC 07E - notary instructor requirements.

The RRC-approved rule amendments, adoptions, and repeals, along with supporting materials, may be reviewed on our website [here](#), as well as on the RRC website on its February 28th [agenda](#).

While many rules of general applicability will be effective July 1, 2024, others will be effective March 1, 2025.

The third and final set of rules will focus on technology required to perform remote electronic notarial acts. The Department anticipates publishing draft technology rules for public comment during the Fall of 2024.

Once rules are finally adopted and approved, the Department, notaries, notary instructors, vendors and other stakeholders must work together to build the infrastructure necessary to conduct remote electronic notarial acts. Such infrastructure includes platforms and third party vendors that must apply for screening and licensure by the Department before contracting with North Carolina electronic notaries to support remote electronic notarial acts. The Department must revise the Notary Manual to incorporate the changes to the law and rules. Forms must be prepared so applicants will deliver essential information. All electronic notary training must be updated, eligible institutions engaged, and training provided. No NC Notary Public may perform a remote electronic notarization under the provisions of the RENA until the rules implementing RENA have been adopted and complied with.

www.sosnc.gov

North Carolina Secretary of State | 2 South Salisbury Street, Raleigh, NC 27501

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Burgos, Alexander N

Subject: FW: [External] Request to remove Notary Rules from ERR schedule

From: Ann Wall <awall@sosnc.gov>

Sent: Friday, March 15, 2024 12:30 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>; Baughman, Jennell L <jbaughman@sosnc.gov>

Subject: RE: [External] Request to remove Notary Rules from ERR schedule

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Dear Seth:

Thank you for your prompt attention to the Secretary's request to remove 18 NCAC 07 rules from the Existing Rules Review (ERR) Schedule.

We are pleased and thank you for your inclination to recommend RRC approval of removing the rules in 18 NCAC Subchapters 07B, 07C, 07D, 07E, 07F, 07I, and 07K from the ERR Schedule, presently set for September 2024. Yes, you are correct that there are no rules in 07A, 07G, 07H to be reviewed.

Insofar as 07J, there are three rules. Each of the three has the same basic history: Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016; Transferred from [another location] Eff. June 1, 2023.

I have been authorized to inform you that we agree with your idea to recommend to the RRC that the RRC change the deadline for the periodic review of 18 NCAC 07J to allow for reconsideration of the waiver after the rules in 07J have been adopted, repealed, or amended. We ask that the changed deadline be to the [June 2025 RRC meeting date](#).

A June 2025 RRC meeting date would provide ample time for us to complete the rulemaking process for the 07J rules. The 07J technical rules are significant and likely to result in more substantive public comment than we have received on the other rules. Such a deadline would accommodate the additional time that may be needed to review those public comments and decide on possible changes to the rules. It would also enable us to format the rules, adopt them, and file them with RRC with adequate time for staff review of the rules and for us to respond to technical change requests for RRC consideration. Such a deadline would also provide an essential cushion for unexpected contingencies. The most recent example is the current, at least two-week, hiatus due to my being unable to work on the rules due to a family emergency. Additionally, we would not be able to file the request for removal of the 07J rules until after the RRC approves the rules. For all of the foregoing reasons, we propose a deadline of June 2025.

We plan to submit the 07J rules to the RRC for review at its December meeting and are working toward that end. The substantial work to implement RENA once all rules are adopted, not to mention our other statutory obligations, is a strong motivator to complete RENA rulemaking as quickly as

possible given the scope and consequence of the undertaking. Hence, if we do not need the additional rulemaking time, rest assured, we would not use it.

Thank you very much for your consideration.

Regards,

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

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Burgos, Alexander N

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From: Ann Wall <awall@sosnc.gov>

Sent: Friday, March 15, 2024 12:30 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>; Baughman, Jennell L <jbaughman@sosnc.gov>

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possible given the scope and consequence of the undertaking. Hence, if we do not need the additional rulemaking time, rest assured, we would not use it.

Thank you very much for your consideration.

Regards,

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

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Burgos, Alexander N

From: Ann Wall <awall@sosnc.gov>
Sent: Tuesday, March 12, 2024 5:30 PM
To: Ascher, Seth M
Cc: Burgos, Alexander N; Elmore, Ann M; Baughman, Jennell L
Subject: RE: [External] Request to remove Notary Rules from ERR schedule

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Hi, Seth. I'm out of state due to a family emergency but will confer with our folks and we'll get back to you as quickly as we can. It's a good idea and one that I had not thought of. All my ideas ended up being non-viable.

Regards, 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.

Ann,

Based on this letter, I believe you are the correct person for me to be communicating about this request. But if not, feel free to redirect me.

I have reviewed the request and the impacted rules. Based on my review, it appears that all of the rules in 18 NCAC subchapters 07B, 07C, 07D, 07E, 07F, 07I, and 07K have been adopted, repealed, or amended in the past year. There do not appear to be rules in 07A, 07G, 07H to be reviewed. There are rules in 07J that have not been adopted, repealed, or amended within the past ten years. If you think that is factually incorrect, please let me know.

Under G.S. 150B-21.3A (d)(10) and 26 NCAC 05 .0209, I anticipate recommending that the RRC grant the Secretary of State's request as to 18 NCAC 07B, 07C, 07D, 07E, 07F, 07I, and 07K. However, I do not think the statute would allow the RRC to grant a waiver to subchapter 07J yet, since under the statute "the Commission may exempt rules that have been adopted or amended within the previous 10 years from review required by this section."

However, based on the unique circumstances described in the letter and which we have previously discussed, if the Secretary would like I could recommend that the RRC change the deadline for the periodic review of 18 NCAC 07J to allow for reconsideration of the waiver after the rules in 07J have been adopted, repealed, or amended.

Ultimately, I expect to write a brief staff opinion to this effect, but I wanted to give you a heads up in the hopes that we can smoothly resolve the problem. 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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-----Original Message-----

From: Jennell Baughman <jbaughman@sosnc.gov>
Sent: Thursday, March 7, 2024 2:56 PM
To: Jeanette.k.doran@gmail.com; justicebarbarajackson@gmail.com; overton.ro@gmail.com
Cc: Rules, Oah <oah.rules@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: [External] Request to remove Notary Rules from ERR schedule

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Good afternoon,

Attached please find a letter from NC Secretary of State Elaine Marshall requesting the removal of the Notary Rules from the ERR schedule. Please let me know if you have any difficulty opening the document.

Sincerely,
Jennell

Jennell Baughman
Protocol Officer and
Executive Assistant to
Elaine F. Marshall, Secretary of State
P.O. Box 29622
Raleigh, NC 27626-0622
919.814.5307

919.814.5391 (fax)

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