



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Code Officials Qualification Board
2. Rule citation & name: 11 NCAC 08 .0735 Temporary Certificate
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes Effective date: <input type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: February 12, 2021 b. Proposed Temporary Rule published on the OAH website: February 19, 2021 c. Public Hearing date: March 9, 2021 d. Comment Period: February 19 – March 12, 2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): February 18, 2021 https://www.ncosfm.gov/licensing-cert/code-officials-qualification-board-coqb/coqb-board-statutes-and-rules f. Adoption by agency on: April 6, 2021 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: April 23, 2021 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: Please see attached justification.

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

Please see attached justification.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Loretta Peace-Bunch

Phone: 919-807-6004

E-Mail: Loretta.Peace-Bunch@ncdoj.gov

Agency contact, if any: Tom Felling

Phone:

E-Mail: Tom.Felling@ncdoj.gov

10. Signature of Agency Head*:

* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Reason for Proposed Temporary Action: *A serious and unforeseen threat to the public health, safety or welfare. 11 NCAC 08 .0735 was first adopted in 2020 as an emergency rule and then a temporary rule in response to the COVID-19 pandemic. At that time, it was unclear how long the COVID-19 global pandemic would continue to affect the ability of Code Enforcement Officials (CEO's) to take the certification classes, certification tests, or continuing education courses necessary to obtain or retain certificates in their respective trades. A CEO must possess an active certificate, whether temporary, probationary, or permanent, as a condition of employment with an inspections department. It was expected that conditions caused by the pandemic would improve by the first quarter of 2021, and that certification classes and certification testing would become more readily available before that time. That rule provided that all Temporary Certificates were valid from March 12, 2020 through March 12, 2021. The ongoing duration of the COVID 19 pandemic, subsequent worsening of the COVID-19 pandemic during the "second wave" this past fall and winter, and delays in widespread vaccination are serious and unforeseen circumstances to the North Carolina Code Enforcement Qualifications Board and its partners in the community college system, professional associations, and code enforcement community. Only recently have group gathering restrictions begun to loosen, and the timeframe for a return to normalcy remains unknown and unpredictable.*

It became apparent to the COQB that the circumstances that necessitated the initial adoption of .0735 as an emergency rule, and then as a temporary rule, will remain in effect longer than reasonably expected and beyond the March 12, 2021 expiration initially set in the rule. By statute, Temporary Certificates are valid for not less than one year and not more than three years. During the October 27, 2020 meeting of the COQB, the COQB acknowledged the effects that continuing in person meeting limitations and close contact quarantine protocols were having on certification courses, certification tests, and continuing education classes, which made them unavailable both in number of seats and in offerings to meet the demands of the code enforcement community. Certification courses are offered to CEOs through the community college system. The community college system continues to have difficulty transitioning these courses online to offer to CEOs in a safe manner. Local inspections jurisdictions continue to have travel restrictions on the out of jurisdiction travel of CEOs in response to the pandemic. These travel restrictions have further limited the ability of CEOs to travel to the few in person classes and tests that are available. The COQB moved to pursue an amendment to the existing .0735 to extend the expiration date of these temporary certificates from March 12, 2021 to December 31, 2021. The amendment of this rule is intended to serve the interest of CEOs by keeping their certificates active so that they can stay employed and also the greater public interest by ensuring that there are adequate numbers of CEOs to perform the vital job of code enforcement. At this time, adherence to the notice and hearing requirements was contrary to the public interest because the effective date of the rule would have been past the current expiration date of the temporary certificates. This would have caused CEO's to lose existing temporary certificates during the permanent rule-making process, perhaps their employment, and would have reduced the already limited pool of qualified CEOs available to perform code inspections. On January 26, 2021, the COQB approved the revised text of .0735 as an emergency rule and as a temporary rule. These rules were submitted to OAH, and the text of the emergency rule was approved by OAH with an effective date of February 25, 2021. Utilizing emergency and temporary procedures ensured that the rule would become effective prior to the expiration of existing temporary certificates.

In response to these serious and unforeseen circumstances that threaten public health and safety, adoption of this temporary rule is now required to ensure that the temporary certificates that were issued under this administrative rule do not expire during the still uncertain pendency of the COVID-19 global health pandemic. The amendment of this rule will ensure that temporary certificate holders remain able to maintain their employment with their local jurisdictions performing the vital function of building and code inspections. The COQB does not intend to amend this rule further and will pursue permanent rule-making, if necessary, in the future for any further revision to .0735.

1 11 NCAC 08 .0735 is adopted under temporary procedures as follows:

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3 **11 NCAC 08 .0735 TEMPORARY CERTIFICATE**

4 (a) A temporary certificate shall be issued without examination or additional application to any code enforcement
5 official (CEO) who currently possesses a probationary certificate that expires between March 12, 2020 and ~~December~~
6 ~~31, 2020.~~ August 31, 2021. The application the CEO initially submitted to obtain the probationary certificate shall
7 provide the basis for issuing the temporary certificate.

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

13 (c) The temporary certificate shall be effective ~~for one year only~~ for the period of March 12, 2020 through ~~March 12,~~
14 ~~2021~~ December 31, 2021 and shall not be renewed. During ~~the one year period,~~ this period of time, the official shall
15 complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate.

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

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

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

23
24 *History Note: Authority G.S. 143-151.12; 143-151.13;*

25 *Emergency Adoption Eff. April 20, 2020;*

26 ~~*[Temporary Adoption Eff. July 1, 2020.]*~~ *Temporary Adoption Eff. July 1, 2020;*

27 *Emergency Adoption Eff. [February 25, 2021.] February 25, 2021;*

28 *Temporary Adoption Eff. April 23, 2021.*

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

Please see attached justification.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: BILL THUNBERG

Title: CHAIRMAN

E-Mail: BILLTHUNBERG@GMAIL.COM

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Reason for Proposed Temporary Action: *A serious and unforeseen threat to the public health, safety or welfare. 11 NCAC 08 .0736 was adopted as a temporary and emergency rule by the COQB at the January 26, 2021 quarterly meeting of the Board. The rule was adopted in response to the effect the COVID-19 global pandemic was having on the ability of Code Enforcement Officials (CEO's) to take the amount of continuing education ("CE") credits required yearly for each certificate. A CEO, by rule, must take 6 hours of CE each year per certificate prior to June 30 in order to renew their certificate. In 2020, the COQB, pursuant to N.C.G.S. § 143-151.13a(e), granted each CEO a one year extension of time to complete their 2020 CE requirement. This requirement, and the regular 2021 CE requirement, were coming due in June 2021. The ongoing duration of the COVID 19 pandemic, subsequent worsening of the COVID-19 pandemic during the "second wave" this past fall and winter, and delays in widespread vaccination are serious and unforeseen circumstances to the North Carolina Code Enforcement Qualifications Board and its partners in the community college system, professional associations, and code enforcement community. These circumstances have continued to prevent many CEOs, especially in smaller and more remote jurisdictions, from obtaining the amount of CE that is required for them to keep their certificates active. Only recently have group gathering restrictions begun to loosen, and the timeframe for a return to normalcy remains unknown and unpredictable.*

The COQB expected that conditions caused by the pandemic would improve by the first quarter of 2021, and that continuing education classes would become more readily available before that time. During the October 27, 2020 meeting of the COQB, the COQB considered and acknowledged the effects that continuing in person meeting limitations and close contact quarantine protocols were having on continuing education classes. CE classes are traditionally offered by trade group at large conferences, agencies, and local inspections department. These providers have been forced to cancel these typically large gatherings where the CE classes are offered due to the COVID pandemic. Local inspections jurisdiction continue to have travel restrictions on the out of jurisdiction travel of CEOs in response to the pandemic. These travel restrictions have further limited the ability of CEOs to travel to the few CE classes that are available. At the October 27, 2020 meeting of the COQB, an option was considered for Office of State Fire Marshal staff, for the first time, to potentially offer a one hour CE course that would be available online through the NCDOT website. The option required further study and development by OSFM staff. The COQB moved to pursue rule-making that would allow for this 1 hour CE class to satisfy the CE requirement of a CEO for one fiscal year, either the 2020 or 2021 fiscal year CE requirement.. The COQB wanted this administrative rule written as an option while the viability of OSFM staff offering this online CE was explored further. At this time, permanent rule-making was not an option because the technical requirements for offering the CE class online were not yet in place with NCDOT. On January 26, 2021, the COQB approved the text of .0736 as an emergency rule and as a temporary rule. Adherence to the notice and hearing requirements of permanent rulemaking was contrary to the public interest because the rule needed to be approved and effective prior to June 30, 2021, and with enough time allowed for CEOs to learn of the course, complete the course, and submit their renewal applications prior to the June 30, 2021 deadline. This rule serves the interest of CEOs by ensuring they have an online alternative to CE that satisfies their yearly CE requirement to keep their certificates active. The public interest is served by ensuring that certified CEOs are available to perform vital code inspections. This rule was submitted to OAH, and the text of the emergency rule was approved by OAH with an effective date of February 25, 2021.

Temporary adoption of 11 NCAC 08 .0736 is now necessary to ensure that CEOs have an immediate continuing education option available to them, offered in a safe online setting, to satisfy their yearly continuing education requirement to keep their permanent certificates active.

1 11 NCAC 08 .0736 is adopted under temporary procedures as follows:

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3 **11 NCAC 08 .0736 FY 2020-2021 SPECIAL CE REQUIREMENT**

4 Every Code Enforcement Official (CEO) [is required to] shall complete a one-hour course titled CS4424 Chapter
5 160D offered by the NC Department of Insurance on <https://www.ncosfm.gov/> on or before June 30, 2021. A CEO
6 who has not yet completed the continuing education hour requirement specified in 11 NCAC 08 .0713(c) for the
7 period ending June 30, 2020 or the period ending June 30, 2021 may [fully] satisfy that requirement for either time
8 period by completing CS4424 Chapter 160D. Completion of this course [will satisfy] satisfies the annual
9 professional development program credit hour requirement needed for every standard certificate held by the CEO.
10 Completion of CS4424 Chapter 160D [will satisfy] satisfies the continuing education hours needed by the CEO for
11 either the fiscal year ending June 30, 2020 or June 30, 2021, but not both. [Any continuing education hour credits
12 held by the CEO prior to completion of the CS4424 Chapter 160D can be rolled over and applied towards their 2021
13 or 2022 continuing education hour requirement.]

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

16 *Emergency Adoption Eff. [~~February 25, 2021.~~] February 25, 2021;*

17 *Temporary Adoption Eff. April 23, 2021.*

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