

**G.S. 150B-21.3A Report for 12 NCAC 02, OFFICE OF THE ATTORNEY GENERAL**

Agency - Department of Justice

Comment Period - May 2, 2016-July 1, 2016

Date Submitted to APO - Filled in by RRC staff

| Subchapter                                  | Rule Section                                     | Rule Citation     | Rule Name                                     | Date and Last Agency Action on the Rule | Agency Determination [150B-21.3A(c)(1)a]      | Implements or Conforms to Federal Regulation [150B-21.3A(e)] | Federal Regulation Citation | Public Comment Received [150B-21.3A(c)(1)] | Agency Determination Following Public Comment [150B-21.3A(c)(1)] |
|---|--|-------------------|---|---|---|--|-----------------------------|--|--|
| SUBCHAPTER 2A - OFFICE RULES                | SECTION .0200 - DUTIES                           | 12 NCAC 02A .0201 | GENERAL                                       | Readopted Eff. January 5, 1978          | Unnecessary                                   | No   |                             | No   | Unnecessary  |
|   |  | 12 NCAC 02A .0202 | SPECIFIC                                      | Readopted Eff. January 5, 1978          | Unnecessary                                   | No   |                             | No   | Unnecessary  |
|   |  | 12 NCAC 02A .0203 | CONSENT JUDGMENTS                             | Amended Eff. July 1, 1993               | Unnecessary                                   | No   |                             | No   | Unnecessary  |
|   | SECTION .0400 - OPINIONS OF THE ATTORNEY GENERAL | 12 NCAC 02A .0401 | WHEN RENDERED: FORM                           | Readopted Eff. January 5, 1978          | Unnecessary                                   | No   |                             | No   | Unnecessary  |
|   |  | 12 NCAC 02A .0402 | WHEN DENIED: REASONS                          | Readopted Eff. January 5, 1978          | Unnecessary                                   | No   |                             | No   | Unnecessary  |
|   |  | 12 NCAC 02A .0403 | WHEN PUBLISHED: SUBSCRIPTION                  | Readopted Eff. January 5, 1978          | Unnecessary                                   | No   |                             | No   | Unnecessary  |
| SUBCHAPTER 2H - TORRENS ACT RULES AND FORMS | SECTION .0100 - RULES                            | 12 NCAC 02H .0101 | NOTICE TO BE FILED WITH CLERK OF COURT        | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0102 | DEPOSIT AND SURETY REQUIREMENTS               | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0103 | DUTIES OF EXAMINER OF TITLES                  | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0104 | CHANGE OF ATTORNEYS                           | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0105 | APPOINTMENT OF GUARDIAN AD LITEM              | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0106 | CUSTODY OF DEPOSITIONS                        | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0107 | NOTICE REQUIREMENTS                           |   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|   |  | 12 NCAC 02H .0108 | AMENDMENT OF PLEADINGS AND SURVEY OF PROPERTY | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |

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|--|---|-------------------|---|---|---|--|-----------------------------|--|--|
|  |   | 12 NCAC 02H .0109 | HEARING BEFORE EXAMINER OF TITLES             | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0110 | PRELIMINARY REPORT OF EXAMINER                | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0111 | FILING OF EXCEPTIONS TO REPORT                | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0112 | NOTICE OF AND ARGUMENT PURSUANT TO EXCEPTIONS | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0113 | DATE OF TRANSCRIPTION OF DECREE               | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0114 | METHOD OF CONVEYANCE                          | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0115 | PARTIAL CONVEYANCE OF REGISTERED LAND         | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0116 | NOTATION OF TERMINATION OF LEASES             | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0117 | OATH PURSUANT TO LETTERS OF ATTORNEY          | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02H .0118 | CORRECTION OF NAME ON CERTIFICATE             | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  | <b>SECTION .0200 - FORMS</b>              | 12 NCAC 02H .0201 | AVAILABILITY OF FORMS                         | Readopted Eff. January 5, 1978          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
| <b>SUBCHAPTER 21 - COMPANY AND RAILROAD POLICE</b> | <b>SECTION .0100 - GENERAL PROVISIONS</b> | 12 NCAC 02I .0101 | LOCATION                                      | Amended Eff. August 1, 1996             | Necessary without substantive public interest | No   |                             | Yes  | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02I .0102 | PURPOSES                                      | Amended Eff. August 2, 1993             | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02I .0103 | ADMINISTRATIVE STAFF                          | Amended Eff. August 2, 1993             | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  |   | 12 NCAC 02I .0104 | DEFINITIONS                                   | Eff. August 2, 1993                     | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|  | <b>SECTION .0200 - COMMISSIONING</b>      | 12 NCAC 02I .0202 | MINIMUM STANDARDS FOR COMPANY POLICE OFFICERS | Amended Eff. January 1, 2008            | Necessary without substantive public interest | No   |                             | Yes  | Necessary without substantive public interest                    |

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|---------------------------------------|--|-------------------|--|--|---|--|-----------------------------|--|--|
|                                       |  | 12 NCAC 02I .0203 | APPLICATION FOR COMPANY POLICE AGENCY                    | Amended Eff. February 1, 2008                        | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0204 | APPLICATION FOR COMPANY POLICE OFFICER                   | Recodified from 12 NCAC 2I .0203 Eff. August 2, 1993 | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0205 | BACKGROUND INVESTIGATION                                 | Recodified from 12 NCAC 2I .0204 Eff. August 2, 1993 | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0206 | FEE  | Amended Eff. August 1, 1996                          | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0208 | OATH   | Recodified from 12 NCAC 2I .0207 Eff. August 2, 1993 | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0210 | LIABILITY INSURANCE                                      | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0211 | SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0212 | SUSPENSION, REVOCATION, OR DENIAL OF OFFICER COMMISSION  | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0213 | PERIOD OF SUSPENSION, REVOCATION OR DENIAL               | Eff. August 2, 1993                                  | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0214 | SUMMARY SUSPENSIONS                                      | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       | <b>SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN</b> | 12 NCAC 02I .0301 | TENURE   | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0304 | PROHIBITED ACTS  | Amended Eff. January 1, 2008                         | Necessary without substantive public interest | No   |                             | Yes  | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0305 | TRANSFERS  | Amended Eff. February 1, 2008                        | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02I .0306 | BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION    | Amended Eff. February 1, 2008                        | Necessary with substantive public interest    | No   |                             | No   | Necessary with substantive public interest                       |
|                                       | <b>SECTION .0500 - AGENCY RECORD RETENTION</b>           | 12 NCAC 02I .0501 | AGENCY RETENTION OF RECORDS OF COMMISSION                | Eff. February 1, 2008                                | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
| <b>SUBCHAPTER 02J - CAMPUS POLICE</b> | <b>SECTION .0100 - GENERAL PROVISIONS</b>                | 12 NCAC 02J .0101 | LOCATION   | Eff. April 1, 2006                                   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02J .0102 | PURPOSES   | Eff. April 1, 2006                                   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02J .0103 | ADMINISTRATIVE STAFF                                     | Eff. April 1, 2006                                   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       |  | 12 NCAC 02J .0104 | DEFINITIONS  | Eff. April 1, 2006                                   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|                                       | <b>SECTION .0200 - COMMISSIONING</b>                     | 12 NCAC 02J .0201 | MINIMUM STANDARDS FOR CAMPUS POLICE OFFICERS             | Eff. April 1, 2006                                   | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |

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|------------|--|-------------------|--|---|---|--|-----------------------------|--|--|
|            |  | 12 NCAC 02J .0202 | APPLICATION FOR CAMPUS POLICE AGENCY                     | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0203 | APPLICATION FOR CAMPUS POLICE OFFICER                    | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0204 | BACKGROUND INVESTIGATION                                 | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0205 | FEE  | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0206 | OATH   | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0207 | LIABILITY INSURANCE                                      | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0208 | SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0209 | SUSPENSION, REVOCATION, OR DENIAL OF OFFICER COMMISSION  | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0210 | PERIOD OF SUSPENSION, REVOCATION OR DENIAL               | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0211 | SUMMARY SUSPENSIONS                                      | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            | <b>SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN</b> | 12 NCAC 02J .0301 | TENURE   | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0302 | PROHIBITED ACTS  | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0303 | TRANSFERS  | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |
|            |  | 12 NCAC 02J .0304 | BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION    | Eff. April 1, 2006                      | Necessary without substantive public interest | No   |                             | No   | Necessary without substantive public interest                    |

**VERBATIM TEXT OF COMMENTS RECEIVED FROM KEITH WILLIAMS ON JULY 1, 2016, FOR COMPANY POLICE RULES. AGENCY RESPONSE FOLLOWS EACH COMMENT:**

*74E-6(c) All Company Police. – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers*

*All law enforcement officers regardless of tax support or not, swear an oath to the state. The state authorizes Company Police officers law enforcement authority to carry out their official duties as is given to municipal or county police this authority should not be diminish by code.*

*1. Administrative code 12 NCAC 02I .0101 should be changed to so the term “POLICE” may be used prominently on badges, patches and vehicles.*

*●Problem: The current code confuses and leads the public and other law enforcement officers to believe that these officers are security guards. This does not embody the spirit of the law. Police is the universal term used by Municipal Corporations, University, College, State, Federal, Park Rangers Police etc... in a prominent way. This term when used prominently confers authority and helps gains compliance so the officer can execute their official duties.*

*●Changing this helps the public, regardless of the native spoken language i.e.; French, Spanish, Italian, English etc... or the area of country in which the public derive, to identify these officers as law enforcement officers and their authority as such.*

**RESPONSE:** The Agency determined this rule was necessary without substantive public interest. Based on the comment, the Agency will not change the categorization. Requiring the badges, uniforms and vehicles used by company police agencies to use the term ‘Company Police’ is mandated in 12 NCAC 02I .0306 (as opposed to 12 NCAC 02I .0101 as indicated in the comment). This mandate is intended to provide the public with clear notice of the jurisdiction for which that agency is responsible. If company police agencies used only the word “Police,” the general public may become confused and believe that the officer could provide service or respond to an urgent law enforcement need anywhere in that municipality. Since company police agencies have jurisdiction only in the properties for which they have contracts, we believe it is necessary to differentiate the markings on their badges, vehicles and uniforms by adding the word ‘Company’.

2. Administrative code 12 NCAC 02I .0304 should be changed to allow the use of emergency equipment consistent with G.S. 20-125(b)

●*Problem: The current code does not fully support the official duties of these officers and does not equate the safety of the officer as municipal and county counter parts.*

●*Statement: All law enforcement officers have their jurisdiction. All North Carolina certified officers are trained by the state in Emergency Vehicle Operation and responsible to its citizens in their respective jurisdictions. North Carolina law G.S. 20-125(b) allows all law enforcement officers to operate their blue lights and sirens in connection with their jurisdiction regardless if the officers in their jurisdiction or beyond. This law does not extend the jurisdiction of the officer but is intended to increase the overall effectiveness of the officer's official duties.*

●*Solution: This restriction should be removed. This restriction removal would allow communities these officers serve to receive additional resources and will increase officer safety for the officer(s) serving the jurisdictions by allowing them to receive adequate and timely backup.*

**RESPONSE:** The Agency determined this rule was necessary without substantive public interest. Based on the comment, the Agency will not change the categorization. For much the same reasoning as detailed in #1 (above), a company police agency's jurisdiction is limited to the property for which it is contracted. Unlike state and municipal law enforcement agencies, company police agencies, by statute, do not have jurisdiction on the public streets and highways. Amending the rule as suggested by the comment would unlawfully extend the jurisdictional limits created by statute.

3. Administrative code 12 NCAC 02I .0202 should be changed so the rules for initial certification and transferring a certification are consistent with municipal and county police applicants.

●*This will allow a consistent process for applicants regardless if the Police Department in which they are applying is tax supported or non tax supported.*

**RESPONSE:** The Agency determined this rule was necessary without substantive public interest. Based on the comment, the Agency will not change the categorization. The revisions suggested by the comments to 12 NCAC 02I .0202 would exceed the underlying statutory authority for the rule. The certification standards are

**materially the same for both company police and criminal justice officers, however, the certification for each group is separate by statute. See §§ G.S. 17C-10 and G.S. 74E-8. make less stringent the requirements for background checks on those seeking company police commissions. The Company/Campus Police program strives to ensure that high quality officers are commissioned under the program. Lowering these standards would compromise the quality of those officers.**