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May 10, 2024

Jeanette Doran, Chair  
Rules Review Commission  
Sent via email: [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)

Re: Objection Response to Rules 12 NCAC 09F .0103, .0104, and .0105.

Dear Ms. Doran:

The North Carolina Criminal Justice Education and Training Standards Commission (CJETS) received from the Rules Review Commission (RRC) the Objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a) on February 22, 2024. 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. CJETS disagrees with the RRC that it lacks the statutory authority to adopt rules regulating the courses and instructors on the topic of concealed carry and respectfully asks that the RRC reconsider.

The rules at issue are 12 NCAC 09F .0103, .0104, and .0105. Under 12 NCAC 09F .0103, CJETS must first review and approve concealed-carry training courses to ensure that the courses meet minimum educational standards. 12 NCAC 09F .0104 sets forth the instructor qualifications for those delivering concealed carry courses. Instructor responsibilities are outlined in 12 NCAC 09F .0105.

The source of CJETS's authority to adopt these rules is N.C. Gen. Stat. §14-415.12, which requires an applicant for a concealed handgun permit to successfully complete "an approved firearms safety and training course." N.C. Gen. Stat. §14-415.12(a)(4). According to the statute, an "approved course" must meet two requirements.

First, the course must "satisf[y] the requirements of this subdivision." *Id.* The "requirements of this subdivision" are that the course must "involve[ ] the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force." *Id.* The statute provides that the Commission "shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision." *Id.*

Second, the course must be “certified or sponsored by any of the following”: (1) CJETS, (2) the National Rifle Association (NRA), (3) the Concealed Carry Association (CCA), or (4) a “law enforcement agency, college, private or public institution or organization, or firearms training school” taught by an instructor certified by CJETS, the NRA, or the CCA. *Id.*

The notices of objection argue that N.C. Gen. Stat. §14-415.12(a)(4) only gives CJETS the power to “prepare and publish general guidelines” and not rules and regulations. The Administrative Procedure Act (APA) defines “rule” as “[a]ny agency regulation, standard, or statement of general applicability.” N.C. Gen. Stat. § 150B-2(8a). A “standard” is “[a] criterion for measuring acceptability, quality, or accuracy.” Black’s Law Dictionary (11th ed. 2019). The power to make guidelines to ensure that courses meet minimum educational criteria and that instructors have adequate qualifications is therefore the power to make “standards.”

By statutory definition, a “standard” must have “general applicability.” N.C. Gen. Stat. § 150B-2(8a). Although “general applicability” is not defined by statute, our courts have determined the common meaning of the phrase. See *Wal-mart Stores East v. Hinton*, 197 N.C. App. 30, 676 S.E.2d 634 (2009). A rule is “generally applicable if it is not exceptional and is allowed without specific requirements.” *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 895 S.E.2d 437, 443, 2023 N.C. App. LEXIS 705, 11-12 (2023). Better stated, “A rule is generally applicable if it applies to most situations.” *Id.* Here, the “standards” required by the statute are not exceptional and apply in most situations. Therefore, the power to make “standards” of general applicability is the power to make rules.

Additionally, the notices of objection ignore recent case law expressly holding that a statute does not need to contain a key phrase of “adopt rules” to trigger the requirement for an agency to adopt rules to apply generally applicable guidelines to its regulated public. Specifically, see the 2020 holding in *Cabarrus County Board of Education v. Department of State Treasurer*, where the Supreme Court held that a statute using the language of “adopt” as opposed to “adopt a rule” does not negate the necessity of rulemaking procedures in the APA. *Cabarrus Cty. Bd. of Educ. v. Dep’t of State Treasurer*, 374 N.C. 3, 839 S.E.2d 814 (2020) In that decision, the Court opined that the procedural requirements of rulemaking, which ensure public scrutiny, are important, and that if the General Assembly intended to exempt agencies from the requirements under the APA, it would state the same. *Id.*

The notices of objection state that the General Assembly specifically used the words “rule” and “regulation” in giving CJETS rulemaking power under a different statute, N.C. Gen. Stat. § 17C-6. However, that statute authorizes CJETS to “[p]romulgate rules and regulations *for the administration of this Article*”—rules that concern the education and training of criminal-justice officers. N.C. Gen. Stat. § 17C-6(a)(1) (emphasis added). CJETS’s authority here, by contrast, arises under a different statute that, as part of the state’s criminal laws, regulates an entirely different topic: concealed handgun permits. The fact that the General Assembly used the term “rules and regulations” in giving CJETS rulemaking authority under section 17C-6(a)(1) therefore does not show that CJETS lacks rulemaking authority under section 14-415.12(a)(4) merely because the statute uses a different term, “general guidelines.” Only when the legislature “includes particular language in one section of a statute but omits it in another section *of the same Act*” do courts presume that the legislature acted “intentionally and purposely in the disparate inclusion or

exclusion.” *Russello v. United States*, 464 U.S. 16, 23, (1983) (emphasis added). Here, sections 14-415.12 and 17C-6 are different statutes on different topics in different parts of the General Statutes. It was not necessary for the General Assembly to use identical language in both statutes to confer rulemaking authority on CJETS.

The notices of objection also argue that CJETS lacks the authority to regulate and approve courses offered by the NRA or the CCA. However, the statute requires courses to be “approved,” and it does not purport to give the NRA or the CCA that authority. N.C. Gen. Stat. § 14-415.12(a)(4). Rather, the statute recognizes that those organizations may only “certify” or “sponsor” a course. *Id.* By contrast, the statute gives CJETS the power to decide whether a course is “approved.” Specifically, an “approved course” under section 14-415.12(a)(4) must “satisf[y] the requirements of this subdivision,” and it is CJETS—not any private organization—that has the authority to issue guidelines for the types of courses that meet “the requirements of this subdivision.” *Id.*

This conclusion is further supported by two additional statutory provisions. First, N.C. Gen. Stat. § 14-415.12(a)(4) also requires that instructors file a copy of the course description, outline, and proof of certification annually with CJETS. *Id.* A requirement that instructors submit course descriptions and outlines on a regular basis would be futile if CJETS lacked the authority to approve and regulate courses. Second, to be issued a permit, an applicant must submit a certificate of completion of “an approved course, *adopted and distributed* by the North Carolina Criminal Justice Education and Training Standards Commission.” N.C. Gen. Stat. § 14-415.13(a)(4) (emphasis added). The requirement that an approved course be “adopted and distributed” by CJETS would also be futile if private organizations, rather than CJETS, could exercise ultimate approval authority.

The notices of objection further argue that CJETS lacks the power to set qualifications and responsibilities for NRA and CCA course instructors. The statute, however, is clear on this point. It states that CJETS “shall prepare and publish general guidelines for...*qualifications of instructors* which would satisfy the requirements of this subdivision.” N.C. Gen. Stat. § 14-415.12(a)(4) (emphasis added). Accordingly, the statute gives CJETS the power to publish guidelines for all instructor qualifications, regardless of the instructor’s affiliation. The notices of objection therefore incorrectly state that CJETS lacks a statutory basis for these rules as they apply to NRA and CCA instructors. The notices of objection focus on the role that these private organizations play in certifying or sponsoring courses. While it is true that the NRA and the CCA may certify or sponsor their own courses, one cannot overlook the additional statutory prerequisite that those courses also satisfy “the requirements of this subdivision”—requirements that CJETS must set by preparing and publishing guidelines, including guidelines for the “qualifications of instructors.” *Id.*

For the foregoing reasons, CJETS does not believe that it lacks the statutory authority to implement Rules 12 NCAC 09F .0103, .0104, and .0105, and asks that the RRC reconsider its Objection issued on February 22, 2024. Accordingly, pursuant to 26 NCAC 05 .0105, CJETS would like to address the RRC at its May 29, 2024, meeting regarding Rules 12 NCAC 09F .0103, .0104, and .0105.

cc: William W. Peaslee, Rules Review Commission Counsel