

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 09B .0202

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

- X Other – rescind the approval on October 16, 2014 of this Rule and approve the rewritten rule to correct an error on page 2, line 11.

COMMENT:

This rule was before the Rules Review Commission on October 16, 2014. This rule as adopted by the Criminal Justice Education and Training Standards Commission was filed with the following language on page 2 (See page 17 of this packet.):

(b) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

...

- (4) With the exception of the **First Responder, Physical Fitness, Explosives and Hazardous Materials, and** topical areas as outlined in Rule .0304(a) of this Subchapter, schedule one specialized certified instructor certified by the Commission for each six trainees while actively engaged in a practical performance exercise;

Staff counsel inquired about the highlighted language as set forth in the technical change requests (See page 14 of this packet.):

Page 2, lines 10 thru 11, looking at 12 NCAC 09B .0304(a), what topical areas are not covered by this sentence? It seems confusing. Please clarify.

Abigail M. Hammond
Commission Counsel

The rulemaking coordinator responded with a rewritten rule deleting the text. The deleted language, as set forth below, was approved by the Rules Review Commission on October 16, 2014 (See page 10 of this packet.):

(b) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ coordinating, and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

...

(4) With the exception of the ~~First Responder, Physical Fitness, Explosives and Hazardous Materials, and~~ First Responder, Physical Fitness, Explosives and Hazardous Materials, and topical areas ~~as~~ as outlined in Rule .0304(a) of this Subchapter, schedule one specialized ~~certified~~ certified instructor certified by the Commission for each six trainees while actively engaged in a practical performance exercise;

After receipt of the revised approved rules from the Rules Division staff, the rulemaking coordinator contacted the Rules Division to acknowledge an error in changing the language pursuant to the technical change requests. The change has unintended consequence not reviewed or approved by the Criminal Justice Education and Training Standards Commission. See page 8 of this packet.

RECOMMENDATION:

It is staff counsel's recommendation to rescind the October 16, 2014 approval of 12 NCAC 09B .0202 that reflects the deletion of language on page 2, line 11. After the approval is rescinded, it is staff counsel's recommendation to approve 12 NCAC 09B .0202 as set forth on page 4 of this packet that reflects the inclusion of all language on page 2, line 11. See page 4 of this packet.

1 **12 NCAC 09B .0202** is proposed for amendment as published in vol. 28, issue 24, pages 2986-2989 **with changes:**

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12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Notify each instructor that he or she **mustshall** comply with the Basic Law Enforcement **Training** Course Management Guide and provide him or her access to the most current version of the Course Management Guide;
- (5) Review each instructor's lesson plans and other instructional materials for conformance to Commission standards and to minimize repetition and duplication of subject matter;
- (6) Arrange for the **timely** availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (7) Develop, adopt, reproduce, and distribute any supplemental **rules, regulations, rules** and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
 - (C) regulating trainee participation and **demeanor demeanor, and** ensuring trainee **attendance attendance**, and maintaining performance records;
- (8) If appropriate, recommend housing and dining facilities for trainees;
- (9) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
- (10) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated. The comprehensive final examination shall be administered by the Criminal Justice Education and Training Standards Commission; and
- (11) Report the completion of each presentation of a Commission-certified criminal justice training course to the Commission.
- (12) All forms required for submission to the Commission are located on the Agency's website: <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

(b) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ **coordinating**, and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

- (1) Deliver training in accordance with the most current version of the Basic Law Enforcement Training Course Management Guide as published by the North Carolina Justice Academy;
- (2) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks, except that there may be as many as three one-week breaks until course requirements are completed;
- (3) Schedule **only these specialized** instructors certified by the Commission to teach those **high liability high-liability** areas as specified in Rule .0304(a) of this Subchapter as either the lead instructor ~~or in any other capacity; as assistant instructors or role players.~~
- (4) With the exception of the **First Responder, Physical Fitness, Explosives and Hazardous Materials, and** topical areas ~~as~~ outlined in Rule .0304(a) of this Subchapter, schedule one specialized **certified** instructor certified by the Commission for each six trainees while actively engaged in a practical performance exercise;
- (5) Schedule one specialized **certified** instructor certified by the Commission for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;"
- (6) ~~Not schedule any~~ **Schedule no** single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation;
- (7) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C ~~.0211~~ **.0211**. The Pre-Delivery Report (Form F-10A) shall indicate a requested date and location for the administration of the state comprehensive exam, ~~along and include with~~ the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed ~~instructional~~ **instructional** assignments; and
 - (B) a copy of any ~~rules, regulations, rules~~ and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course;
- (8) Monitor, or designate an instructor certified by the Commission to monitor, a presentation of each instructor once during each three year certification period in each topic taught by the instructor and prepare a written evaluation on the instructor's performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure that the instructor is using the Instructional System Design model, and that the delivery is objective based, documented **by by**, and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluations of the instructor. For probationary instructors,

Comment [A1]: The rulemaking coordinator would like to restore the language that was deleted pursuant to the inquiry in the technical change requests.

the evaluations conducted by another instructor shall be prepared on ~~Commission forms~~ the Criminal Justice Instructor Evaluation (Form F-16), and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on ~~Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations~~ the Criminal Justice Instructor Evaluation (Form F-16), ~~shall~~ be kept on file by the school for a period of ~~three years~~ years, and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the Commission. Any ~~designated~~ instructor certified by the Commission who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated;

- (9) Administer or designate a staff person to administer appropriate tests during course delivery:
- (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
 - (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of this ~~Subchapter; Subchapter; and~~
- ~~(10) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and~~
- ~~(11)(10)~~ Not more than 10 days after ~~receiving from the Commission's representative the Report of Examination Scores; the conclusion of a school's offering of Basic Law Enforcement Training~~, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) ~~which that~~ shall include:
- (A) a "Student Course Completion" form for each individual enrolled on the day of orientation; and
 - (B) a "Certification and Test Score Release" form.
- (c) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ coordinating, and delivering each Commission-certified "Criminal Justice Instructor Training ~~Course" Course;~~" the School Director shall:
- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
 - (2) Schedule at least one evaluator for each six trainees, as follows:
 - (A) no evaluator shall be assigned more than six trainees during a course delivery;

- 1 (B) each evaluator, as well as the instructors, ~~must shall~~ have ~~successfully~~ completed a
 2 Commission-certified instructor training course or an equivalent instructor training course
 3 utilizing the Instructional Systems Design model, an international model with applications in
 4 education, military training, and private enterprise; and
- 5 (C) each instructor and evaluator ~~must shall~~ document successful participation in a program
 6 presented by the North Carolina Justice Academy for purposes of familiarization and
 7 supplementation relevant to delivery of the instructor training course and trainee evaluation;
- 8 (3) Not fewer than 30 days before commencing delivery of the course, submit to the Commission a Pre-
 9 Delivery Report of Training Course Presentation ~~Form F-10A(ITC)~~ [Form F-10A(ITC)] with the
 10 following attachments:
- 11 (A) a course schedule showing arrangement of topical presentations and proposed instructional
 12 assignments;
- 13 (B) the names and last four digits of the social security numbers of all instructors and evaluators;
 14 and
- 15 (C) a copy of any rules, ~~regulations~~, and requirements for the school; and
- 16 (4) Not more than 10 days after course ~~completion~~ completion, submit to the Commission a Post-Delivery
 17 Report [Form F-10B(ITC)] containing the following:
- 18 (A) class enrollment roster;
- 19 (B) a course schedule with designation of instructors and evaluators utilized in delivery;
- 20 (C) scores recorded for each trainee on ~~both the 80 minute skill presentation and the final written~~
 21 ~~examination;~~ presentation; and
- 22 (D) designation of trainees who ~~successfully~~ completed the course in its entirety and whom the
 23 School Director finds to be competent to instruct.
- 24 (d) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ coordinating, and delivering each
 25 Commission-certified radar, radar and time-distance, time-distance, or lidar speed measurement operator training course
 26 or re-certification course, the School Director shall:
- 27 (1) select and schedule ~~radar, time distance, or lidar~~ speed measurement instrument instructors who are
 28 certified by the Commission as instructors for the specific speed measurement instruments in which the
 29 trainees are to receive ~~instruction;~~ instruction as follows:
- 30 (A) provide to the instructor the Commission form(s) for motor skill examination on each trainee;
- 31 (B) require the instructor to complete the motor skill examination form on each trainee indicating
 32 the level of proficiency obtained on each specific instrument; and
- 33 (C) require each instructor to sign each individual form and submit the original to the School
 34 Director;
- 35 (2) not fewer than 30 days before the scheduled starting ~~date date~~, submit to the Director of the Standards
 36 Division a ~~Request for Training~~ Pre-Delivery Report of Speed Measuring Instrument Course
 37 Presentation [Form F-10A (SMD)] ~~which that~~ shall contain a period of course delivery including the

1 proposed starting date, course ~~location~~ location, requested date and location for the administration of
2 the state ~~exam~~ exam, and the number of trainees to be trained on each type of approved speed
3 measurement instrument. The Director of the Standards Division shall review the request and notify
4 the School Director within thirty business days if the request is approved or denied; and
5 (3) upon completing delivery of the Commission-certified course, and not more than 10 days after
6 ~~receiving from the Commission's representative the Report of Examination Scores, the conclusion of a~~
7 school's offering of a certified radar, radar and time-distance, time-distance, or lidar speed
8 measurement operator training course or re-certification course, the School Director shall notify the
9 Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery
10 Report of Training Course ~~Presentation~~. Presentation [Form F-10B (SMD)]. This report shall include
11 the original motor-skill examination form(s) completed and signed by the certified instructor
12 responsible for administering the motor-skill examination to the respective trainee.
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14 *History Note: Authority G.S. 17C-6;*
15 *Eff. January 1, 1981;*
16 *Amended Eff. November 1, 1981;*
17 *Readopted w/change Eff. July 1, 1982;*
18 *Amended Eff. January 1, 2015; June 1, 2013; April 1, 2009; November 1, 2007; January 1, 2006;*
19 *May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1,*
20 *1985.*
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From: [Allen, Trevor](#)
To: [Woy, Lindsay R](#)
Cc: [Vojtko, Dana](#); [Hammond, Abigail M](#)
Subject: RE: Administrative rules 12 NCAC 09B .0202, .0205, .0209, .0226, .0227, .0232, .0233, and .0302
Date: Monday, November 03, 2014 11:04:37 AM

Lindsay,

Each of these rules looks good, with the exception of 12 NCAC 09B .0202. The wording in paragraph (b)(4) is not correct – my fault for not seeing it. I spoke with Abby about it this morning, and I’m not sure of the next step.

Trevor

From: Woy, Lindsay R [mailto:lindsay.woy@oah.nc.gov]
Sent: Thursday, October 30, 2014 2:20 PM
To: Allen, Trevor
Cc: Vojtko, Dana
Subject: Administrative rules 12 NCAC 09B .0202, .0205, .0209, .0226, .0227, .0232, .0233, and .0302

Good afternoon,

Attached are draft copies of administrative rules **12 NCAC 09B .0202, .0205, .0209, .0226, .0227, .0232, .0233, and .0302** to be entered into the NC Administrative Code. Pursuant to 26 NCAC 02C .0114, the agency shall notify OAH of any error made in the attached draft within 5 business days of receipt of this email. If OAH receives written notification from the agency of any error made by OAH, OAH shall correct the error.

OAH does not post rules to the internet until the agency has responded or until 5 business days has expired.

Even though the OAH rule does not require agencies to respond if the final draft is OK, we will post your rules on the internet if we should hear from you before the 5th business day.

Thank you and have a great day!

Lindsay Woy
Editorial Assistant
NC Office of Administrative Hearings
Rules Division
1711 New Hope Church Rd
Raleigh, NC 27609
lindsay.woy@oah.nc.gov

1 **12 NCAC 09B .0202** is proposed for amendment as published in vol. 28, issue 24, pages 2986-2989 **with changes:**

2
3 **12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR**

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5 School Director shall:

- 6 (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established
7 in this Subchapter;
- 8 (2) Select and schedule instructors who are certified by the Commission;
- 9 (3) Provide each instructor with a current Commission course outline and all necessary additional
10 information concerning the instructor's duties and responsibilities;
- 11 (4) Notify each instructor that he or she **mustshall** comply with the Basic Law Enforcement Training
12 Course Management Guide and provide him or her access to the most current version of the Course
13 Management Guide;
- 14 (5) Review each instructor's lesson plans and other instructional materials for conformance to Commission
15 standards and to minimize repetition and duplication of subject matter;
- 16 (6) Arrange for the **timely** availability of appropriate audiovisual aids and materials, publications,
17 facilities, and equipment for training in all topic areas;
- 18 (7) Develop, adopt, reproduce, and distribute any supplemental **rules, regulations, rules** and requirements
19 determined by the school to be necessary or appropriate for:
 - 20 (A) effective course delivery;
 - 21 (B) establishing responsibilities and obligations of agencies or departments employing or
22 sponsoring course trainees; and
 - 23 (C) regulating trainee participation and **demeanor demeanor, and** ensuring trainee **attendance**
24 **attendance**, and maintaining performance records;
- 25 (8) If appropriate, recommend housing and dining facilities for trainees;
- 26 (9) Administer the course delivery in accordance with Commission procedures and standards, give
27 consideration to advisory guidelines issued by the Commission, and ensure that the training offered is
28 safe and effective;
- 29 (10) Maintain direct supervision, direction, and control over the performance of all persons to whom any
30 portion of the planning, development, presentation, or administration of a course has been delegated.
31 The comprehensive final examination shall be administered by the Criminal Justice Education and
32 Training Standards Commission; and
- 33 (11) Report the completion of each presentation of a Commission-certified criminal justice training course
34 to the Commission.
- 35 (12) All forms required for submission to the Commission are located on the Agency's website:
36 [http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-
Education-and-Training-Standards/Forms-and-Publications.aspx](http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-
37 Education-and-Training-Standards/Forms-and-Publications.aspx).

(b) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ **coordinating**, and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

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- (7) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C ~~.0211 .0211~~. The Pre-Delivery Report (Form F-10A) shall indicate a requested date and location for the administration of the state comprehensive exam, along and include with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed ~~instructional~~ instructional assignments; and
 - (B) a copy of any ~~rules, regulations, rules~~ and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course;
- (8) Monitor, or designate an instructor certified by the Commission to monitor, a presentation of each instructor once during each three year certification period in each topic taught by the instructor and prepare a written evaluation on the instructor's performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure that the instructor is using the Instructional System Design model, and that the delivery is objective based, documented ~~by by~~ and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluations of the instructor. For probationary instructors,

Comment [A1]: Pursuant to the inquiry in the technical change request, this language was deleted and approved by the Rules Review Commission on October 16, 2014.

the evaluations conducted by another instructor shall be prepared on ~~Commission forms~~ the Criminal Justice Instructor Evaluation (Form F-16), and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on ~~Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations~~ the Criminal Justice Instructor Evaluation (Form F-16), ~~shall~~ be kept on file by the school for a period of ~~three years~~ years, and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the Commission. Any ~~designated~~ instructor certified by the Commission who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated;

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- (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
 - (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of this ~~Subchapter; Subchapter; and~~
- ~~(10) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and~~
- ~~(11)(10)~~ Not more than 10 days after ~~receiving from the Commission's representative the Report of Examination Scores; the conclusion of a school's offering of Basic Law Enforcement Training~~, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) ~~which that~~ shall include:
- (A) a "Student Course Completion" form for each individual enrolled on the day of orientation; and
 - (B) a "Certification and Test Score Release" form.
- (c) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ coordinating, and delivering each Commission-certified "Criminal Justice Instructor Training ~~Course" Course;~~" the School Director shall:
- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
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- 1 (B) each evaluator, as well as the instructors, ~~must shall~~ have ~~successfully~~ completed a
 2 Commission-certified instructor training course or an equivalent instructor training course
 3 utilizing the Instructional Systems Design model, an international model with applications in
 4 education, military training, and private enterprise; and
- 5 (C) each instructor and evaluator ~~must shall~~ document successful participation in a program
 6 presented by the North Carolina Justice Academy for purposes of familiarization and
 7 supplementation relevant to delivery of the instructor training course and trainee evaluation;
- 8 (3) Not fewer than 30 days before commencing delivery of the course, submit to the Commission a Pre-
 9 Delivery Report of Training Course Presentation ~~Form F-10A(ITC)~~ [Form F-10A(ITC)] with the
 10 following attachments:
- 11 (A) a course schedule showing arrangement of topical presentations and proposed instructional
 12 assignments;
- 13 (B) the names and last four digits of the social security numbers of all instructors and evaluators;
 14 and
- 15 (C) a copy of any rules, ~~regulations~~, and requirements for the school; and
- 16 (4) Not more than 10 days after course ~~completion~~ completion, submit to the Commission a Post-Delivery
 17 Report [Form F-10B(ITC)] containing the following:
- 18 (A) class enrollment roster;
- 19 (B) a course schedule with designation of instructors and evaluators utilized in delivery;
- 20 (C) scores recorded for each trainee on ~~both the 80 minute skill presentation and the final written~~
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 23 School Director finds to be competent to instruct.
- 24 (d) In addition to Paragraph (a) of this Rule, in planning, developing, ~~coordinating~~ coordinating, and delivering each
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 26 or re-certification course, the School Director shall:
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 28 certified by the Commission as instructors for the specific speed measurement instruments in which the
 29 trainees are to receive ~~instruction;~~ instruction as follows:
- 30 (A) provide to the instructor the Commission form(s) for motor skill examination on each trainee;
- 31 (B) require the instructor to complete the motor skill examination form on each trainee indicating
 32 the level of proficiency obtained on each specific instrument; and
- 33 (C) require each instructor to sign each individual form and submit the original to the School
 34 Director;
- 35 (2) not fewer than 30 days before the scheduled starting ~~date date~~, submit to the Director of the Standards
 36 Division a ~~Request for Training~~ Pre-Delivery Report of Speed Measuring Instrument Course
 37 Presentation [Form F-10A (SMD)] ~~which that~~ shall contain a period of course delivery including the

1 proposed starting date, course ~~location~~ location, requested date and location for the administration of
 2 the state ~~exam~~ exam, and the number of trainees to be trained on each type of approved speed
 3 measurement instrument. The Director of the Standards Division shall review the request and notify
 4 the School Director within thirty business days if the request is approved or denied; and
 5 (3) upon completing delivery of the Commission-certified course, and not more than 10 days after
 6 ~~receiving from the Commission's representative the Report of Examination Scores, the conclusion of a~~
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 9 Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery
 10 Report of Training Course ~~Presentation~~ Presentation [Form F-10B (SMD)]. This report shall include
 11 the original motor-skill examination form(s) completed and signed by the certified instructor
 12 responsible for administering the motor-skill examination to the respective trainee.

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 14 *History Note:* Authority G.S. 17C-6;
 15 Eff. January 1, 1981;
 16 Amended Eff. November 1, 1981;
 17 Readopted w/change Eff. July 1, 1982;
 18 Amended Eff. January 1, 2015; June 1, 2013; April 1, 2009; November 1, 2007; January 1, 2006;
 19 May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1,
 20 1985.

REQUEST FOR TECHNICAL CHANGE

AGENCY: **Criminal Justice Education and Training Standards Commission**

RULE CITATION: **12 NCAC 09B .0202**

DEADLINE FOR RECEIPT: Friday, October 10, 2014

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, replace "must" with "shall"

Line 15, define or delete "timely"

Line 17; and page 2, line 26, what is the purpose of this sentence? What are the school's supplemental rules or regulations?

Lines 34 thru 36 appear to be responsive to providing the location of the forms. However, for each form, if there is mandatory content necessary for the reviewing party to evaluate the form, then the information should be provided in the rule. The purpose of the rule is to provide notice to the regulated public of the requirements of the agency. If the requirements are not set forth in a rule, then the regulated party may not be required to provide the information.

Page 2, line 1, add a comma after "coordinating"

Page 2, lines 3 thru 4, is the "Basic Law Enforcement Training Course Management Guide" not a rule? Is this document something outside of a rule? Please clarify.

Page 2, line 8, should the term "those instructors" be clarified as "specialized instructors"

Page 2, line 9, what are the "in any other capacity"?

Page 2, lines 10 thru 11, looking at 12 NCAC 09B .0304(a), what topical areas are not covered by this sentence? It seems confusing. Please clarify.

Comment [AMH1]: Staff counsel inquired about the language in the technical change requests sent to the agency.

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Friday, September 26, 2014

Page 2, line 11 thru 12, and in light of the suggestion for page 2, line 8, should the term be "specialized certified instructor"? Or should the "certified" be deleted in light of the following clause of "certified by the..."

Page 2, line 14, please maintain a consistent term for "specialized certified instructor"

Page 2, line 17, consider rewriting the sentence as follows:

~~"Not scheduled any~~ No single individual ~~to~~ shall instruct..."

Page 2, line 26, is this related to page 1, line 17?

Page 2, line 33, where is the "Instructional System Design model" found? It is a known standard that should be incorporated?

Page 2, line 37, and page 3, line 3, and page 4, lines 26, 27, and 29, what are the Commission forms? What information is contained within them necessary for the Commission's review? Where are they located?

Page 3, lines 7 thru 8, consider rewriting the sentence as follows:

~~"Any designated instructor certified by the Commission who is..."~~

Page 3, line 28, and page 4, line 20, add a comma after "coordinating"

Page 3, line 34, replace "must" with "shall"

Page 3, line 34, define or delete "successfully"

Page 4, line 23 contains a list like line 21. Should the phrase "radar and time-distance" be included on line 23?

Page 4, line 33, replace "which" with "that"

Page 4, line 35, add a comma after "exam"

Page 4, lines 36 thru 37, are there any requirements on the response from the Director of the Standards Division that should be included in this Rule, such as how long the request is reviewed before the school is notified of the decision?

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, September 26, 2014

1 **12 NCAC 09B .0202** is proposed for amendment as published in vol. 28, issue 24, pages 2986-2989:

2 **12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR**

3 (a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the
4 School Director shall:

- 5 (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established
6 in this Subchapter;
- 7 (2) Select and schedule instructors who are certified by the Commission;
- 8 (3) Provide each instructor with a current Commission course outline and all necessary additional
9 information concerning the instructor's duties and responsibilities;
- 10 (4) Notify each instructor that he or she must comply with the Basic Law Enforcement Training Course
11 Management Guide and provide him or her access to the most current version of the Course
12 Management Guide;
- 13 (5) Review each instructor's lesson plans and other instructional materials for conformance to Commission
14 standards and to minimize repetition and duplication of subject matter;
- 15 (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications,
16 facilities, and equipment for training in all topic areas;
- 17 (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements
18 determined by the school to be necessary or appropriate for:
 - 19 (A) effective course delivery;
 - 20 (B) establishing responsibilities and obligations of agencies or departments employing or
21 sponsoring course trainees; and
 - 22 (C) regulating trainee participation and demeanor and ensuring trainee attendance and
23 maintaining performance records;
- 24 (8) If appropriate, recommend housing and dining facilities for trainees;
- 25 (9) Administer the course delivery in accordance with Commission procedures and standards, give
26 consideration to advisory guidelines issued by the Commission, and ensure that the training offered is
27 safe and effective;
- 28 (10) Maintain direct supervision, direction, and control over the performance of all persons to whom any
29 portion of the planning, development, presentation, or administration of a course has been delegated.
30 The comprehensive final examination shall be administered by the Criminal Justice Education and
31 Training Standards Commission; and
- 32 (11) Report the completion of each presentation of a Commission-certified criminal justice training course
33 to the Commission.
- 34 (12) All forms required for submission to the Commission are located on the Agency's website:
35 [http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-
Education-and-Training-Standards/Forms-and-Publications.aspx](http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-
36 Education-and-Training-Standards/Forms-and-Publications.aspx)

- 1 (b) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-
 2 certified Basic Law Enforcement Training Course, the School Director shall:
- 3 (1) Deliver training in accordance with the most current version of the Basic Law Enforcement Training
 4 Course Management Guide as published by the North Carolina Justice Academy;
 - 5 (2) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar
 6 weeks, except that there may be as many as three one-week breaks until course requirements are
 7 completed;
 - 8 (3) Schedule only those instructors certified by the Commission to teach those high liability areas as
 9 specified in Rule .0304(a) of this Subchapter as either the lead instructor or in any other capacity;
 - 10 (4) With the exception of the First Responder, Physical Fitness, Explosives and Hazardous Materials, and
 11 topical areas as outlined in Rule .0304(a) of this Subchapter, schedule one specialized certified
 12 instructor certified by the Commission for each six trainees while actively engaged in a practical
 13 performance exercise;
 - 14 (5) Schedule one specialized certified instructor certified by the Commission for each eight trainees while
 15 actively engaged in a practical performance exercise in the topical area "Subject Control Arrest
 16 Techniques;"
 - 17 (6) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum
 18 during any one delivery of the Basic Law Enforcement Training Course presentation;
 - 19 (7) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course,
 20 submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12
 21 NCAC 09C .0211 .0211. The Pre-Delivery Report (Form F-10A) shall indicate a requested date and
 22 location for the administration of the state comprehensive exam, along and include with the following
 23 attachments:
 - 24 (A) a course schedule showing arrangement of topical presentations and proposed ~~instructional~~
 25 instructional assignments; and
 - 26 (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall
 27 also be given to each trainee and to the executive officer of each trainee's employing or
 28 sponsoring agency or department at the time the trainee enrolls in the course;
 - 29 (8) Monitor, or designate an instructor certified by the Commission to monitor, a presentation of each
 30 instructor once during each three year certification period in each topic taught by the instructor and
 31 prepare a written evaluation on the instructor's performance and suitability for subsequent instructional
 32 assignments. The observations shall be of sufficient duration to ensure that the instructor is using the
 33 Instructional System Design model, and that the delivery is objective based, documented by and
 34 consistent with a Commission-approved lesson plan. For each topic area, the School Director's
 35 evaluation shall be based upon the course delivery observations, the instructor's use of the approved
 36 lesson plan, and the results of the student evaluations of the instructor. For probationary instructors,
 37 the evaluations conducted by another instructor shall be prepared on Commission forms and forwarded

Comment [A1]: This language was in the Rule adopted by the Criminal Justice Education and Training Standards Commission on August 22, 2014.

1 to the Commission. Based on this evaluation, the School Director shall recommend approval or denial
 2 of requests for General Instructor Certification. For all other instructors, these evaluations shall be
 3 prepared on Commission forms in accordance with Commission standards as set out in this Chapter.
 4 These evaluations shall be kept on file by the school for a period of three years and shall be made
 5 available for inspection by a representative of the Commission upon request. In the event the
 6 evaluation of an instructor indicates that his or her performance was less than acceptable, the School
 7 Director shall forward a copy of the evaluation to the Commission. Any designated instructor certified
 8 by the Commission who is evaluating the instructional presentation of another instructor shall hold
 9 certification in the same instructional topic area as that for which the instructor is being evaluated;

10 (9) Administer or designate a staff person to administer appropriate tests during course delivery:

11 (A) to determine and record the level of trainee comprehension and retention of instructional
 12 subject- matter;

13 (B) to provide a basis for a final determination or recommendation regarding the minimum
 14 degree of knowledge and skill of each trainee to function as an inexperienced law
 15 enforcement officer; and

16 (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of
 17 this ~~Subchapter~~; ~~Subchapter~~; and

18 ~~(10) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours~~
 19 ~~of scheduled class time and classroom facilities for the administration of a written examination to those~~
 20 ~~trainees who have satisfactorily completed all course work; and~~

21 ~~(11)(10) Not more than 10 days after receiving from the Commission's representative the Report of~~
 22 ~~Examination Scores, the conclusion of a school's offering of Basic Law Enforcement Training, submit~~
 23 ~~to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which that~~
 24 shall include:

25 (A) a "Student Course Completion" form for each individual enrolled on the day of orientation;
 26 and

27 (B) a "Certification and Test Score Release" form.

28 (c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-
 29 certified "Criminal Justice Instructor Training Course" the School Director shall:

30 (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar
 31 weeks until course requirements are completed;

32 (2) Schedule at least one evaluator for each six trainees, as follows:

33 (A) no evaluator shall be assigned more than six trainees during a course delivery;

34 (B) each evaluator, as well as the instructors, must have successfully completed a Commission-
 35 certified instructor training course or an equivalent instructor training course utilizing the
 36 Instructional Systems Design model, an international model with applications in education,
 37 military training, and private enterprise; and

- 1 (C) each instructor and evaluator must document successful participation in a program presented
 2 by the North Carolina Justice Academy for purposes of familiarization and supplementation
 3 relevant to delivery of the instructor training course and trainee evaluation;
- 4 (3) Not fewer than 30 days before commencing delivery of the course, submit to the Commission a Pre-
 5 Delivery Report of Training Course Presentation ~~Form F-10A(ITC)~~ [Form F-10A(ITC)] with the
 6 following attachments:
- 7 (A) a course schedule showing arrangement of topical presentations and proposed instructional
 8 assignments;
- 9 (B) the names and last four digits of the social security numbers of all instructors and evaluators;
 10 and
- 11 (C) a copy of any rules, regulations, and requirements for the school; and
- 12 (4) Not more than 10 days after course ~~completion~~ completion, submit to the Commission a Post-Delivery
 13 Report [Form F-10B(ITC)] containing the following:
- 14 (A) class enrollment roster;
- 15 (B) a course schedule with designation of instructors and evaluators utilized in delivery;
- 16 (C) scores recorded for each trainee on ~~both the 80 minute skill presentation and the final written~~
 17 ~~examination; presentation; and~~
- 18 (D) designation of trainees who ~~successfully~~ completed the course in its entirety and whom the
 19 School Director finds to be competent to instruct.
- 20 (d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-
 21 certified radar, radar and time-distance, time-distance, or lidar speed measurement operator training course or re-
 22 certification course, the School Director shall:
- 23 (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are
 24 certified by the Commission as instructors for the specific speed measurement instruments in which the
 25 trainees are to receive ~~instruction; instruction as follows:~~
- 26 (A) provide to the instructor the Commission form(s) for motor skill examination on each trainee;
- 27 (B) require the instructor to complete the motor skill examination form on each trainee indicating
 28 the level of proficiency obtained on each specific instrument; and
- 29 (C) require each instructor to sign each individual form and submit the original to the School
 30 Director;
- 31 (2) not fewer than 30 days before the scheduled starting ~~date~~ date, submit to the Director of the Standards
 32 Division a ~~Request for Training~~ Pre-Delivery Report of Speed Measuring Instrument Course
 33 Presentation [Form F-10A (SMI)] which shall contain a period of course delivery including the
 34 proposed starting date, course ~~location~~ location, requested date and location for the administration of
 35 the state exam and the number of trainees to be trained on each type of approved speed measurement
 36 instrument. The Director of the Standards Division shall review the request and notify the School
 37 Director if the request is approved or denied; and

1 (3) upon completing delivery of the Commission-certified course, and not more than 10 days after
2 ~~receiving from the Commission's representative the Report of Examination Scores,~~ the conclusion of a
3 school's offering of a certified radar, radar and time-distance, time-distance, or lidar speed
4 measurement operator training course or re-certification course, the School Director shall notify the
5 Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery
6 Report of Training Course ~~Presentation.~~ Presentation [Form F-10B (SMI)]. This report shall include
7 the original motor-skill examination form(s) completed and signed by the certified instructor
8 responsible for administering the motor-skill examination to the respective trainee.
9

10 *History Note: Authority G.S. 17C-6;*
11 *Eff. January 1, 1981;*
12 *Amended Eff. November 1, 1981;*
13 *Readopted w/change Eff. July 1, 1982;*
14 *Amended Eff. January 1, 2015; June 1, 2013; April 1, 2009; November 1, 2007; January 1, 2006;*
15 *May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1,*
16 *1985.*
17