

PROCESS FOR TEMPORARY RULEMAKING

Criteria for Adopting a Temporary Rule

Adoption – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of N.C.G.S. § 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- 1) A serious and unforeseen threat to the public health, safety, or welfare;
- 2) The effective date of a recent act of the General Assembly or the U.S. Congress;
- 3) A recent change in federal or State budgetary policy;
- 4) A recent federal regulation;
- 5) A recent court order; or
- 6) Fifteen (15) additional standards applicable to specific agencies.

Procedure for Proposing a Temporary Rule

If the agency meets the criteria for adoption, an agency must prepare a written statement of its findings of need for a temporary rule. Prior to adopting the temporary rule, an agency must do the following:

- 1) The State Board of Community Colleges shall adopt the *proposed* temporary rule to establish the times community college employees will be furloughed in accordance with Executive Order Number 11 issued April 28, 2009. – 15 May 2009¹
- 2) The agency shall submit the *proposed* temporary rule and notice of hearing to the Office of Administrative Hearings (“OAH”). – 18 May 2009
- 3) OAH must publish the *proposed* temporary rule on their OAH website within five (5) business days of the agency’s submission. – 26 May 2009
- 4) On the same day OAH publishes the *proposed* temporary rule, the agency shall notify persons on the agency’s mailing list and “any other interested parties” of its intent to adopt a temporary rule. – 26 May 2009
- 5) Accept written comments on the proposed rule for at least fifteen (15) business days prior to adopting the temporary rule. – 26 June 2009
- 6) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published. – Between 2 June 2009 and 26 June 2009
- 7) After the end of the written comment period, the State Board of Community Colleges will meet to adopt the temporary rule. – 17 July 2009
- 8) After adopting a temporary rule, the agency must submit the rule to the Rules Review Commission (“RRC”), and the RRC has fifteen (15) business days to review the rule. - 20 August 2009

¹ These dates are used for illustration purposes to help you see the timeline for adopting a temporary rule.

TEMPORARY RULEMAKING continued

- 9) The RRC will likely review the temporary rule at its next regularly scheduled meeting, and the temporary rule **MUST** be approved by the RRC to take effect.
- 10) After the RRC approves the rule, it delivers it to OAH within two (2) business days of its approval. – 24 August 2009

Procedure Once Temporary Rule is Approved by the RRC

- 1) Once the temporary rule is approved by the RRC, it is entered into the NC Administrative Code on the sixth business day following the receipt from the RRC. – 01 September 2009
- 2) In our case, the temporary rule remains effective for the duration of the applicability of Executive Order 11.

Procedure if the RRC Objects to Temporary Rule

- 1) The RRC may object to the rule for failure to meet criteria for adopting temporary rule and/or failure to meet standards for a rule.
- 2) If the RRC objects to the temporary rule, the agency can submit new findings or rewrite the rule, and the RRC will review the temporary rule within five (5) business days or the agency does not have to submit new findings or rewrite the rule and the agency goes to Superior Court.