

Burgos, Alexander N

Subject: FW: [External] DOJ Rule

From: Williams, Charminique <cdwilliams@ncdoj.gov>

Sent: Friday, August 2, 2019 10:39 AM

To: Reeder, Amanda J <amanda.reeder@oah.nc.gov>

Cc: Evitt, Marie <mevitt@ncdoj.gov>; Munn, Randy <Rmunn@ncdoj.gov>; Squires, Richard <RSQUIRES@ncdoj.gov>

Subject: [External] DOJ Rule

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Good morning Amanda,

DOJ decided to withdraw 12 NCAC 02I .0213 from the rule-making process. As for .0306, we are currently waiting for company agencies to complete a survey by August 9, 2019, providing necessary financial information to complete the fiscal note. If you have questions or concerns please let me know.

Thank you,
Charminique



Charminique D. Williams
Research and Planning Specialist
BLET Administrator
Criminal Justice Training and Standards
(919) 779-8206
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**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 20, 2019

Carrie Hollis
Office of State Budget and Management
Sent via email to Carrie.Hollis@osbm.nc.gov

RE: Rule 12 NCAC 02I .0306

Ms. Hollis:

At its meeting this morning, the Rules Review Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced Rule has a substantial economic impact and therefore requires a fiscal note.

This Rule is an adoption and it imposes requirements regarding company police officer badges, patches, and advertising on vehicles. A copy of the Rule reflecting all requested technical changes is enclosed with this correspondence. At the Commission meeting, members of the public stated that the companies regulated by this Rule would have to spend money to comply with its requirements.

A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the Rule in accordance with the Administrative Procedure Act.

The Commission objected to the Rule at the meeting; as such, the Rule will remain under the Commission's review until the agency acts pursuant to G.S. 150B-21.12. The Commission is aware that there are multiple demands on your time, and respectfully requests a response as soon as you are able to do so.

Thank you for your assistance in this matter. Please let me know if I can be of any assistance or if you desire further information regarding the Commission's decision.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

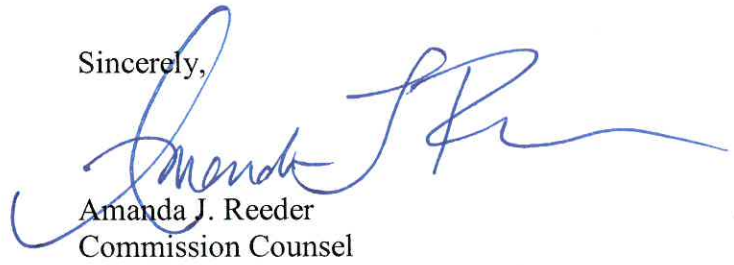
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Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel

cc: Charminique Williams, Rulemaking Coordinator

Enclosure Rule 12 NCAC 02I .0306

12 NCAC 02I .0306 is adopted with changes as published in 33:17 NCR 1765-1767 as follow:

12 NCAC 02I .0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

(a) Badges:

(1) All on-duty company police officers ~~shall, shall when on duty,~~ wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:

(A) Railroad Police Officer;

(B) Campus Police Officer; or

(C) Special Police Officer.

(2) The badge shall be carried at all times by the company police officer. The badge shall be worn in plain view to the public, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0304 of this Section.

(3) No identification card indicating the person is a company police officer shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.

(4) The Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a badge used by the company police agency.

(b) Uniforms:

(1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.

(2) Those company police agencies ~~which that~~ employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers with a uniform of a different color that would distinguishes the company police officer from other employees of the agency. Furthermore, the Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a uniform identifying them as company police officers.

(3) The uniform of the company police officer shall bear a shoulder patch or some equivalent item containing the following information:

(A) the terms "Railroad Police Officer," "Campus Police Officer," "Special Police Officer," or "Company Police Officer"; and

(B) the name of the company police agency.

(c) Vehicles:

(1) Each marked vehicle used by a company police agency subject to this Rule shall display the agency name and one of the following agency classifications: "Railroad Police," "Campus Police," "Special Police," or "Company Police".

(2) The agency classifications ~~required by~~ set forth in Subparagraph (a)(1) of this Rule shall be of uniform size with any other writing on the company police vehicle.

1 (3) The Department Head shall ensure that employees who have not been commissioned as company
2 police officers do not operate any marked vehicle used by the company police agency.

3 (4) The Department Head shall ensure that employees who are not commissioned as a company police
4 officer do not operate any company police vehicle with a blue light contained therein.

5 (5) The Department Head shall ensure that any marked company police agency vehicle is not operated
6 outside of those property jurisdiction limitations set forth in G.S. 74E-6, unless such operation is
7 performed by an on-duty commissioned company police officer in the performance of his or her
8 official duties and authorized by the Department Head.

9 (d) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are
10 regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police
11 Certification Act of 1990.

12
13 *History Note: Authority G.S. 74E-4; 74E-7;*

14 Eff. August 2, 1993;

15 Amended Eff. February 1, 2008;

16 Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of January
17 31, 2018;

18 Adopted Eff. July 1, 2019.



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OFFICE OF ADMINISTRATIVE HEARINGS

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June 20, 2019

Charminique Williams, Rulemaking Coordinator
Department of Justice
Sent via email only: cdwilliams@ncdoj.gov

Re: Objection to Rules 12 NCAC 02I .0213 and .0306

Dear Ms. Williams:

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

The Commission objected to Rule 02I .0213 for lack of statutory authority and ambiguity. Specifically, the RRC found that the Rule is ambiguous as it does not set forth the process by which the Attorney General or the designee will act to revoke or deny the summary suspension. Further, it is unclear whether this will be a summary action or if it will include a hearing. Finally, the RRC found that the agency lacks statutory authority to take this action if it is not taken in compliance with G.S. 150B, Article 3, as required by G.S. 74E-4(5).

The RRC objected to Rule 02I .0306 for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required in its Notice of Text, published March 1, 2019. However, members of the regulated public stated that the adoption of this Rule would create a substantial economic impact. Pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the RRC found that the agency did not comply with the APA. The RRC will send this Rule to OSBM pursuant to G.S. 150B-21.9(a) for further review.

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.

Administration
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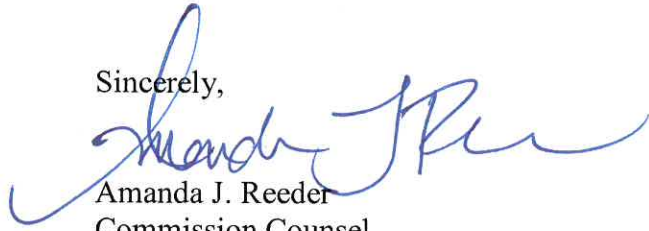
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Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel

cc: Randy Munn, Department of Justice

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Justice

RULE CITATION: 12 NCAC 02I .0213

DEADLINE FOR RECEIPT: Wednesday, June 5, 2019

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:

On the Submission for Permanent Rule form:

In Box 2, please insert the name of the Rule.

Please complete the information requested in Box 11 by typing in the name and title.

In the Rule:

In the Introductory Statement, line 1, please provide the correct citation and use “.0213” here.

In (a), line 4, is “denies” used when the individual is an applicant? If so, then how can the denial be based upon criminal history in light of G.S. 93B-8.1? Or will this decision be based upon the review required in G.S. 93B-8.1?

In (a)(1), line 6, delete the comma after “offense” and insert a semicolon before “or” It will appear like this: “... offense; or”

In (b), line 10, state ‘his or her’

On line 11, you state the Attorney General may take this action. What are the circumstances when the Attorney General will decide to not reduce or suspend the sanction if the circumstances in (b)(1) through (9) are present? The Rule needs to provide guidance on this.

On line 12, G.S. 74E-7(5) requires a hearing pursuant to G.S 150B, Article 3. What authority do you have to delete “following an administrative hearing” here? Since the hearing is not referenced anywhere else in this Chapter, do not strike this language.

In (b)(3), line 17, what is “satisfaction” here?

In (b)(4), line 18, what is “material”?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 21, 2019

Please remove the hard return on line 20.

On line 22, insert a comma after “misrepresentation”

Also on line 22, remove the “or” at the end of the line. Note the same for lines 23 and 24.

In (b)(8) and (9), so that I’m clear – the officer will be sanctioned for these things? I understand that G.S. 74E-3(c) speaks to the loss of the certification for the agency, but this will lead to individual sanctions?

**74E-3. Liability insurance policy or certificate of self-insurance required;
suspension of company police agency certification for failure to comply.**

(c) A company police agency that is a nonpublic entity must maintain the liability insurance policy or certificate of self-insurance required by this section in effect at all times. The Attorney General shall suspend the certification of a company police agency that fails to maintain a liability insurance policy or certificate of self-insurance when required to do so by this section. A certification suspended for this reason may not be reinstated until the person whose certification was suspended files with the Attorney General an application for reinstatement and either the required liability insurance policy or certificate of self-insurance. (1991 (Reg. Sess., 1992), c. 1043, s. 1.)

In (c), line 27, state “his or her”

On line 28, “stated” where? Do you even need this, or could you just state “continued so long as the deficiency, infraction,....”

In (c)(1), what are “basic training requirements”? Where are those located in rule or law?

In (c)(3), what do you mean by “criminal justice agency”? Is this to address dual employment?

In (c)(2), I do not understand this cross-reference. I don’t think this Rule sets employment standards. Did you mean to cite to G.S. 74E-8?

How do (c)(2) and (c)(4) differ?

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

1 12 NCAC 02I .0306 is amended as published in 33:17 NCR pages 1765-1767:
2

3 **12 NCAC 02I .0213 PERIOD OF SUSPENSION, REVOCATION OR DENIAL**

4 (a) When the Attorney General, or his or her designee, ~~suspends~~ revokes or denies the commission of a company
5 police officer, the period of sanction shall be permanent when the cause of the sanction is:

6 (1) commission or conviction of a felony offense, or;

7 (2) commission or conviction of a criminal offense for which the authorized punishment includes
8 imprisonment for up to two years.

9 (b) When the Attorney General, or his or her designee, suspends, revokes, or denies the commission of a company
10 police officer, the period of sanction shall not be less than three years. However, the Attorney General, or his designee,
11 may either reduce or suspend the period of sanction under 12 NCAC 02I .0212(b) or substitute a period of probation
12 in lieu of suspension of a commission ~~following an administrative hearing~~, where the cause of sanction is:

13 (1) commission or conviction of a crime other than those listed in Paragraph (a) of Rule .0212;

14 (2) refusal to submit to the applicant or lateral transferee drug screen required by 12 NCAC 02I
15 .0202(7);

16 (3) production of a positive result on a drug screen reported to the Company Police Administrator where
17 the positive result cannot be explained to the Company Police Administrator's satisfaction;

18 (4) material misrepresentation of any information required for company police commissioning;

19 (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempting
20 to

21 obtain credit, training or commissioning as a company police officer by any means of false pretense,
22 deception, defraudation, misrepresentation or cheating; or

23 (6) failure to make either of the notifications as required by 12 NCAC 02I ~~.0202(8)~~; .0202(8); or

24 (7) commission of any act prohibited by 12 NCAC 02I .0304; or

25 (8) termination from the company police agency for which the officer is commissioned; or

26 (9) termination of the certification of the company police agency for with the officer is commissioned.

27 (c) When the Attorney General, or his designee, suspends or denies the commission of a company police officer, the
28 period of sanction shall be continued so long as the stated deficiency, infraction, or impairment continues to exist,
29 where the cause of sanction is:

30 (1) failure to meet or satisfy all basic training requirements;

31 (2) failure to meet or maintain the minimum standards of employment specified in 12 NCAC 02I
32 .0202(4);

33 (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or

34 (4) failure to meet the in-service training requirements as prescribed by the North Carolina Criminal
35 Justice Education and Training Standards Commission.

36
37 *History Note:* Authority G.S. 74E-4;

38 *Eff. August 2, 1993;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*
2 *2016;*
3 *Amended Eff. July 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Justice

RULE CITATION: 12 NCAC 02I .0306

DEADLINE FOR RECEIPT: Wednesday, June 5, 2019

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In the Rule:

In (a)(1), line 5, why not state "All on-duty company police officers shall wear a badge..."?

In (a)(2), is the badge to be carried at all times, or at all times when on duty?

On line 11, define "plain view"

I do not understand the cross-reference to the concealed weapon here. Are you referring to some sort of undercover work?

In (a)(3), line 13, what do you mean by "indicating"? Do you mean "stating"? Or are you trying to address a card that would give an impression the person is a company police officer, such that "indicating" is more appropriate here?

In (a)(4) and elsewhere the term is used, I take it "Department Head" is the term as defined in 02I .0104(10)?

In (b)(2), line 21, replace "which" with "that"

In (b)(2), line 23, what do you mean by "would distinguish"? Why not simplify this language and state "that distinguishes"

In (c)(2), line 36, what do you mean by "required by Subparagraph (a)(1)"? Technically, that addresses the classifications. G.S. 74E-6(b) creates/establishes these. Please clarify what you intend to say here.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 21, 2019

In (c)(5), line 7, state "his or her"

Why do you need Paragraph (d)? Aren't these all federal entities? What part of G.S. 74E allows the Department to regulate federal agencies?

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

12 NCAC 02I .0306 is adopted as published in 33:17 NCR pages 1765-1767:

12 NCAC 02I .0306 **BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION**

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9 (d) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are
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12
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14 Eff. August 2, 1993;

15 Amended Eff. February 1, 2008;

16 Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of January
17 31, 2018;

18 Adopted Eff. July 1, 2019.
19
20