

**RULES REVIEW COMMISSION MEETING
MINUTES
July 20, 2017**

The Rules Review Commission met on Thursday, July 20, 2017, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew P. Atkins, Bobby Bryan, Anna Baird Choi, Jeanette Doran, Garth Dunklin, and Paul Powell.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin recognized outgoing Commissioner Stephanie Simpson for her service.

Commissioner Simpson addressed the Commission.

Chairman Dunklin read into the record the following statement of economic interest for:

Anna Baird Choi, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because she is an attorney with Nichols, Choi & Lee, PLLC law firm, which could represent clients that come before the Commission during the rulemaking process. As such, she has the potential for a conflict of interest and should exercise appropriate caution in the performance of her public duties should issues involving Nichols, Choi & Lee, PLLC or any of the firms' clients come before the Commission for official action or otherwise seek to conduct business with the Commission.

Andrew P. Atkins, which stated there was no actual conflict of interest. However, there is the potential for a conflict of interest because he is an associate attorney with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP ("Smith Anderson") law firm, which could represent clients that come before the Commission during the rulemaking process. As such, he has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues involving Smith Anderson or any of the firms' clients come before the Commission for official action or otherwise seek to conduct business with the Commission.

Chairman Dunklin introduced Supreme Court Associate Justice Barbara A. Jackson to the Commission.

Justice Barbara Jackson administered the oath of office to new Commissioners Anna Baird Choi and Andrew P. Atkins.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the June 15, 2017 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

10A NCAC 27H .0202, .0203, .0204, .0205, and .0206 – The agency is addressing the objections from the March and June meetings. No action was required by the Commission.

Department of Insurance

11 NCAC 05A .0501, .0505, .0508, and .0511 - The agency is addressing the objections from the January meeting. No action was required by the Commission.

Locksmith Licensing Board

21 NCAC 29 .0402 and .0601 - The rewritten rules were unanimously approved.

LOG OF FILINGS (PERMANENT RULES)**Pre-Reviewed Rules****Department of Natural and Cultural Resources**

07 NCAC 13B .0802 was unanimously approved.

Non Pre-Reviewed Rules**Department of Commerce - Credit Union Division**

04 NCAC 06C .0407 was unanimously approved.

Social Services Commission 10A NCAC 70E, F, G

All rules were unanimously approved.

Social Services Commission 10A NCAC 70I, K

10A NCAC 70K - All rules were unanimously approved.

10A NCAC 70I .0308 – The Commission objected to the rule in accordance with G.S. 150B-21.10.

The Commission objected to the rule based upon ambiguity. Specifically, the Commission found that the policies and procedures required by this Rule address application, documentation, and training regarding a “reasonable and prudent parent standard.” This standard is not defined in the cited statute or elsewhere within the Subchapter. Therefore, the rule is unclear as written, because this standard is not defined, and the rule purports to require enforcement of this unknown standard.

10A NCAC 70I .0101, .0201, .0202, .0302, .0305, .0306, .0405, .0503, .0504, .0506, .0601, .0604, .0609, .0613, and .0614 – The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rules at a later meeting.

Social Services Commission 10A NCAC 97

10A NCAC 97B .0401, .0402, .0403; 97C .0104, .0106, .0108, .0109, and .0111 - The Commission objected to the rules in accordance with G.S. 150B-21.10.

The Commission objected to the rules based upon lack of statutory authority, as none of the rules as submitted to the Commission for review provided any statutory authority for the Social Services Commission to promulgate them.

Nancy Dunn, with the Attorney General's Office and representing the agency, addressed the Commission.

Board of Physical Therapy Examiners

21 NCAC 48F .0102 was unanimously approved.

EXISTING RULES REVIEW**Board of Crop Seed Improvement**

02 NCAC 29 - The Commission unanimously approved the report as submitted by the agency.

Board of Agriculture

02 NCAC 31 – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 39 – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43A – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43B – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43C – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43D – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43E – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43G – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43L – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 43M – The Commission unanimously approved the report as submitted by the agency.
02 NCAC 53 – The Commission unanimously approved the report as submitted by the agency.

Commissioner of Agriculture

02 NCAC 58 – The Commission unanimously approved the report as submitted by the agency.

Department of the Secretary of State

18 NCAC 02 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 08 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 11 - The Commission unanimously approved the report as submitted by the agency.
18 NCAC 12 - The Commission unanimously approved the report as submitted by the agency.

NC Housing Finance Agency

24 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

Department of Justice

12 NCAC 02 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than January 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Environmental Management Commission

15A NCAC 13A - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than May 31, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Board of Agriculture

02 NCAC 37 – The Commission denied the agency's request to reschedule the March 31, 2017 readoption deadline. The Commission discussed whether it would be appropriate to extend the deadline for readoption after the initial readoption date has passed.

Tina Hlabse with the agency, addressed the Commission.

Molly Masich, Codifier of Rules with OAH, addressed the Commission.

Alcoholic Beverage Control Commission

14B NCAC 15A – The Commission denied the agency's request to reschedule the May 31, 2017 readoption deadline. The Commission determined it would be inappropriate to extend the deadline for readoption after the initial readoption date has passed.

Prior to the review of the request from the Alcoholic Beverage Control Commission, Commissioner Powell recused himself and did not participate in any discussion or vote concerning the request because he has a potential conflict of interest.

Renee Metz with the agency, addressed the Commission.

COMMISSION BUSINESS

The Chairman gave an update on the RRC appeal in the State Board of Education against the Rules Review Commission lawsuit.

The Chairman conveyed that the APO draft letter will be discussed at the August meeting.

The chair discussed that the 2nd Vice Chair is now vacant and elections to fill the position will held at a later meeting.

The meeting adjourned at 11:09 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 17th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

July 20, 2017

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Debbie TRAGAN	NCBPTE
Kathy Arney	NCBPTE
Tien Cheng	NC Dept of Agr
Tina Hlabse	NCDACS
Derek Wagner	NCDACS
Judy Estimer	NC DOJ.
Rose H. Corrier	NCCUD
Renee Metz	NC ABC Commission
Tony Knox	NCCUD
Ashley Snyder	NCDLR
JOAN SILVERSTEIN	NCBPTE
Evelyn Handman	CCUL
Madison Angelen	CCUL
Dana Selman	CCUL
Joal Brown	NC Dept. of SOS
Missy P. Welch	ABC Commission
Jack Nichols	Nichols, Choi, & Lee
Casey Howard	NCHFA
Jennifer Perry	NCHFA
Charlotte R. Stewart	NCHFA
Heather West	NC DSS

July 20, 2017

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

July 20, 2017

Whitney Belich, Rulemaking Coordinator
Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 12 NCAC 02

Dear Mrs. Belich:

Attached to this letter is the rule subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this rule was discussed at the July 20, 2017 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than January 31, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

RRC DETERMINATION
PERIODIC RULE REVIEW
September 15, 2016
APO Review: October 04, 2016
Justice, Department of
Total: 1

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>12</u> <u>NCAC 02I</u> <u>.0306</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

July 20, 2017

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 13A**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the July 20, 2017 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2018.

Please note that the rules set forth in 15A NCAC 13B and 15A NCAC 13C are not subject to this readoption date. Those rules address separate rulemaking needs and will be scheduled for a different readoption date.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
April 20, 2017
APO Review: June 24, 2017**

**Environmental Management Commission
Total: 156**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 13A .0102</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0103</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0104</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0105</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0106</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0107</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0108</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0109</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0110</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0111</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0112</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0113</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0116</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0117</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0118</u>	Necessary with substantive public interest
<u>15A NCAC 13A .0119</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0101</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0102</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0103</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0104</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0105</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0106</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0201</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0202</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0203</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0204</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0301</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0302</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0401</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0402</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0501</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0502</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0503</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0504</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0505</u>	Necessary with substantive public interest
<u>15A NCAC 13B .0508</u>	Necessary with substantive public interest

15A	NCAC 13B	1625	Necessary-with substantive public interest
15A	NCAC 13B	1626	Necessary-with substantive public interest
15A	NCAC 13B	1627	Necessary-with substantive public interest
15A	NCAC 13B	1628	Necessary-with substantive public interest
15A	NCAC 13B	1629	Necessary-with substantive public interest
15A	NCAC 13B	1630	Necessary-with substantive public interest
15A	NCAC 13B	1631	Necessary-with substantive public interest
15A	NCAC 13B	1632	Necessary-with substantive public interest
15A	NCAC 13B	1633	Necessary-with substantive public interest
15A	NCAC 13B	1634	Necessary-with substantive public interest
15A	NCAC 13B	1635	Necessary-with substantive public interest
15A	NCAC 13B	1636	Necessary-with substantive public interest
15A	NCAC 13B	1637	Necessary-with substantive public interest
15A	NCAC 13B	1680	Necessary-with substantive public interest
15A	NCAC 13B	1701	Necessary-with substantive public interest
15A	NCAC 13B	1702	Necessary-with substantive public interest
15A	NCAC 13B	1703	Necessary-with substantive public interest
15A	NCAC 13B	1704	Necessary-with substantive public interest
15A	NCAC 13B	1705	Necessary-with substantive public interest
15A	NCAC 13B	1706	Necessary-with substantive public interest
15A	NCAC 13B	1707	Necessary-with substantive public interest
15A	NCAC 13B	1708	Necessary-with substantive public interest
15A	NCAC 13B	1709	Necessary-with substantive public interest
15A	NCAC 13B	1710	Necessary-with substantive public interest
15A	NCAC 13C	0301	Necessary-with substantive public interest
15A	NCAC 13C	0302	Necessary-with substantive public interest
15A	NCAC 13C	0303	Necessary-with substantive public interest
15A	NCAC 13C	0304	Necessary-with substantive public interest
15A	NCAC 13C	0305	Necessary-with substantive public interest
15A	NCAC 13C	0306	Necessary-with substantive public interest
15A	NCAC 13C	0307	Necessary-with substantive public interest
15A	NCAC 13C	0308	Necessary-with substantive public interest