

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 09C .0401 (Temporary)

RECOMMENDATION DATE: July 26, 2024

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

Extend the period of review

COMMENT:

At its June 2024 meeting the North Carolina Rules Review Commission ("RRC") objected to this temporary rule pursuant to G.S.150B-21.9(a)(4) having found that the rule was not adopted in accordance with Part 2 of Article 2A of Chapter 150B of the North Carolina General Statutes. See the attached opinion by counsel which was adopted by the RRC.

In short, the agency adopted the rule on June 17, 2024 which was less than 30 business days from submitting the proposed rule and notice of public hearing to the codifier required by G.S. 150B-21.1(a3)(1). The agency could not have lawfully adopted the rule for an additional five business days.

In response to the RRC's objection, the agency, pursuant to G.S. 150B-21.1(b1) re-adopted the temporary rule¹ on July 22, 2024, which is well beyond the June 24, 2024 adoption exclusion period specified in G.S. 150B-21.1(a3)(1).

It should be noted that the agency held a public comment period from May 17, 2024 to June 7, 2024 in accordance with G.S. 150B-21.1(a3)(3), prior to the initial adoption of the temporary rule on June 17, 2024.

¹ THE AGENCY MADE CHANGES TO THE TEMPORARY RULE AFTER THE INITIAL ADOPTION BUT PRIOR THE SECOND ADOPTION.

William W. Peaslee
Commission Counsel

As the June 17th adoption did not truncate the public's ability to comment to the agency, and the subsequent July 22nd adoption has well exceeded the 30 days that the proposed rule was required to be published by the Codifier, it appears that the agency has satisfied the RRC's objection by re-adopting the temporary rule on July 22, 2024.

Accordingly, staff recommends that the RRC find that the agency has satisfied the RRC's objection and approve the temporary rule.

§ 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.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

§ 150B-21.1. 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.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
 - a. No wake zones.
 - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
 - c. Hunting or fishing bag limits.
 - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
 - a. In accordance with the provisions of G.S. 163-22.2.
 - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
 - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.
- (17) To maximize receipt of federal funds for the Medicaid or NC Health Choice programs within existing State appropriations, to reduce Medicaid or NC

Health Choice expenditures, and to reduce Medicaid and NC Health Choice fraud and abuse.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(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. If notice of a public hearing has been published and that public hearing has been cancelled, the agency shall publish notice at least five days prior to the date of any rescheduled hearing.

(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 in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. - When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement within 30 days of the notification. If the agency fails to supplement its statement of need with additional findings or submit a new statement to the Commission within 30 days, or submits written notice within 30 days to the Commission that the agency does not intend to supplement its statement of need with additional findings or submit a new statement, the Commission or its designee shall immediately return the rule to the agency. If the agency provides additional findings or submits a new statement within 30 days of the notification, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment within 30 days after notification of the return of the rule by the Commission in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes within 30 days of the date the rule is returned to the agency.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(b4) When the Commission returns to an agency a proposed permanent rule intended to replace a temporary rule, the holder of a permit from the agency may submit revised plans for a revised permit removing the impacts of the returned rule if all of the following conditions apply:

(1) The permit was conditioned upon adherence to the requirements of a temporary rule that the returned proposed permanent rule was intended to replace.

(2) The revised plans comply with all other applicable regulations.

The agency shall review the revised plans and approve or deny the revised permit within 45 days of the receipt of the revised plans. The agency may not impose an additional permit fee for review of a revised plan resulting from the expiration of a temporary rule.

(c) Standing. - A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files

an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. - A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

- (1) The date specified in the rule.
- (2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
- (3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
- (4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
- (5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.
- (6) Notwithstanding subdivision (5) of this subsection, 12 months after the effective date of the temporary rule.

(e) Publication. - When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c); 1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3; 1998-127, s. 2; 1998-212, s. 26B(h); 1999-434, s. 16; 1999-453, s. 5(a); 2000-69, ss. 3, 5; 2000-148, ss. 4, 5; 2001-126, s. 12; 2001-421, ss. 2.3, 5.3; 2001-424, ss. 27.17(b), (c), 27.22(a), (b); 2001-487, s. 21(g); 2002-97, ss. 2, 3; 2002-164, s. 4.6; 2003-184, s. 3; 2003-229, s. 2; 2003-413, ss. 27, 29; 2004-156, s. 1; 2011-398, s. 4; 2013-360, s. 12H.9(d); 2013-413, s. 39; 2015-241, s. 7A.4(ee); 2015-264, s. 22; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2020-3, s. 4.25(a); 2022-74, s. 9D.15(z); 2023-11, s. 3.2(h); 2023-134, s. 21.2(a).)

150B-21.1 as amended by S.L. 2023-134

"§ 150B-21.1. Procedure for adopting a temporary rule.

...

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new ~~statement~~-statement within 30 days of the notification. If the agency fails to supplement its statement of need with additional findings or submit a new statement to the Commission within 30 days, or submits written notice within 30 days to the Commission that the agency does not intend to supplement its statement of need with additional findings or submit a new statement, the Commission or its designee shall immediately return the rule to the agency. If the agency provides additional findings or submits a new ~~statement~~-statement within 30 days of the notification, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment within 30 days after notification of the return of the rule by the Commission in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General ~~Statutes~~.Statutes within 30 days of the date the rule is returned to the agency.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(b4) When the Commission returns to an agency a proposed permanent rule intended to replace a temporary rule, the holder of a permit from the agency may submit revised plans for a revised permit removing the impacts of the returned rule if all of the following conditions apply:

(1) The permit was conditioned upon adherence to the requirements of a temporary rule that the returned proposed permanent rule was intended to replace.

(2) The revised plans comply with all other applicable regulations.

The agency shall review the revised plans and approve or deny the revised permit within 45 days of the receipt of the revised plans. The agency may not impose an additional permit fee for review of a revised plan resulting from the expiration of a temporary rule.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(6) Notwithstanding subdivision (5) of this subsection, 12 months after the effective date of the temporary rule.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register."

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 09C .0401 (Temporary)

RECOMMENDATION DATE: June 22, 2024 (revised June 24, 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

COMMENT:

The proposed temporary rule was submitted to the Codifier of Rules at the Office of Administrative Hearings (OAH) on May 9, 2024 for publication on the OAH website.

The agency submitted the Findings of Need Form 0500 (attached hereto) and the rule for RRC consideration on June 18, 2024. On the Form 0500 filed, the agency states that the rule was adopted on June 21, 2024, three days in the future of the filing date.²

A review of the agency website reveals that the adoption of the rule was on the agency agenda³ of its June 17, 2024 meeting, the day before the Form 0500 and the rule were submitted for RRC consideration.

Neither the agency's website nor the Secretary of State's website contain information indicating an agency meeting on June 21, 2024. Accordingly, the agency could not have adopted the Rule on June 21, 2024.

It appears that the temporary rule was adopted on June 17, 2024 and that Form 0500 is inaccurate.

² POSSIBLE IF THE AGENCY HAS MADE A TIME MACHINE OUT OF A DELOREAN.

³ THE ONE-DAY AGENDA IS ATTACHED HERETO.

William W. Peaslee
Commission Counsel

*Pursuant to G.S. 150B-21.1(a3)(1), at least 30 **business** days prior to adoption an agency shall submit the proposed rule and a notice of public hearing to the Codifier of Rules. Put another way, agencies cannot adopt a rule within 30 **business** days of submission to the Codifier.*

Thirty business days from May 9, 2024 is June 21, 2024.⁴ Accordingly, the temporary rule could not have lawfully be adopted by the agency prior to June 24, 2024.

Whether the agency adopted the temporary rule on June 17, 2024 or on June 21, 2024 as the Form 0500 purports, the adoption was within 30 business days of May 9, 2024.

Assuming arguendo that a June 21, 2024 filing would comply with G.S. 150B-21.1(a3)(1), it does not appear that the agency adopted the rule on June 21, 2024.

Staff recommends objection to the temporary rule pursuant to G.S. 150B-21.9(a)(4) as the rule was not adopted in accordance with the Administrative Procedures Act.

4 JUNETEENTH IS CONSIDERED A BUSINESS DAY UNDER THIS ANALYSIS.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Criminal Justice Education and Training Standards Commission	
2. Rule citation & name: 12 NCAC 09C .0401 Accreditation of Criminal Justice Schools	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: May 16, 2024	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: May 9, 2024 b. Proposed Temporary Rule published on the OAH website: May 16 2024 c. Public Hearing date: June 7, 2024 d. Comment Period: May 17, 2024 - June 7, 2024 e. Notice pursuant to G.S. 150B-21.1(a3)(2): May 17, 2024 f. Adoption by agency on: June 21, 2024 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]: July 25, 2024	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> Other: Explain: The Commission has encountered a situation where a school has held courses resulting in serious injuries to students. The conduct involved adts and omssions of the school throughout its chain of command, from the instructor to the school executive level. This type of systemic failure to adhere to the Rules resulting in repeated and multiple serious injuries was not foreseen. The Commission has rules that allow the summary suspension of criminal justice officers and instructors on an individual basis, when the public health, safety, and welfare require. However, this authority does not currently exist for schools. This temporary rule allows for the summary suspension of the accreditation of a school if the public health, safety, and welfare requires action. The Commission faces such a situation at present. Without the temporary rule, the school can continue to offer courses in a way that risks the health safety and welfare of the students and public.	

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

The Commission has encountered a situation where a school has held courses resulting in serious injuries to students. The conduct involved acts and omissions of the school throughout its chain of command, from the instructor to the school executive level. This type of systemic failure to adhere to the Rules resulting in repeated and multiple serious injuries was not foreseen. The Commission has rules that allow the summary suspension of criminal justice officers and instructors on an individual basis, when the public health, safety, and welfare require. However, this authority does not currently exist for schools. This temporary rule allows for the summary suspension of the accreditation of a school if the public health, safety, and welfare requires action. The Commission faces such a situation at present. Without the temporary rule, the school can continue to offer courses in a way that risks the health safety and welfare of the students and public.

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:

Michelle Schilling

Phone:

(919) 779-8205

E-Mail:

MSchilling@ncdoj.gov

Agency contact, if any:

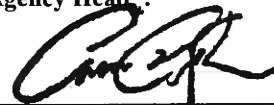
Michelle Schilling

Phone:

(919) 779-8205

E-Mail: MSchilling@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:

Christopher C. Blue

Title:

Commission Chair

E-Mail: cblue@town of chapelhill.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

12 NCAC 09C .0401 is being submitted for temporary rule amendment as follows:

12 NCAC 09C .0401 ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS

(a) Any school requesting ~~accreditation~~, ~~accreditation or re-accreditation~~, pursuant to the Commission's authority to certify criminal justice training schools in G.S. 17C-6, ~~as meeting and which is in compliance with~~ the requirements contained in ~~12 NCAC 09B .0200~~ Section .0200 of this subchapter, ~~must~~ shall submit a completed Form F-10(SA) Request for School Accreditation. The Form F-10(SA) is available on the agency's website: [http://www.ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10\(SA\)-6-11.aspx](http://www.ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10(SA)-6-11.aspx). ~~The F-10(SA)~~

Request for School Accreditation shall contain the following:

- (1) The name of the requesting institution/agency;
- (2) The mailing address, phone number, and name of the institution head or executive officer;
- (3) The name, title or rank, address and phone number of the designated School Director;
- (4) The type of Commission approved training course in which accreditation is being sought;
- (5) The type and location of all facilities to be used in administering the Commission approved training course; and
- (6) The signature of the institution head or executive officer.

(b) Upon receipt of a completed Request for School Accreditation application:

- (1) The Standards Division staff reviews the application and conducts a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) The Standards Division Staff contacts the applying institution or agency concerning deficiencies and provides assistance on correcting problem areas;
- (3) The Standards Division staff recommends to the Education and Training Committee when the accredited institution has satisfied the requirements outlined in 12 NCAC 09B .0200; and
- (4) The Education and Training Committee recommends to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

~~(b)-(c)~~ Accreditation or Re-accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for failure to maintain compliance with the requirements set forth in 12 NCAC 09B .0200, Minimum Standards for Criminal Justice Schools and Criminal Justice Training Programs or Courses of Instruction.

~~(c) The identity of those schools accredited under this Rule are published and distributed by the Standards Division, via the agency's website: <http://www.ncdoj.gov/CMSPages/GetFile.aspx?nodeguid=6eb7e157-87f7-40a3-b281-d95a36807bb9> and the schedule of criminal justice training courses planned for delivery during the succeeding year.~~

~~(d) A school may request reaccreditation from the Commission by submitting a completed Form F-10(SA) Request for School Accreditation form, located on the agency's website: [http://ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10\(SA\)-6-11.aspx](http://ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10(SA)-6-11.aspx). The Form F-10(SA) shall contain information on changes in facilities, equipment, and staffing. Upon receipt of a completed application:~~

- ~~(1) The Standards Division staff reviews the request for reaccreditation, conducts a site visit to tour facilities, confirms information on the application, determines if and where deficiencies exist, and attaches copies of the reports of site visits to the application;~~

(2) The Standards Division staff submits the application and staff reports to the Education and Training Committee for review; and

(3) The Education and Training Committee recommends to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation of the applicant institution or agency.

(e) In instances where certified schools have been found to be in compliance with ~~by whom~~ 12 NCAC 09B .0200 through favorable site visit reports, Standards Division staff shall reaccredit on behalf of the Commission. Such action shall be reported to the Education and Training Committee at its next scheduled meeting.

~~(f)~~ (d) In instances where the Education and Training Committee determines the school seeking accreditation or reaccreditation is not in compliance with 12 NCAC 09B .0200, the requirements contained in Section .0200 of this subchapter, the school application and staff reports shall be reviewed by the Probable Cause Committee, as specified in 12 NCAC 09A .0201.

~~(g)~~ (e) The Commission ~~may shall~~ suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation. The Commission, by and through the Probable Cause Committee, shall summarily suspend the accreditation of a criminal justice school if the public health, safety, or welfare requires action pursuant to G.S. 150B-3.

(1) For the purpose of considering a summary suspension of accreditation, the Probable Cause Committee shall meet only during its regularly scheduled quarterly meeting or upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting;

(2) A summary suspension shall be effective on the date specified in the order of the summary suspension or upon service of the certified copy of the order at the last known address of the school, whichever is later. The summary suspension shall remain effective during the proceedings for suspension and revocation;

(3) Upon oral notification to the executive officer or officers of the institution or agency sponsoring any criminal justice training program or course of instruction by the Director that the accreditation of a school is being summarily suspended by written order, the school shall not perform any duties or conduct any courses requiring accreditation by the Commission;

(4) The Director shall send a report of all summary suspensions for a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

~~(h) The Accreditation of a school whose accreditation is scheduled to expire in calendar year 2015 and who has submitted a request for recertification shall be extended for a maximum of two years under the following conditions:~~

(1) ~~accreditation has not expired;~~

(2) ~~the school has submitted a request for reaccreditation along with the required documentation by December 31, 2015.~~

(3) ~~the Standards Division staff was unable to complete the recertification process by December 31, 2014; and~~

(4) ~~the school is not denied reaccreditation prior to the expiration of the current accreditation.~~

~~Accreditation or accreditation extension according to this Paragraph expires when reaccreditation is~~

1 ~~denied or revoked or the Standards Division staff is able to complete the reaccreditation process and~~
2 ~~it is determined that the school is in compliance with the Rules for Reaccreditation. If the school~~
3 ~~reaccreditation is denied or revoked, the school shall not deliver Commission accredited criminal~~
4 ~~justice courses until such reaccreditation has been granted or reinstated by the Commission.~~

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6 *History Note: Authority G.S. 17C-6; 17C-11;*
7 *Eff. January 1, 1981;*
8 *Amended Eff. August 1, 2004, January 1, 1996;*
9 *Temporary Amendment Eff. January 1, 2007;*
10 *Temporary Amendment Expired October 13, 2007;*
11 *Amended Eff. February 1, 2016; April 1, 2008;*
12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
13 *2019.*
14 *Temporary Amendment Eff. September 1, 2024*
15
16