

Burgos, Alexander N

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, June 3, 2022 9:43 AM
To: Liebman, Brian R
Cc: Burgos, Alexander N; Dismukes, Leslie; Smythe, John J
Subject: RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Thank you, Brian!



MICHELLE SCHILLING
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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, June 3, 2022 9:38 AM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Smythe, Jeffrey <jsmythe@NCDOJ.GOV>
Subject: RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Michelle,

OK, that sounds fine to me. I'll wait to hear from you.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Friday, June 3, 2022 9:17 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>; Smythe, John J <jsmythe@NCDOJ.GOV>

Subject: RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Brian

The Committee will more than likely follow your recommendation, they just want an opportunity to review and talk through a few items.

Michelle



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From: Schilling, Michelle

Sent: Friday, June 3, 2022 9:16 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Smythe, Jeffrey <jsmythe@NCDOJ.GOV>

Subject: RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Brian,

Our Committee is meeting on Monday, June 6 at 9:30am. Would it be too late to let you know no later than COB that day?

Thank you for your continued support and assistance,

Michelle



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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, June 3, 2022 8:52 AM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Hi Michelle,

There's no official deadline, other than obviously it would need to be before the meeting. However, if you choose not to seek an extension, I will need time to review the rule, submit any change requests to you, receive your responses, and then develop my recommendation to RRC. So, time is somewhat short. Would it be possible for you to let me know before the end of today?

Thanks,
Brian

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, June 3, 2022 8:47:15 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Good morning, Brian:

Thank you for providing the information regarding the subject rule. When do I need to let you know of the Commission's decision regarding an extension?

Michelle



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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, June 2, 2022 5:21 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 12 NCAC 09G .0205 - June 2022 RRC

Hi Michelle,

First, it was a pleasure speaking with you just now! I'm glad you're enjoying getting to know the rulemaking process.

So, as we discussed, the rule that is currently before RRC for the June 2022 meeting has somewhat of an unusual history. A permanent amendment was approved by RRC at their July 2021 meeting, only to have the rule become subject to legislative review. In the interim, CJETS sought a temporary amendment to the Rule which was approved in February 2022 and is currently in the Administrative Code. The permanent rule currently before RRC is designed to replace that temporary rule. It is my understanding that the July 2021 version of the Rule, is currently under review at this session of the General Assembly. Per G.S. 150B-21.3(b1), a rule subject to legislative review becomes effective:

"on the earlier of the thirty first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule If a bill that specifically disapproves the rule is introduced in either house of the General Assembly, before the thirty first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule."

Currently, the GA is in session, and I believe they are on approximately the 11th legislative day of this session (I will check to make sure, but it is in that neighborhood). Thus, they have approximately another twenty legislative days in which to introduce a bill specifically disapproving 12 NCAC 09G .0205. If RRC approves the version of 09G .0205 currently before it, the new permanent rule would become effective 7/1/22. At the same time, if the GA fails to introduce a bill disapproving the prior July 2021 version of the rule (sorry for the double negative), that version of the Rule would become effective as early as late June, creating a situation where it is unclear which version of the Rule should go into the Code.

As such, I believe it would be beneficial for both CJETS and RRC if the agency were to request an extension under G.S. 150B-21.10(3). Assuming RRC grants the extension, pursuant to G.S. 150B-21.13, the agency will have an additional 70 days before RRC has to render a final opinion on the Rule. This would give us time for the legislative review process to reach its conclusion, providing clarity as to which version of the Rule would go into the Administrative Code, and allowing us time to clear up any other issues that might come up in the wake of legislative review.

If you agree, just email me back requesting an extension, and I will recommend to RRC at the upcoming meeting that they approve it.

Again, it was a pleasure speaking with you, and hope you have a great rest of your day!

Thanks,
Brian

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