

TEMPORARY RULE

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: Code Officials Qualifications Board

RULE CITATION: 11 NCAC 08 .0706, and .0737-.0741

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

COMMENT:

Staff recommends approval of the proposed temporary rules cited above. G.S. 150B-21.1(a) sets forth a two-part test to engage in temporary rulemaking: (1) adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest; and (2) the immediate adoption of the rule is required by a serious and unforeseen threat to the public health, safety, or welfare. The Code Officials Qualifications Board (Board) has submitted a written statement of its findings of need stating why adherence to the notice and hearing requirements would be contrary to the public interest and why the immediate adoption of the rule is required. The Board has met the requirements of G.S. 150B-21.1 and has filed these temporary rules due to a serious and unforeseen threat to the public health, safety, or welfare.

Pursuant to G.S. 143-151.12, the Board is authorized to, and responsible for, adopting rules necessary to establish minimum standards for employment as a North Carolina State Building Code-enforcement official. Pursuant to G.S. 143-151.13, the Board shall issue certificates to Code-enforcement officials who have demonstrated the necessary qualifications to engage in Code enforcement.

The Board recently adopted amendments to 11 NCAC 08 .0706, and adopted 11 NCAC 08 .0737 through .0741, as new rules to implement a "dual track" certification system for code officials

beginning January 1, 2025. This system provides a "grandfathering" period under which a Level I or Level II code official certified before January 1, 2025 is authorized to inspect different types of structures and systems than a Level I or II code official certified on or after that date.

After adoption of these rules, the Office of the State Fire Marshal (OSFM), which provides staff support to the Board, learned that its current certification database cannot accommodate this dual track certification structure. Specifically, the system cannot assign different scopes of inspection authority to inspectors with the same level designation based on their certification date. As a result, OSFM has been forced to manually track the certification scopes of newly certified inspectors.

Manual tracking presents an immediate and unforeseen threat to public health, safety, and welfare for several reasons:

1. Risk of Improper Inspection Assignments- Without reliable system controls, there is a significant risk that newly certified inspectors could be assigned to perform inspections outside their authorized scope. Such inspections may overlook critical code requirements, leading to unsafe construction, undetected hazards, and potential injury or property damage.
2. Potential for Incorrect Certifications- Manual processing increases the likelihood of clerical or data entry errors. An inspector might be issued an incorrect certification level in the database, which could allow them to perform inspections they are not qualified to conduct.
3. Liability and Enforcement Problems-If unqualified inspections occur, it could expose local governments and the State to liability for unsafe structures and undermine enforcement actions when improper work is challenged in court.
4. Loss of Public Confidence- The inability to accurately certify and track code official qualifications could erode public trust in the building code enforcement system and in the COQB 's oversight of inspector competency.

The technological limitation was not known to the Board during the rulemaking process, and OSFM requires time to design a new certification database or procure one from a vendor. Until the technology solution is in place, it is necessary to temporarily amend the affected rules to delay the dual track provisions, thus preventing confusion, error, and unsafe inspection assignments.

Temporary rulemaking is required to address this unforeseen threat to the public health, safety, and welfare and to maintain the integrity of the State's building inspection program.

These proposed temporary rules meet all the criteria in G.S. 150B-21.1(a)(1), (a3), (a4), and G.S. 150B-21.9. Thus, Staff recommends that the RRC approve 11 NCAC 08 .0706 and 11 NCAC 08.0737-.0741 at its October 2025 meeting.

§ 150B-21.1.1 PROCEDURE FOR ADOPTING A TEMPORARY RULE

(a) Adoption-An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(a3) Unless otherwise provided by law, the agency shall:

- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and why immediate adoption of the rule is required.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.