

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: North Carolina Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09F .0103, .0104, and .0105

DATE ISSUED: May 28, 2024

RECOMMENDED ACTION:

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

X Return to Agency

COMMENT:

The above-captioned rules were first submitted by the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter "CJETS," to the Rules Review Commission, hereinafter "the Commission," for review on November 17, 2023. The Commission granted an extension of the period of review for 12 NCAC 09F .0103, .0104, and .0105 at its December 14, 2023 meeting.

At the Commission's meeting on February 22, 2024, the Commission objected to the above-captioned rules, finding that the rules did not meet the standards of G.S. 150B-21.9(a). The Commission adopted the written staff opinion of Commission Counsel Peaslee submitted on February 6, 2024.

The Commission notified CJETS of its objections via a letter dated and emailed to the agency's rulemaking coordinator on February 22, 2023. In the letter, the Commission asked the agency to respond to the objections pursuant to G.S. 150B-21.12(a)(1) or (2), and (b). The agency had until May 13, 2024, to respond.

The agency submitted a letter, dated May 10, 2024, to the Commission via email on May 11, 2024 providing additional arguments as to why it does not believe CJETS lacks the statutory authority to implement Rules 12 NCAC 09F .0103, .0104, and .0105. In its letter, the agency said,

Travis Wiggs
Commission Counsel

“Pursuant to N.C. Gen. Stat. §150B-21.12(a)(2), this letter serves as a written response to the Commission indicating that CJETS has decided not to change rules 12 NCAC 09F .0103, .0104, and .0105.”

Pursuant to G.S. 150B-21.12(d), “the Commission shall return the rule to the agency” if the agency “submits a written response indicating that the agency has decided not to change the rule within the time limit established by subsection (b) of this section.”

Accordingly, it is staff’s opinion that the Commission must return the above-captioned rules to the agency.

Assuming, arguendo, that the Commission finds that it is not obligated to return the rules and wishes to consider the additional arguments asserted by the agency, staff recommends that the Commission find that the agency has not satisfied the Commission’s objections. Staff has independently reviewed the applicable statutes, case law, and procedural history of these rules. The agency has made no changes to the rules since the Commission’s objections to them on February 22, 2024. The agency’s arguments are unconvincing, and the cited case law is unpersuasive or tends to support the Commission’s objections.

SECTION 21.2.(h) G.S. 150B-21.12 reads as rewritten:

"§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. – When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. – An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in ~~G.S. 150B-21.1(a3) and (b)~~ G.S. 150B-21.2.

(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule ~~decides not to~~

~~satisfy~~satisfies the Commission's objection ~~and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must~~or submits a written response to the Commission indicating that the agency has decided not to change the rule. If the agency does not submit a revised rule to satisfy the Commission's objection within the time limit established in subsection (b) of this section, or submits a written response indicating that the agency has decided not to change the rule within the time limit established by subsection (b) of this section, the Commission shall return the rule to the agency and notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.