



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Code Officials Qualification Board

2. Rule citation & name: 11 NCAC 08 .0735 Temporary Certificate

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: February 12, 2021
- b. Proposed Temporary Rule published on the OAH website: February 19, 2021
- c. Public Hearing date: March 9, 2021
- d. Comment Period: February 19 – March 12, 2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 18, 2021 <https://www.ncosfm.gov/licensing-cert/code-officials-qualification-board-coqb/coqb-board-statutes-and-rules>
- f. Adoption by agency on: April 6, 2021
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: April 23, 2021
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Please see attached justification.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Please see attached justification.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Loretta Peace-Bunch

Phone: 919-807-6004

E-Mail: Loretta.Peace-Bunch@ncdoj.gov

Agency contact, if any: Tom Felling

Phone:

E-Mail: Tom.Felling@ncdoj.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: BILL THUNBERG

Title: CHAIRMAN

E-Mail: BILLTHUNBERG@GMAIL.COM

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Reason for Proposed Temporary Action: *A serious and unforeseen threat to the public health, safety or welfare. 11 NCAC 08 .0735 was first adopted as an emergency rule and then a temporary rule in response to the COVID-19 pandemic. At that time, it was unclear how long the COVID-19 global pandemic would continue to affect the ability of Code Enforcement Officials (CEO's) to take the classes, tests, or continuing education courses necessary to obtain or retain Permanent certificates in their respective trades. It was expected that conditions caused by the pandemic would improve by the first quarter of 2021, and that certification classes and continuing education testing would become more readily available by that time. The Code Officials Qualification Board meets regularly each quarter. The ongoing duration of the COVID 19 pandemic, subsequent worsening of the COVID-19 pandemic in the past few months, and delays in widespread vaccination are serious and unforeseen circumstances to the North Carolina Code Enforcement Qualifications Board and its partners in the community college system, professional associations, and code enforcement community.*

It has now become apparent to the Code Officials Qualification Board that the circumstances that necessitated the initial adoption of this rule as an emergency rule, and then as a temporary rule, will remain in effect longer than reasonably expected. Due to continuing in person meeting limitations and close contact quarantine protocols, certification courses, certification tests, and continuing education classes continue to be unavailable both in number of seats and in offerings to meet the demands of the code enforcement community. Certification courses are offered to CEOs through the community college system. The community college system has also been unable to transition these courses online to offer to CEOs in a safe manner. Local inspections jurisdiction have also enacted travel restrictions on the out of jurisdiction travel of CEOs in response to the pandemic. These travel restrictions have further limited the ability of CEOs to travel to the few in person classes and tests that are available. Due to in person gathering limits and quarantine protocols, local jurisdiction, trade groups, and other organizations that routinely offer continuing education classes have continued to cancel or greatly restrict continuing education course offerings for CEOs.

In response to these serious and unforeseen circumstances, emergency and temporary action is now required to ensure that the temporary certificates that were issued under this administrative rule do not expire during the still uncertain pendency of the COVID-19 global health pandemic. Temporary amendment to 11 NCAC 08 .0735, under emergency and temporary procedures, is required to ensure that temporary certificate holders remain able to maintain their employment with their local jurisdictions performing the vital function of building and code inspections. Temporary adoption of 11 NCAC 08 .0736 is now required to ensure that CEOs have an immediate continuing education option available to them, offered in a safe online setting, to satisfy their yearly continuing education requirement to keep their permanent certificates active.

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: Code Officials Qualification Board

RULE CITATION: 11 NCAC 08 .0735

DEADLINE FOR RECEIPT: 12:00 p.m., April 12, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In your Findings of Need form, please show this proposed rule as an adoption in Box 3 since there is no permanent rule in the Code.

For this Rule, why was it contrary to the public interest to adhere to the notice and hearing requirements of the permanent rulemaking process in G.S. 150B-21.2? See G.S. 150B-21.1(a). In other words, why extend the existing temporary rule with another temporary rule instead of going through permanent rulemaking? What made the permanent rulemaking process contrary to the public interest in this case? Please address this in your Findings of Need form.

Is the COVID pandemic still an "unforeseen threat" such that it would meet the threshold to qualify for temporary rulemaking under G.S. 150B-21.1(a)(1)?

For your introductory statement, please say "11 NCAC 08 .0735 is adopted under temporary procedures as follows:"

In your History Note, please add the effective date of the emergency rule and show changes based on what is currently in the Code:

*History Note: Authority G.S. 143-151.12; 143-151.13;
Emergency Adoption Eff. April 20, 2020;
Temporary Adoption Eff. July 1, 2020;
Emergency Adoption Eff. February 25, 2021—2021;
Temporary Adoption Eff. April 23, 2021.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 08 .0735 is proposed for amendment as published by OAH on February 19th, 2021

2
3 11 NCAC 08 .0735 TEMPORARY CERTIFICATE

4 (a) A temporary certificate shall be issued without examination or additional application to any code enforcement
5 official (CEO) who currently possesses a probationary certificate that expires between March 12, 2020 and ~~December~~
6 ~~31, 2020.~~ August 31, 2021. The application the CEO initially submitted to obtain the probationary certificate shall
7 provide the basis for issuing the temporary certificate.

8 (b) A temporary certificate shall authorize the CEO, during the effective period of the certificate, to hold the position
9 of the type, level, and location that corresponds to the probationary certificate the applicant previously received. The
10 certificate shall specify the type and level of code enforcement in which the CEO may engage and may be conditioned
11 upon his or her having supervision from an official with the specified certification or qualifications included on the
12 CEO's probationary certificate application.

13 (c) The temporary certificate shall be effective ~~for one year only~~ for the period of March 12, 2020 through ~~March 12,~~
14 ~~2021~~ December 31, 2021 and shall not be renewed. During ~~the one year period,~~ this period of time, the official shall
15 complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate.

16 (d) A CEO who is issued a temporary certificate that the CEO no longer needs or wants shall return the temporary
17 certificate, within 30 days, to the Engineering and Codes Division of Department of Insurance for cancellation.

18 (e) A temporary certificate shall remain valid only so long as the person certified is employed by the State or a local
19 government as a code enforcement official of the type and level indicated on the certificate. If the person certified
20 leaves such employment for any reason, he or she shall return the certificate to the Board.

21 (f) A CEO with only a temporary certificate and no standard or limited certificate is not required to complete any
22 continuing education courses.

23
24 *History Note: Authority G.S. 143-151.12; 143-151.13;*

25 *Emergency Adoption Eff. April 20, 2020;*

26 ~~*Temporary Adoption Eff. July 1, 2020.*~~ *Temporary Adoption Eff. July 1, 2020;*

27 *Temporary Adoption Eff. April 23, 2021.*
28
29



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[Authority G.S. 150B-21.1]

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1. Rule-Making Agency: North Carolina Code Officials Qualification Board

2. Rule citation & name: 11 NCAC 08 .0736 FY 2021-2021 Special CE Requirement

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date:

5. Provide dates for the following actions as applicable:

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f. Adoption by agency on: April 6, 2021

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: April 23, 2021

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
☐ A recent change in federal or state budgetary policy.
Effective date of change:
☐ A recent federal regulation.
Cite:
Effective date:
☐ A recent court order.
Cite order:
☐ State Medical Facilities Plan.
☐ Other:

Explain:

Please see attached justification.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Please see attached justification.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Loretta Peace-Bunch

Phone: 919-807-6004

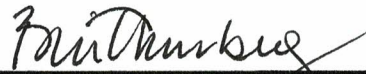
E-Mail: Loretta.Peace-Bunch@ncdoj.gov

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Phone:

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Typed Name: BILL THUNBERG

Title: CHAIRMAN

E-Mail: BILLTHUNBERG@GMAIL.COM

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It has now become apparent to the Code Officials Qualification Board that the circumstances that necessitated the initial adoption of this rule as an emergency rule, and then as a temporary rule, will remain in effect longer than reasonably expected. Due to continuing in person meeting limitations and close contact quarantine protocols, certification courses, certification tests, and continuing education classes continue to be unavailable both in number of seats and in offerings to meet the demands of the code enforcement community. Certification courses are offered to CEOs through the community college system. The community college system has also been unable to transition these courses online to offer to CEOs in a safe manner. Local inspections jurisdiction have also enacted travel restrictions on the out of jurisdiction travel of CEOs in response to the pandemic. These travel restrictions have further limited the ability of CEOs to travel to the few in person classes and tests that are available. Due to in person gathering limits and quarantine protocols, local jurisdiction, trade groups, and other organizations that routinely offer continuing education classes have continued to cancel or greatly restrict continuing education course offerings for CEOs.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Code Officials Qualification Board

RULE CITATION: 11 NCAC 08 .0736

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In reviewing this Rule, the staff recommends the following technical changes be made:

For this Rule, why was it contrary to the public interest to adhere to the notice and hearing requirements of the permanent rulemaking process in G.S. 150B-21.2? See G.S. 150B-21.1(a). Please address this in your Findings of Need form. Please note I am specifically concerned about continuing education credits "for the period ending June 30, 2020" being addressed in a temporary rule at this time.

Is the COVID pandemic still an "unforeseen threat" such that it would meet the threshold to qualify for temporary rulemaking under G.S. 150B-21.1(a)(1)?

For your introductory statement, please say "11 NCAC 08 .0736 is adopted under temporary procedures as follows:"

At line 4, please consider replacing "is required to" with "shall."

At line 7, please delete or define "fully."

At lines 8 and 10, consider changing "will satisfy" to "satisfies."

Why is the last sentence necessary given 11 NCAC 08 .0713(e)?

In your History Note, please add the effective date of the emergency rule and show changes based on what is currently in the Code:

*History Note: Authority G.S. 143-151.12; 143-151.13A;
Emergency Adoption Eff. February 25, ~~2021~~-2021;
Temporary Amendment Eff. April 23, 2021.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 08 .0736 is proposed for amendment as published on February 19th, 2021

2
3 **11 NCAC 08 .0736 FY 2020-2021 SPECIAL CE REQUIREMENT**

4 Every Code Enforcement Official (CEO) is required to complete a one-hour course titled CS4424 Chapter 160D
5 offered by the NC Department of Insurance on <https://www.ncosfm.gov/> on or before June 30, 2021. A CEO who
6 has not yet completed the continuing education hour requirement specified in 11 NCAC 08 .0713(c) for the period
7 ending June 30, 2020 or the period ending June 30, 2021 may fully satisfy that requirement for either time period by
8 completing CS4424 Chapter 160D. Completion of this course will satisfy the annual professional development
9 program credit hour requirement needed for every standard certificate held by the CEO. Completion of CS4424
10 Chapter 160D will satisfy the continuing education hours needed by the CEO for either the fiscal year ending June
11 30, 2020 or June 30, 2021, but not both. Any continuing education hour credits held by the CEO prior to completion
12 of the CS4424 Chapter 160D can be rolled over and applied towards their 2021 or 2022 continuing education hour
13 requirement.

14
15 *History Note: Authority G.S. 143-151.12; 143-151.13A;*

16 *Temporary Adoption Eff. April 23, 2021.*
17
18