



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

March 4, 2020

Sent via email: cdwilliams@ncdoj.gov
Charminique Williams, Rulemaking Coordinator
Criminal Justice Education and Training Standards Commission

Re: Return of Rule 23 NCAC 09E .0105

Dear Ms. Williams:

At its January 16, 2020 meeting, the Rules Review Commission objected to the amendment of the above-identified Rule in accordance with G.S. 150B-21.10.

The Criminal Justice and Training Standards Commission responded in accordance with the provisions of G.S. 150B-21.12 on February 27, 2020, and requested the rule be returned to the agency.

This letter is to confirm that pursuant to G.S. 150B-21.12(d), the Rule is being returned upon the written request of the agency. No further action will be taken by the Rules Review Commission on these rules.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Ashley Snyder
Commission Counsel

cc: Brenda Rivera, brivera@ncdoj.gov

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January 17, 2020

Charminique Williams
Criminal Justice and Training Standards Commission
Sent via email only: cdwilliams@ncdoj.gov

Re: Objection to Rule 12 NCAC 09E .0105

Dear Ms. Williams:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to Rule 12 NCAC 09E .0105 for failure to comply with the APA and ambiguity. Specifically, 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. The list of training topics meets the definition of a "rule" in G.S. 150B-2(8a). 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. Additionally, the language at lines 29-31 makes it unclear which trainings are required and which trainings are optional.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder
Commission Counsel

cc: Brenda Rivera, brivera@ncdoj.gov

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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.

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

4 Criminal Justice Standards Division
5 North Carolina Department of Justice
6 1700 Tryon Park Drive
7 Raleigh, North Carolina 27610

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

9 North Carolina Justice Academy
10 Post Office Drawer 99
11 Salemburg, North Carolina 28385

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

15 Criminal Justice Standards Division
16 North Carolina Department of Justice
17 1700 Tryon Park Drive
18 Raleigh, North Carolina 27610

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

20 North Carolina Justice Academy
21 Post Office Drawer 99
22 Salemburg, North Carolina 28385

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

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

- 27 (1) A written test comprised of at least five questions per credit shall be developed by the agency or the
28 North Carolina Justice Academy for each in-service training topic requiring testing. Written courses
29 that are more than four credits in length shall include a written test comprising of a minimum of 20
30 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant
31 to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- 32 (2) A student shall pass each test by achieving ~~at least~~ 70 percent correct answers; and
- 33 (3) A student who completes a topic of in-service training in a traditional classroom setting or online
34 and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a
35 second time, the student shall complete the in-service training topic in a traditional classroom setting
36 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.*