

12 NCAC 09G .0103 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0103 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change; change for adoptions or amendments; and
- (3) the reason for its proposal; proposal.

(b) Petitioners may also submit the following in the petition:

- (1)(4) the effect of the proposal on existing rules or decisions;
- (2)(5) data supporting the proposal;
- (3)(6) practices likely to be affected by the proposal; and
- (4)(7) a list or description of persons likely to be affected by the proposed rule.

(c)(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in G.S. 150B, Article 3;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(d)(e) The rules establishing procedures for contested cases incorporated by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference, including subsequent amendments and editions, reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such incorporations by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

(e) Provided, however, that if ~~If~~ the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03. 03 and that 26 NCAC 03 .0101(2); .0102(a)(1) and .0103(b) shall not apply.

(f) (d) An applicant for certification or a certified officer shall have ~~60~~ 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

History Note: Authority G.S. 17C-6; 17C-11(b); 150B-20; ~~150B-21.6;~~ 150B-38(h); 150B-40;

Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002;

Amended Eff. January 1, 2019



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

September 21, 2018

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

Re: Objection to Rule 12 NCAC 09G .0103
Extension of the Period of Review for Rules 12 NCAC 09B .0101, .0203, .0301;
09G .0102, .0304, .0504, .0505, and .0701

Dear Ms. Williams:

At its meeting yesterday, the Rules Review Commission objected to Rule 12 NCAC 09G .0403 in accordance with G.S. 150B-21.10.

The Commission objected the Rule based upon ambiguity and a lack of statutory authority. Specifically, the Commission found that the agency lacks authority to require the items in Subparagraphs (a)(2) (as it relates to repealed rules, which is also unclear as written), (a)(3), (a)(4) (as it relates to the effect on existing decisions, which is also unclear as written), (a)(5), (a)(6), and (a)(7). The Commission also found that Paragraph (c) is unclear as written, as it relates to a cross-reference that does not exist. Finally, in Paragraph (d), the agency did not present any statutory authority that it allowed it to set the deadline to request a contested case at 30 days.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

The Rules Review Commission extended the period of review for Rules 12 NCAC 09B .0101, .0203, .0301 and 12 NCAC 09G .0102, .0304, .0504, .0505, and .0701 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

Administration
919/431-3000
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Judges and
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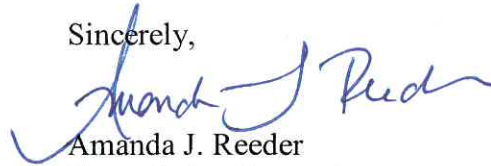
Clerk's Office
919/431-3000
fax: 919/431-3100

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

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

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

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

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0103

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (a), line 4, are these procedures in G.S. 150B-20?

On line 5, how are these submitted? Electronically or via mail? What is the contact information for this?

In (a)(1), line 6, consider beginning this with an article

On line 6, insert a comma after "address"

G.S. 150B-20 requires rulemaking to establish the procedure for the public to submit the petition and the procedure the agency will use to consider the petition. What is the procedure the Commission will use? Is it set forth in another Rule?

What is your statutory authority to require (a)(3) through (7), especially in light of G.S. 150B-19.1?

In (b), I take it the Commission considers itself to be an occupational licensing agency because it is specifically mentioned in G.S. 93B?

In (b)(2) and (3), lines 16 and 17, either state who will determine this relevance or delete "insofar as relevant"

In (c), line 19, delete "incorporated by the Office of Administrative Hearings as"

On line 21, why are you citing to G.S. 150B-38(h) here?

On lines 21-22, replace the sentence you have with "These rules are incorporated by reference, including subsequent amendments and editions."

On line 22, delete "Provided, however, that" and begin the sentence "If"

On lines 24-25, please review the rules in 26 NCAC 03 to determine if this is the reference you want. Please note there is no 03 .0101(2) or .0102(a)(1).

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

In (d), line 26, what is your authority to set the appeal deadline at 30 days? I note that G.S. 150B-23(f) states:

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, **the general limitation for the filing of a petition in a contested case is 60 days.** The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

I realize that the statute I cited is in Article 3 of G.S. 150B, but where is your authority to set a 30 day deadline?

In the History Note, delete the reference to G.S. 150B-21.6.

In the History Note, line 31, this is not the proper way to insert the amended effective date. Put the newest date first.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

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 Temporary Adoption Eff. January 1, 2001;
 Eff. August 1, ~~2002~~, 2002; October 1, 2018