

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0302

DEADLINE FOR RECEIPT: January 9, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Just to be clear, are you eliminating General Instructor Certifications entirely and replacing them with Probationary Instructor Certifications? If so, please review the title of this Rule.

In (a), line 6, do you mean "Section" instead of "Subchapter?"

In (a)(1)(B), please delete or define "directly."

At lines 22 and 35, please capitalize "State" if you are only referring to North Carolina. If you are referring to any state, please do not capitalize "state."

In (c), do they have to complete the exam again or only the training course?

In (d), what is considered an "equivalent instructor training course?" How does CJETS determine whether a training course is "equivalent?" What factors are considered?

In (d), lines 6-7, are the contents or substantive requirements of the application in a rule in accordance with G.S. 150B-2(8a)(d)?

At line 7, please capitalize "State" if you are only referring to North Carolina. If you are referring to any state, please do not capitalize "state."

In (e), line 9, please delete or define "substantially."

At line 10, Please capitalize "Paragraphs."

At line 11, please add a comma after "styles."

In (f), are you eliminating General Instructor Certifications entirely in this Rule? If so, please review the language in (f). If not, what is the difference between a general and a probationary instructor?

Ashley Snyder
Commission Counsel
Date submitted to agency: December 20, 2019

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: December 20, 2019

12 NCAC 09B .0302 is amended as published in 34:06 NCR 486-489 as follows:

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) A General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of ~~General~~ Probationary Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; and
 - (B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency;
- (2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course. ~~course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and~~
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for ~~General~~ Probationary Instructor Certification shall be submitted to the Standards Division within ~~60~~ sixty days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program. ~~program or an equivalent instructor training course use the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.~~

~~(c) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course using the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.~~

~~(d) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.~~

(c) Persons having completed a Commission-accredited training course and not having submitted the application within sixty days of the date the applicant passed the state comprehensive examination shall complete a subsequent Commission-accredited instructor training course in its entirety.

1 (d) Out-of-State applicants having completed an equivalent instructor training course and who are certified or have
2 been certified within two years prior to the submission of application to the Standards Division as an instructor in a
3 Criminal Justice Program, as verified by the respective State Police Officer Standards and Training (POST) or Federal
4 Law Enforcement Training Center (FLEC) or military POST organization, are eligible to apply for Probationary
5 Instructor Certification upon achieving a passing score of 75% on the comprehensive written examination
6 administered by the Commission, as required by Rule .0413(d) of this Subchapter. The application shall be submitted
7 to the Standards Division within sixty days of the date the applicant passed the state comprehensive examination.

8 (e) The Standards Division staff shall evaluate the out-of-state applicant's combined training and experience to
9 determine if the combined training and experience is substantially equivalent to or exceeds the requirements for
10 Probationary Instructor certification as prescribed in paragraphs (a)(1-2) of this Rule and includes course topics in
11 instructional leadership, liability, teaching adults, presentation styles and written lesson plan preparation.

12 (f) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor
13 Certification.

14
15 *History Note: Authority G.S. 17C-6.*

16 *Eff. January 1, 1981;*

17 *Amended Eff. February 1, 2020; October 1, 2017; January 1, 2017; February 1, 2016; January 1,*
18 *2015; January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1,*
19 *1985; January 1, 1985.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0314

DEADLINE FOR RECEIPT: January 9, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Pursuant to G.S. 90-113.74E, did you consult with DOJ, the North Carolina Justice Academy, and SBI on the certification requirements for diversion investigators and diversion supervisors?

What is a diversion investigator or diversion supervisor? Are you using the definitions from G.S. 90-13.74(i)(7)?

In (a), consider deleting "be designed to" at line 4.

At line 5, please delete or define "proficiently."

A line 8, instead of "he or she" consider saying "the trainee."

At line 9, please do not use parentheses. Consider deleting the wording in the parentheses because this is already explained at lines 6-7.

At line 12, consider deleting the word "such."

At line 15, who are "appointed" deputy sheriffs? Does this refer to all deputy sheriffs?

At line 18, please review your reference to .0206. It has been repealed. Did you intend to reference another rule?

In (c), line 20, consider deleting "those" at the beginning of the sentence.

At line 20, please delete or define "previously."

At line 21, please capitalize "Rule."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder
Commission Counsel
Date submitted to agency: December 20, 2019

12 NCAC 09B .0314 is adopted as published in 34:06 NCR 486-489 as follows:

12 NCAC 09B .0314 CERTIFICATION OF DIVERSION INVESTIGATORS AND SUPERVISORS

(a) The diversion training courses for investigators and supervisors shall be designed to provide the trainee with the skills and knowledge to proficiently perform the duties of a law enforcement Diversion Investigator or Supervisor. The diversion training course for investigators shall be twenty-four classroom hours. The diversion training course for supervisors shall be administered in a four hour online training course. To be certified as a Diversion Investigator or Diversion Supervisor he or she shall complete the respective diversion training course and achieve a minimum score of 70 percent on the comprehensive written (Investigator) or online (Supervisor) examination.

(b) Only a Sheriff, deputy sheriff, or law enforcement officer certified or appointed through the North Carolina Criminal Justice Education and Training Standards or North Carolina Sheriff Education and Training Standards Commissions and employed by a law enforcement agency shall be enrolled in a diversion training course. Such a trainee shall not be certified as a Diversion Investigator or Diversion Supervisor until the Basic Law Enforcement Training course, pursuant to Rule 09B .0205 of this Chapter, has been completed with passing scores and probationary or general law enforcement certification has been granted. Sheriffs and appointed deputy sheriffs shall be allowed to participate in the diversion training courses on a space available basis at the discretion of the Diversion Training Course School Director without having enrolled in, or having completed with passing scores, the Basic Law Enforcement Training course, pursuant to Rule 09B .0205 and .0206 of this Chapter and without being currently certified in a probationary status or holding justice officer certification.

(c) Those Special Agents with the North Carolina State Bureau of Investigation previously deemed Diversion Investigators as of July 1, 2019, shall be automatically granted certification under this rule for a period of three years.

(d) The “Diversion Training Courses” required for certification, authored by the North Carolina State Bureau of Investigation and published by the North Carolina Justice Academy, shall include the topic areas as outlined in NCGS 17C-6(a)(19) and is to be applied as the basic curriculum for the Diversion Training Courses for Diversion Investigator and Diversion Supervisors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tyron Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemburg, North Carolina 28385

History Note: Authority G.S. 17C-6; G.S. 17E-4, 90-113.74E

Eff. February 1, 2020.

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: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09E .0105

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:

Staff recommends objection for failure to comply with the APA. At lines 7-13, the agency incorporates a manual of approved training topics by reference, including subsequent amendments and editions. The Rule refers to the manual again at lines 29-31. Incorporating or referring to the manual rather than stating its contents in the Rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. The list of training topics meets the definition of a "rule" in G.S. 150B-2(8a) and the list is proposed to be deleted at lines 14-27. As written, this Rule would allow the agency to amend the manual outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review.

Therefore, staff recommends objection to the language in lines 7-13 and 29-31 for failure to comply with the APA.

12 NCAC 09E .0105 is amended as published in 34:06 NCR 486-489 as follows:

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING (EFFECTIVE JANUARY 1, 2020)

(a) ~~The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction.~~ All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. Specific topics identified in the Annual In-Service Manual and approved by the North Carolina Criminal Justice Education and Training Standards Commission shall be as published by the North Carolina Department of Justice, Incorporated herein by reference, and shall include any later amendments and editions of the incorporated materials as provided by G.S. 150B-21.6. The publication shall be available from the Commission's website at <https://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>. The following topics, totaling 18 credits, shall be specifically required:

- (1) ~~2020 Firearms Training and Qualification (4 credits);~~
- (2) ~~2020 Legal Update (4 credits);~~
- (3) ~~2020 Long Term Effects of Childhood Adversity (2 credits);~~
- (4) ~~2020 The Signs Within: Suicide Prevention Education and Awareness (2 credits);~~
- (5) ~~2020 Career Survival: Training and Standards Issues (2 credits);~~
- (6) ~~2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing (2 credits);~~
- (7) ~~2020 Armed/Unarmed Security/Company Police: Understanding Their Roles and Authority (2 credits);~~
- (8) ~~Topics of Choice (12 credits);~~
 - (A) ~~Hazardous Materials (2 credits);~~
 - (B) ~~Bloodborne Pathogens (2 credits);~~
 - (C) ~~Situational Awareness/Subject Control (4 credits); and~~
 - (D) ~~Law enforcement Threat Assessment (4 credits).~~

(b) ~~All sworn law enforcement officers shall complete a minimum of 6 in service credits, in topics identified by their respective agency heads. It is possible for a training topic other than the specific topics identified in the Annual In-Service Training Manual to qualify for credit towards officers' Annual In-Service Training requirement. A Department Head~~ The agency head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section and National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year, shall satisfy in part or in whole the topic requirements set forth by the agency department head. To satisfy this requirement these topics shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

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Salemberg, North Carolina 28385

(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length shall include a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving ~~at least~~ 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

1 *History Note:* *Authority G.S. 17C-6; 17C-10;*
2 *Eff. July 1, 1989;*
3 *Amended Eff. January 1, 2005; November 1, 1998;*
4 *Temporary Amendment Eff. January 1, 2005;*
5 *Amended Eff. January 1, 2019; January 1, 2018; January 1, 2017; July 1, 2016; January 1, 2016;*
6 *January 1, 2015; February 1, 2014; June 1 ,2012; February 1, 2011; January 1, 2010; April 1,*
7 *2009; April 1, 2008; February 1, 2007; January 1, 2006;*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
9 *2019;*
10 *Amended Eff. January 1, 2021; January 1, 2020.*