

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Friday, December 8, 2023, and filed with the agency secretary on Tuesday, December 12, 2023.

AGENCY NAME: Alabama Commission on Higher Education Planning and Coordination

INTENDED ACTION: Repeal and Replace

RULE NO.: 300-2-1-.02

(If amended rule, give specific paragraph, subparagraphs, etc., being amended)

RULE TITLE: Review or Exemption from Review of Proposed Postsecondary Course Offerings in Alabama by Non-Alabama Institutions Seeking State Authorization

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted without changes. No comments were received.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLI, ISSUE NO. 12, AAM,
DATED FRIDAY, SEPTEMBER 29, 2023.

STATUTORY RULEMAKING AUTHORITY: Code of Ala. 1975, §§16-5-1, et seq.

(Date Filed)
(For IRS Use Only)
REC'D & FILED
DEC 12, 2023
LEGISLATIVE SVC AGENCY

Stephanie C. Dolan

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Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

**Review or Exemption from Review of Proposed
Postsecondary Course Offerings in Alabama by
Non-Alabama Institutions Seeking State
Authorization.**

(1) **Purpose and Commission Responsibility.** Per the Code of Ala. 1975, §16-5-10(14), it is the responsibility of the Alabama Commission on Higher Education to establish policies and procedures for the review and approval or disapproval of all proposed postsecondary credit courses or programs of instruction offered in the State of Alabama by non-Alabama institutions of higher education. The Code of Ala. 1975, §16-5-10(10) authorizes the Commission to make rules and regulations for its meetings, procedures, and execution of the powers and duties delegated to it by this article. These institutions must also be licensed to do business or be exempt from licensing in Alabama by the Private School Licensure Division of the Alabama Community College System (ACCS).

(2) **Scope.** This section shall apply only to Non-Resident Institutions seeking to offer postsecondary programs of instruction to Alabama residents. It does not apply to Alabama-based institutions.

(3) **Definitions.** For purposes of this rule, the following definitions apply:

(a) **Accreditation:** A formal process conducted by a non-governmental, independent accrediting agency recognized by the US Department of Education or by the Council for Higher Education Accreditation to ensure the delivery of sound educational programs.

(b) **ACCS-Exempted Institutions:** Those postsecondary institutions that are granted a Certificate of Exemption from Licensure by the ACCS Private School Licensure Division and for which the System has waived formal licensure application and review.

(c) **ACHE-Exempted Institutions:** Non-Resident Institutions that are determined to meet one of the criteria for exemption from Commission review and are named in an official letter of exemption from the Commission.

(d) **Approved Programs:** Programs of study that have been reviewed and found to meet the criteria for approval by the Commission.

(e) **Authorization:** Formal approval to offer postsecondary programs of instruction to Alabama residents. Authorization is generally secured through one of the following processes:

1. **Private School Licensure:** A formal process conducted by the ACCS Private School Licensure Division to certify viability and legal authority to

offer postsecondary programs of instruction, resulting in a Private School License.

2. Formal Exemption from Licensure: A formal process conducted by the ACCS Private School Licensure Division to verify that a private postsecondary institution has met the criteria for exemption from licensure, resulting in a Certificate of Exemption.
3. Membership in the National Council for State Authorization Reciprocity Agreements (NC-SARA) (applies only to Non-Resident Institutions without a physical presence in Alabama): A streamlined, reciprocity-based process for participating postsecondary institutions to become authorized to offer interstate distance education programs in other NC-SARA member states without individually applying to each state for such authorization, subject to certain limitations. Institutions are approved for NC-SARA membership by their states of domicile, and as a condition of membership, they are required to maintain certain academic and financial standards designed to protect students.

(f) Commission: The Alabama Commission on Higher Education (ACHE).

(g) Distance Education Program: A for-credit postsecondary program for which all instructional requirements can be completed via distance education courses. A distance education program may have in-person requirements that are non-instructional (e.g., orientation, practicum).

(h) Main Campus: The physical boundaries of the location of an institution's principal administrative offices. In the case of an institution eligible for Title IV funds, the campus designated by the U.S. Department of Education's Office of Postsecondary Education identification number (OPEID).

(i) NC-SARA: The National Council for State Authorization Reciprocity Agreements (NC-SARA) is a national association of member institutions and states organized to provide a streamlined, reciprocity-based process for participating postsecondary institutions to become authorized to offer interstate distance education in other NC-SARA member states without individually applying to each state for such authorization, subject to certain limitations.

(j) Non-Alabama Institution: A postsecondary educational institution, public or private, profit or nonprofit, whose main campus or headquarters is located outside the State of Alabama.

(k) Non-Resident Institution: Synonymous term for Non-Alabama Institution.

(l) Physical Presence: Having a geographical site with an address and location within the physical boundaries of the State of Alabama.

(m) Programs of Instruction (Courses): Any course or sequence of courses for which credit toward any postsecondary degree, certificate, or diploma is to be awarded.

(n) SARA (State Authorization Reciprocity Agreements): An interstate distance education compact coordinated through NC-SARA.

(o) System: The Alabama Community College System (ACCS).

(p) Unaccredited Institution: An institution not accredited by an agency recognized by the US Department of Education or Council on Higher Education Accreditation or by an entity determined to be comparable.

(4) **State Authorization for Non-Resident Institutions.** The Commission's review or exemption from review of postsecondary programs of instruction offered by Non-Resident Institutions is a component of the state authorization process conducted by the ACCS Private School Licensure Division under the authority granted to it under Code of Ala. 1975, §§16-46-1, et seq.

(a) All Non-Resident Institutions seeking authorization by obtaining a Private School License must complete the Commission's program review or exemption process.

(b) If the ACCS Private School Licensure Division grants a Certification of Exemption to a Non-Resident Institution, the institution does not need to apply to the Commission for program review or formal exemption from review.

(c) Non-Resident Institutions who are NC-SARA members and do not maintain a physical presence in Alabama are not required to obtain a Private School License or Certificate of Exemption and are therefore not required to seek program review or exemption by the Commission.

(5) **Requests for Formal Exemption from Program Review.**

(a) As a component of its Private School Licensure application, a Non-Resident Institution may request a letter of exemption from the Commission's program review process, if the institution meets any of the following criteria:

1. It is accredited by a regional, national, or specialized/programmatic accrediting body that is recognized by the US Department of Education or by

the Council for Higher Education Accreditation.
Documentation concerning accreditation is required.

2. It offers only non-degree programs or non-credit courses.
3. It was originally incorporated in Alabama and is now owned by an entity headquartered in another state. These institutions must have been in continuous operation in Alabama since their inception, with no more than a one-year interruption of operations due to a change in ownership. Legal documentation of Alabama origin must be submitted to the Commission.

(b) An institution seeking formal exemption from Commission program review must submit an application and proper documentation to the Commission. The Commission will then determine if the institution meets any of the criteria for exemption from review and will inform the Alabama Community College System concerning the disposition of the application.

(c) Formal exemption from program review by the Commission does not exempt Non-Resident Institutions from the ACCS Private School Licensure requirements as established in the Code of Ala. 1975, §§16-46-1, et seq.

(6) **Program Review and Approval Required for Non-Exempt Institutions.**

(a) Any Non-Resident Institution seeking Private School Licensure that is not exempt from Commission review must undergo a review of its programs of instruction and receive approval from the Executive Director on behalf of the Commission.

(b) As a prerequisite to program approval, an unaccredited Non-Resident Institution seeking a Private School License must undergo an external review of its programs of study by one or more outside consultants chosen by the Commission.

1. The unaccredited institution shall underwrite all costs related to the external review.
2. The program review process for unaccredited institutions shall not exceed six months following receipt of data and information required by the Commission.

(c) The following considerations will be made as to whether programs of instruction can be approved:

1. In general, program proposals must meet academic standards used by the Commission proposals for new off-campus offerings by in-state public institutions and in doing so be in full compliance with the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) guidelines or those of other regional, national, or specialized/ programmatic accrediting bodies recognized by the US Department of Education or the Council for Higher Education Accreditation.
2. Since the use of state appropriated funding is not involved, the question of unnecessary duplication is not an issue when proposals of non-Alabama institutions are reviewed.

(d) In the absence of unavoidable delays, the Commission will report its approval or disapproval of proposed courses or program(s) of instruction to the System and to the applying institution within sixty (60) working days following receipt of the required data and information forms from the applying institution.

(e) By statute, the Commission is authorized to promulgate a schedule of fees commensurate with the cost of Commission activities related to the programmatic review, not to exceed fifteen thousand dollars (\$15,000) and may exercise this authority as the Commission determines necessary with six (6) months' advance notice.

(f) The Commission reserves the right to conduct a site visit to the proposed location for an evaluation of a course or program of instruction before or subsequent to concluding its review of a pending application. There is no charge to the institution for mileage or per diem payments to Commission staff for such visits. However, in the event that the Commission appoints other education or external specialists as on-site visit consultants, the institution will pay the consultants a consulting fee determined by the Commission, as well as expenses.

(7) **Changes to Approved Program Offerings by Licensed Non-Resident Institutions.** If a currently licensed Non-Resident Institution seeks to change its approved program offerings, whether by adding new programs or by relocating or modifying previously approved programs, the Commission will review these changes in a cycle to coincide with the license renewal process established by the ACCS Private School Licensure Division.

(8) **Period of Approval or Exemption.** In keeping with the review cycle for ACCS Private School Licensure, program approval or formal exemption from program review is valid for two years, after which the institution may seek renewal.

(9) **Appeals.** Any person or institution aggrieved by the action of the Commission in its administration of this rule may, by written petition filed with the Commission within thirty (30) days after notice of the aggrieving action, request a rehearing by the Commission. The Commission shall schedule the requested rehearing to be held no less than twenty (20) nor more than thirty (30) days after receipt of the petition. The aggrieved party may present written and oral evidence supporting its petition and may be represented by counsel, if desired. The decision of the Commission following the rehearing shall be final.

Author: Robin E. McGill

Statutory Authority: Code of Ala. 1975, §§16-5-1, et seq.

History: Filed December 10, 1985. Rule 300-2-1-.02 was formerly referenced as Chapter 300-2-1; it has been repealed and reinserted as a rule within this chapter. The rule title remains unchanged from its previous chapter title. The contents are also unchanged except for slight format changes and the addition and deletion of certain definitions: Filed April 10, 1989. **Amended:** Filed August 21, 1996; effective September 25, 1996. **Amended:** Filed January 6, 2003; effective February 10, 2003. **Amended:** Filed May 6, 2004; effective June 10, 2004. **Amended:** Filed February 8, 2010; effective March 15, 2010. **Amended:** Filed November 5, 2013; effective December 10, 2013. **Amended:** Filed May 9, 2016; effective June 23, 2016. **Amended:** Filed December 11, 2018; effective January 25, 2019. **Repealed and New Rule:** Published December 29, 2023; effective February 12, 2024.