

**TEMPORARY RULE  
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: Code Officials Qualification Board

RULE CITATION: 11 NCAC 08 .0735

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

COMMENT:

*Staff recommends approval because the agency substantially complied with the APA. The agency has not had anyone sign up for its interested persons list, but the agency provided notice to "other interested parties" – its licensees – on April 9, 2020. The agency adopted the Rule on May 19, 2020, 29 business days after providing notice. The temporary rulemaking process requires notice 30 business days prior to adoption.*

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

(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.

**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article.

Ashley Snyder  
Commission Counsel

*The agency contends it substantially complied with the temporary rulemaking process. Staff agrees and therefore recommends approval. The agency's explanation is provided below:*

The Code Officials Qualification Board ("the Board") adopted the rule prior to 30 business days for the following reasons: The temporary certificate rule was requested by the Chair of the Board to address numerous complaints received from code enforcement jurisdictions stating that many of their code enforcement officials would lose their certification to practice code enforcement in their trade because of testing center and community college closures due to COVID-19. Because of this unprecedented pandemic and because of the need to act quickly to prevent loss of employment and the loss of many departments' ability to provide vital inspections, the Board acted quickly to adopt the Temporary Certificate rule both as an emergency rule and then as a temporary rule. The Board in recent memory has not pursued emergency and temporary rule making. The Board acted responsibly and quickly to develop and pass these rules for the benefit of those regulated by the Board. Temporary rule-making began at the same time the emergency rule was adopted per the APA. The comment period ended prior to the Board's adoption, and a public hearing was also held. The Board did not receive any public comments prior to the end of the comment period or at the public hearing. No one appeared at the scheduled virtual public hearing. The Board had already scheduled a meeting on May 19 to consider adoption of permanent rules that were already in the rule-making process. This meeting occurred 29 business days after notice of the rule was given. The Board does now recognize that the statute requires 30 business days and this was not intentional noncompliance with, or disregard of, the APA. In order to avoid the time, expense, and difficulty of convening multiple Board meetings, the Board opted to consider this temporary rule for adoption at that time.

It is important to note that the temporary rule was adopted for the benefit of code enforcement officials who were previously certified by the Board and does not require any action or impose requirements on their part. Feedback from the emergency rule has been incredibly positive. We are in the middle of an unprecedented global pandemic where boards are enacting emergency rules and taking emergency action in furtherance of the public interest and wellbeing as best as the circumstances will allow. Although the Board could have called an additional special meeting to consider adoption of these rules, the Board had previously convened a number of special meetings to address other COVID-19 related issues, and scheduling these meetings was becoming increasingly difficult due to work and time conflicts of the members of the Board. Scheduling an additional meeting would also impose additional costs on the Board and detract from other duties and responsibilities of staff and Board Members during a time of an unprecedented public health crises.

Ashley Snyder  
Commission Counsel



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: Code Officials Qualification Board</b>	
<b>2. Rule citation &amp; name: 11 NCAC 08 .0735 Temporary Certificate</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date: April 20, 2020</b>	
<b>5. Provide dates for the following actions as applicable:</b> a. Proposed Temporary Rule submitted to OAH: April 8, 2020 b. Proposed Temporary Rule published on the OAH website: April 14, 2020 c. Public Hearing date: May 6, 2020 d. Comment Period: April 21 – May 12, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 9, 2020 f. Adoption by agency on: May 19, 2020 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 1, 2020 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <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"/> State Medical Facilities Plan. <input type="checkbox"/> Other:  <b>Explain:</b> A serious and unforeseen threat to the public health, safety or welfare. On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issues Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.	

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

The North Carolina Code Officials Qualification Board is requesting a temporary rule to automatically issue Temporary Certificates to holders of a Probationary Certificate that are to expire between March 12<sup>th</sup> and December 31<sup>st</sup> 2020. Temporary Certificates are allowed under N.C. Gen. Stat. § 143-151.13(d). The NCCOQB has adopted emergency rules to assist current holders of probationary certificates that are good for a maximum of 3 years and may not be extended beyond that period pursuant to statute – N.C. Gen. Stat. § 143-153.13(d). There are a number of licensees with probationary certificates that will be expiring in the near future, but they are unable to obtain their Standard Certificate because the training and testing centers are closed due to COVID-19. The issuance of Temporary Certificates, without delay, ensures that Code Enforcement Jurisdictions have certified code enforcement officials available to perform vital fire and property inspections.

**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: Loretta Peace-Bunch**

Phone: 919-807-6004

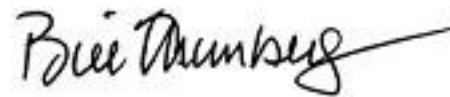
E-Mail: [Loretta.Peace-Bunch@ncdoi.gov](mailto:Loretta.Peace-Bunch@ncdoi.gov)

Agency contact, if any: Kathy Williams

Phone: 919-647-0023

E-Mail: [Kathy.Williams@ncdoi.gov](mailto:Kathy.Williams@ncdoi.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: Bill Thunberg

Title: Chairman

E-Mail: [billthunberg@gmail.com](mailto:billthunberg@gmail.com)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

11 NCAC 08 .0735 is adopted under temporary procedures as follows:

**11 NCAC 08 .0735        TEMPORARY CERTIFICATE**

(a) A temporary certificate shall be issued without examination or additional application to any code enforcement official (CEO) who currently possesses a probationary certificate that expires between March 12, 2020 and December 31, 2020. The application the CEO initially submitted to obtain the probationary certificate shall provide the basis for issuing the temporary certificate.

(b) A temporary certificate shall authorize the CEO, during the effective period of the certificate, to hold the position of the type, level, and location that corresponds to the probationary certificate the applicant previously received. The certificate shall specify the type and level of code enforcement in which the CEO may engage and may be conditioned upon his or her having supervision from an official with the specified certification or qualifications included on the CEO's probationary certificate application.

(c) The temporary certificate shall be effective for one year only for the period of March 12, 2020 through March 12, 2021 and shall not be renewed. During the one-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate.

(d) A CEO who is issued a temporary certificate that the CEO no longer needs or wants shall return the temporary certificate, within ~~30 days~~ 30 days, ~~[of receipt]~~ to the Engineering and Codes Division of Department of Insurance for cancellation.

(e) A temporary certificate shall remain valid only so long as the person certified is employed by the ~~[state]~~ State or a local government as a code enforcement official of the type and level indicated on the certificate. ~~[When]~~ If the person certified leaves such employment for any reason, he or she shall return the certificate to the Board.

(f) A CEO with only a temporary certificate and no standard or limited certificate is not required to complete any continuing education courses.

*History Note:*     Authority G.S. 143-151.12; 143-151.13;

Temporary Adoption Eff. July 1, 2020.