

**RULES REVIEW COMMISSION MEETING
MINUTES
April 19, 2018**

The Rules Review Commission met on Thursday, April 19, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

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

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

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.

Chairman Dunklin informed the Commission that Jay Hemphill resigned from the Rules Review Commission to accept an appointment to the NC State Board of Elections and Ethics Enforcement.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the March 15, 2018 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Department of Revenue

17 NCAC 05B .1105, .1108, .1110, .1406; 05C .0101, .0403; .0801, .0907, .1506, .1702; 05D .0109, and .0112 - All rules were unanimously approved.

Building Code Council

2018 Residential Code Tables N1102.1.2 and N1102.1.4; 2018 Energy Conservation Code Tables R402.12 and R402.1.4 – Pursuant to G.S. 150B-21.12(d), the rules were returned to the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Industrial Commission

All rules were unanimously approved.

Wildlife Resources Commission

All rules were unanimously approved.

Department of Revenue

All rules were unanimously approved.

Department of Transportation/Division of Motor Vehicles

The Commission objected to 19A NCAC 03D .0219 in accordance with G.S. 150B-21.10. The Commission unanimously objected to the rule for failure to comply with the APA, as the agency substantially changed the rule after publication in the NC Register. The Commission also objected to the rule based upon lack of statutory authority with Commissioners Atkins, Choi, and Currin voting against, because requiring certain records to be provided “immediately” in all circumstances was not authorized by G.S. 20-297, which requires that such records be “available for inspection by the Division within a reasonable period after being requested by the Division.”

19A NCAC 03D .0237 was withdrawn at the request of the agency.

John Policastro, General Counsel to the NC Automobile Dealers Association, addressed the Commission.

John Congleton, with the Attorney General's Office and representing the agency, addressed the Commission.

Helen Landi, the rulemaking coordinator with the agency, addressed the Commission.

Following the vote on Rule 19A NCAC 03D .0219, Commissioner Bryan left the meeting and did not participate in the remainder of the meeting.

Medical Board

All rules were unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

The chair called the meeting into a brief recess at 11:06 a.m.

The meeting resumed at 11:14 a.m.

Non Pre-Reviewed Rules

Board of Agriculture

All rules were unanimously approved with the following exception:

02 NCAC 09B .0135 was withdrawn at the request of the agency.

Commission of Navigation and Pilotage for the Cape Fear River and Bar

The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

Teachers' and State Employees' Retirement System Board of Trustees

20 NCAC 02B .0405 was unanimously approved.

The Commission received over 10 letters of objection for 20 NCAC 02B .0405 requesting a delayed effective date and legislative review of the approved rule in accordance with G.S. 150B-21.3(b2).

Prior to the review of the rule from the Teachers' and State Employees' Retirement System Board of Trustees, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because of his law firm's client involvement.

Michael Crowell, attorney for Johnston, Wilkes, Union, and Cabarrus County Boards of Education, addressed the Commission.

Katie Cornetto, attorney for Dare, Pender, and Wilson County Boards of Education, addressed the Commission.

Sam Hayes, General Counsel to the Department of State Treasurer, addressed the Commission.

Sam Watts, Director of Policy with the Department of State Treasurer, addressed the Commission.

Christina Strickland, legal counsel to the Department of State Treasurer, addressed the Commission.

Local Government Employees' Retirement System Board of Trustees

20 NCAC 02C .0405 was unanimously approved.

Prior to the review of the rule from the Local Government Employees' Retirement System Board of Trustees, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because of his law firm's client involvement.

Interpreter and Transliterator Licensing Board

All rules were unanimously approved.

Board of Nursing

All rules were unanimously approved.

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal representation to the Board.

Real Estate Commission

All rules were unanimously approved.

Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Real Estate Commission.

EXISTING RULES REVIEW

Department of Natural and Cultural Resources

07 NCAC 14 – The Commission unanimously approved the report as submitted by the agency.

07 NCAC 15 – The Commission unanimously approved the report as submitted by the agency.

DHHS/Division of MH/DD/SAS

10A NCAC 26C .0100, .0402, and .0500 – The Commission unanimously approved the report as submitted by the agency.

DHHS/Commission for MH/DD/SAS

10A NCAC 26C .0200, .0300, .0401, and .0600 - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 27C – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 28D – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 28E - The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

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

Board of Electrolysis Examiners

21 NCAC 19 – The Commission unanimously approved the report as submitted by the agency.

DHHS/Medical Care Commission

10A NCAC 13F - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2024 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from DHHS/Medical Care Commission, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the proposed readoption date because of a conflict.

Prior to the review of the proposed readoption date from DHHS/Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the proposed readoption date because of his law firm represents the Medical Care Commission from time to time.

Social Services Commission

10A NCAC 70M - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than August 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Housing Finance Agency

24 NCAC 01 - As reflected in the attached letter, the Commission voted to schedule readoption of the rule no later than January 31, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Following the review of the readoption date for 24 NCAC 01, Commissioner Poley left the meeting and did not participate in the remainder of the meeting.

Industrial Commission

The Industrial Commission submitted a request for 04 NCAC 10 to be exempt from the periodic review during the current review cycle.

Pursuant to Rule 26 NCAC 05 .0209, the Commission held a public hearing to determine whether to grant the Industrial Commission's request. The Commission opened the hearing at 12:23 p.m.

There were no speakers.

The Commission voted to grant the request and amend Rule 26 NCAC 05 .0211 to remove 04 NCAC 10, with Commissioner Dunklin voting against.

The Commission closed the public hearing at 12:27 p.m.

COMMISSION BUSINESS

The Commission voted to reschedule the June 2018 Rules Review Commission meeting date. It has been rescheduled from June 21st to June 14th.

The Commission reviewed Bylaws revisions proposed by the Bylaws Subcommittee.

Following the review of the Bylaws revisions, Commissioner Powell left the meeting and did not participate in the remainder of the meeting.

The Chair reminded the Commission of the Periodic Review and Expiration of Existing Rules Readoption Schedule.

Staff gave a brief presentation on the Supreme Court decision in the Ambulatory Surgical Center Association v. Industrial Commission.

The meeting adjourned at 12:42 p.m.

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

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

DRAFT

April 19, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Anita Mac Mullan	NCDA & CS, Food & Drug
Kendall Bourdon	NCIC
Carrie Rukman	NCWRC
Tamara Zmuda	NCDOJ
David Cobb	NCWRC
DAVID GRIFFIN	NCDCR
Katie Cornetto	Schwartz & Shaw, PLLC
Sam Mayer	NC DST
MICHAEL CROWELL	LAWLER, CARPENTER
M. Smallwood	WHL
John Green	NC DOT for NC I&T Lic. Bd.
Matt Sarchak	NC DOJ
Casey Howard	NCHFA
Carrie Hollis	OSBM
Wanda Long	NC Med Board
Marcus Vinison	NC Med Board
Melissa Vuotto	REC
Rob Patchett	REC
Doug Barrick	DT+SR
Phil Frazier	DNCR
W. DeHise Baker	pmH/DO/SAS

April 19, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Loretta Peace-Bunch	NC DOT
Charlton Allen	NC Industrial Comm.
Nadine Pfeiffer	NC DHHS - DH SR
Ashley Snyder	Industrial Comm.
Joann Bunze	Noteworthy Reporting Service
Kaurafay	DST
Gray Redford	NC DOR
William Young	NC DOR
Drew Marsh	NC DOT
Meredith Henderson	NC IC
MATTHEW NIES	NCDMV L+T
JOHN SEIBERT	NC DOR
John Policastro	NCADA
Helen Vandi	DOT
Hannah Jennigan	DOT
Shannon Gierger	DOA
Tien Cheng	NC DACS
Benton Whitaker	NC DACS
Jamie Kethen	NCDMV
CHUCK CHURCH	DMV
Hope Mozingo	DMV
Virginia Niehaus	DMV
Ana Grozan	OSBM



STATE OF NORTH CAROLINA
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Raleigh, NC 27609-6285

April 19, 2018

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 13F**

Dear Ms. Pfeiffer:

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 April 19, 2018 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 November 30, 2024.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

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

Rules Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 25, 2018
APO Review: March 06, 2018
Medical Care Commission
Total: 43**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 13F .0203</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0207</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0214</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0301</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0302</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0304</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0305</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0306</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0307</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0309</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0311</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0402</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0403</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0404</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0405</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0407</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0501</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0503</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0601</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0602</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0603</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0604</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0605</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0606</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0702</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0703</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0704</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0801</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0802</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0904</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1006</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1008</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1010</u>	Necessary with substantive public interest

<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1106</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1206</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1213</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1304</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1307</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1601</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1602</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1603</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1604</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1605</u>	Necessary with substantive public interest



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April 19, 2018

Belivia Spaulding, Rulemaking Coordinator
Social Services Commission
2402 Mail Service Center
Raleigh, North Carolina 27699-2420

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 70M**

Dear Ms. Spaulding:

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 April 19, 2018 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 August 31, 2021.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

Administration
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Rules Division
919/431-3000
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Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 14, 2017
APO Review: January 09, 2018
Social Services Commission
Total: 15**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 70M .0201</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0301</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0302</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0304</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0401</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0402</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0403</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0404</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0405</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0501</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0502</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0601</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0602</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0603</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0604</u>	Necessary with substantive public interest



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April 19, 2018

Patricia Amend, Rulemaking Coordinator
Housing Finance Agency
3508 Bush Street
Raleigh, North Carolina 27609

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **24 NCAC 01**

Dear Ms. Amend:

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 April 19, 2018 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, 2019.

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

Sincerely,


Amber May
Commission Counsel

cc: Casey Howard

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**RRC DETERMINATION
PERIODIC RULE REVIEW
July 20, 2017
APO Review: September 23, 2017
North Carolina Housing Finance Agency
Total: 1**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>24</u> <u>NCAC 01N .0204</u>	Necessary with substantive public interest