

Burgos, Alexander N

Subject: FW: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13

From: Ann Wall <Awall@sosnc.gov>

Sent: Tuesday, June 24, 2025 4:47 PM

To: Rules, Oah <oah.rules@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13

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Great news. Thanks so much for taking on this review.

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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Ann,

Attached is my staff opinion recommending the approval of your early review request and reports. At this point, I do not anticipate much discussion of this issue. I'll let you know if that changes.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Secretary of State

RULE CITATION: 18 NCAC 01, 04, 13 periodic review reports

RECOMMENDATION DATE: June 24, 2025

RECOMMENDED ACTION:

- X Approve, but note staff's comment
 - Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

The Secretary of State is requesting early review and immediate approval of the three periodic review reports listed above. Those rules are currently on the schedule for October 2025. In those reports, all rules are designated as necessary, and the agency received no public comments after posting the rules for the required period of time. As you may recall, staff have already informally discussed readoption deadlines for these subchapters with the agency as part of the Secretary's overall readoption plan. This was necessary because the remainder of the Secretary of State's rules had their readoption deadline set earlier this year. It is my opinion that granting this request, and approving these reports, is appropriate to streamline the administrative burden on both the agency and the RRC.

Request for Early Review

Requests for early review are governed by 26 NCAC 05 .0205, attached. It is my opinion that the agency has met all the substantive requirements for this request to be granted. However, the procedural timing requirements in (e) would normally require that the request be heard at this meeting, and the reports scheduled for review for the July meeting at the earliest. I recommend

Seth Ascher
Commission Counsel

waiving the timing requirements in .0205 and proceeding with an immediate review of the reports, per the Secretary's request.

Waiver

The RRC's waiver of its own rules is governed by 26 NCAC 05 .0112, attached. It is my opinion that in this case there is no potential for harm from the waiver, and granting the waiver simplifies the process in this case simplifies the process for both the agency and the RRC.

Factually, the timing requirements of the rule on the request for early review seem designed for two purposes. First, to give RRC and RRC staff sufficient time to process the reports. Second, to give an opportunity to the public to comment on the reports. Because there were no public comments on these reports, and all the rules have been designated as necessary, there is no additional time needed for staff processing. Additionally, in this circumstance, it is my opinion that public comment to the RRC on these reports could have no legal effect. As I have discussed previously, under the current periodic review law, if all the rules are designated as necessary in the report and the agency has appropriately followed the report procedures, the RRC can only approve them. There is no provision for public comment at this stage that would change that analysis.

I do note that the analysis would be different if any of the rules were not designated as necessary, since there is the potential a public comment at this stage could be considered by the RRC.

Approval

As discussed above, the rules in all three of these reports are designated as necessary and have received no public comment. Therefore, if the RRC considers the reports, it is my recommendation that they be approved.

Conclusion

It is my recommendation that the RRC waive the timing requirements of 26 NCAC 05 .0205 for this early review request, grant the early review request, and approve the reports as filed by the Secretary of State.

26 NCAC 05 .0112 WAIVER

- (a) The Commission in open session may waive any rule for which no specific waiver provision is set out.
- (b) Any person or agency requesting a waiver shall do so in writing and shall set out the specific rule for which a waiver is requested and the reasons justifying such a waiver.
- (c) Any person desiring a waiver of the Commission's rules shall submit a copy of the request to the rulemaking coordinator for the agency proposing a rule at the same time and in the same manner as the submission to the RRC.
- (d) The factors to be used in deciding whether to waive a rule are:
 - (1) the necessity for a waiver;
 - (2) the amount of notice given to the Commission and its staff, the agency proposing the rule, and interested parties;
 - (3) the applicant's responsibility for the conditions creating the need for a waiver;
 - (4) the applicant's previous requests for a waiver;
 - (5) the applicant's knowledge of or experience with the rulemaking process;
 - (6) the precedential value of such a waiver;
 - (7) the harm to the applicant if a waiver is not granted;
 - (8) the harm to the agency if a waiver is granted when the agency is not the applicant.

History Note: *Authority G.S. 143B-30.1;*
 Eff. August 1, 2008.

26 NCAC 05 .0205

**AGENCY REQUEST TO RESCHEDULE REPORTS FOR EARLIER REVIEW
AND ADD UNNECESSARY RULES TO THE SCHEDULE**

(a) If an agency wishes to reschedule a report for review before the date set forth in Rule .0211 of this Section, the agency shall send a written request to the Commission. The request shall contain:

- (1) the Title and Chapter of the Report;
- (2) the reason for the request;
- (3) if the report was already posted, a copy of the report and any public comments received;
- (4) the date the report was originally scheduled for review; and
- (5) the date that the agency seeks for Commission review.

(b) An agency seeking earlier review shall, on the date of submission of the request to the Commission, post notice on its website and notify its interested persons mailing list maintained pursuant to G.S. 150B-21.2(d) of the meeting date on which the Commission will review its request as set forth in Paragraph (e) of this Rule. The notice shall also inform the public that the individuals may contact the Commission to object to the rescheduling.

(c) The Commission's decision to grant the request for earlier review shall be made on a case-by-case basis, considering the following:

- (1) the reason offered by the agency;
- (2) the workload of the Commission; and
- (3) arguments for or against the rescheduling by members of the public.

(d) If an agency designates a rule as unnecessary and places it on the current year schedule as set forth in G.S. 150B-21.3A(e), it shall file written notice of this designation with the Commission. The Commission shall consider the notice at its next regularly scheduled meeting.

(e) For any requests made pursuant to this Rule, the Commission shall consider a request filed on or before the 20th day of the month at its meeting the next month and shall then place the rule or rules on the schedule. Following the Commission's decision, the Commission shall notify the agency of the date the agency is required to submit the report.

*History Note: Authority G.S. 150B-21.3A;
Eff. April 1, 2014;
Amended Eff. June 1, 2023; December 1, 2016.*

Burgos, Alexander N

Subject: FW: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13

From: Ann Wall <Awall@sosnc.gov>

Sent: Wednesday, June 18, 2025 10:44 AM

To: Rules, Oah <oah.rules@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Elmore, Ann M <aelmore@sosnc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13

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Okay. Thanks for letting us know. Just FYI: I will not be physically present at the meeting, but Ann Elmore will be there. I will be available virtually if I am needed.

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] Thank you, Seth! Re: Request for Earlier Review for 18 NCAC 01, 04, & 13

From: Ann Elmore <aelmore@sosnc.gov>

Sent: Tuesday, June 17, 2025 8:13 AM

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

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

Subject: [External] Thank you, Seth! Re: Request for Earlier Review for 18 NCAC 01, 04, & 13

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Good morning, Seth.

Thank you for accommodating our request! We understand the necessary qualifications/contingencies for your recommendation.

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

With appreciation,
AnnE

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Burgos, Alexander N

Subject: FW: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13
Attachments: 18 NCAC 01 ERR Report - Step 1e Staff Recommendation.xlsx; 18 NCAC 13 ERR Report - Step 1e Staff Recommendation.xlsx; 18 NCAC 04 ERR Report - Step 1e Staff Recommendation.xlsx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, June 16, 2025 1:59 PM
To: Elmore, Ann M <aelmore@sosnc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wall, Ann B <awall@sosnc.gov>
Subject: Re: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13

Ann,

I have reviewed your request and the relevant reports. I intend to recommend that the Commission grant your request, waive the timing requirements in 26 NCAC 05 .0205(e) to immediately review the rules, and approve the attached reports.

Note that I will be writing a staff opinion regarding the request and waiving the timing in rule .0205(e). The short version of my opinion is that the process and that rule in particular were written for the previous decennial review (when there was a necessary w/out substantial public interest category) and that waiving the rule for administrative convenience under the new statute is reasonable. That said, I do not know that the Commission will agree with my recommendation, and if we receive public comments about your reports before the meeting my opinion would likely change.

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 Elmore <aelmore@sosnc.gov>
Sent: Thursday, June 12, 2025 8:08 PM
To: Rules, Oah; Ascher, Seth M
Cc: Burgos, Alexander N; Wall, Ann B
Subject: [External] Request for Earlier Review for 18 NCAC 01, 04, & 13
Attachments: 6.12.25 Letter Seeking Early Review.pdf

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Hi, Seth.

Enclosed is our request for earlier review of the ERR Step 1e Reports for 18 NCAC 01, 04, & 13, pursuant to 26 NCAC 05 .0205 (And per email communication between you & AnnW earlier this week—including today).

Please confirm receipt & let us know if you need anything more in connection with this request.

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:9198145560) Fax: 919 814-5596

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