

**RULES REVIEW COMMISSION MEETING
MINUTES
January 16, 2020**

The Rules Review Commission met on Thursday, January 16, 2020, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, and Tommy Tucker.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Alex Burgos.

The meeting was called to order at 9:02 a.m. with Chairman Hyde presiding.

The Chair 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.

The Chair introduced OAH extern Alex Fowler to the Commission.

APPROVAL OF MINUTES

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the December 19, 2019 meeting. There were none and the minutes were approved as distributed.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Permanent rules for the Criminal Justice Education and Training Standards Commission.

FOLLOW UP MATTERS

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Prior to the review of the rule from the Board of Elections, Commissioner LiVecchi recused himself and did not participate in any discussion or vote concerning the rule because he actively represents clients before this Board in non-judicial and quasi-judicial proceedings.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0114, .0201, .0202, .0203, .0205, .0502, .0701, .0702, .0705, .0706, .0801, .0802, .0806, .0902, .0903, .0904, .0909, .0910, .0911, .0912, .1301, .1302, .1306, .1401, .1402, and .1406 - The agency is addressing the request for technical changes from the December meeting. No action was required by the Commission.

Environmental Management Commission

The agency is addressing the objection for 15A NCAC 02B .0240 (to be recodified as 15A NCAC 02B .0703). No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142,

.0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206
- The agency is addressing the objections. No action was required by the Commission.

State Board of Opticians

21 NCAC 40 .0321 - The agency is addressing the objection and request for technical changes from the September meeting. No action was required by the Commission.

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

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – At the November meeting, the Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced rules have a substantial economic impact and therefore require a fiscal note. A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the rules in accordance with the Administrative Procedure Act. OSBM has not formally responded to this request. No action was required by the Commission.

These rules will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (PERMANENT RULES)

Department of Administration

All rules were unanimously approved.

Department of Natural and Cultural Resources

The Commission extended the period of review for 07 NCAC 13F .0202, .0303, and .0304 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 address technical changes and submit the rewritten rules at a later meeting.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved with the following exceptions:

12 NCAC 09B .0302 was approved subject to a technical change in (d) – page 2, line 4: "FLEC" to "FLETC". The rule with the technical change was received after the meeting.

The Commission objected to 12 NCAC 09E .0105 for failure to comply with the APA and ambiguity. Specifically, at lines 7-13, the agency incorporates a manual of approved training topics by reference, including subsequent amendments and editions. The Rule refers to the manual again at lines 29-31. The list of training topics meets the definition of a "rule" in G.S. 150B-2(8a). Incorporating or referring to the manual rather than stating its contents in the rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. Additionally, the language at lines 29-31 makes it unclear which trainings are required and which trainings are optional.

Brenda Rivera with the Attorney General's Office, and representing the agency, addressed the Commission.

Alcoholic Beverage Control Commission

14B NCAC 15B .1004 was unanimously approved.

Sedimentation Control Commission

The Commission extended the period of review for 15A NCAC 04A .0101 and .0105; 04B .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0115, .0118, .0120, .0124, .0125, .0126, .0127, .0129, .0130, .0131, and .0132; 04C .0103, .0106, .0107, .0108, .0110, and .0111; 04D .0102; 04E .0101, .0102, .0104, .0201, .0203, .0403, .0405, .0406, .0501, .0502, .0503, and .0504 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 address technical changes and submit the rewritten rules at a later meeting.

Coastal Resources Commission

The Commission extended the period of review for 15A NCAC 07H .0304, .0305, .0309, .0313, .1901, .1902, .1904, and .1905 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 address technical changes and submit the rewritten rules at a later meeting.

Wildlife Resources Commission

All rules were unanimously approved with the following exception:

The Commission extended the period of review for 15A NCAC 10F .0306 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 address technical changes and submit the rewritten rule at a later meeting.

Board of Dental Examiners

All rules were unanimously approved.

Board of Examiners of Electrical Contractors

The Commission extended the period of review for 21 NCAC 18B .0212, .0303, .0404, .0408, and .0901 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 address technical changes and submit the rewritten rules at a later meeting.

Medical Board/Perfusion Advisory Committee

21 NCAC 32V .0103 was unanimously approved.

21 NCAC 32V .0111 was withdrawn at the request of the agency.

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

Psychology Board

The Commission extended the period of review for 21 NCAC 54 .1602, .1605, .1606, .1607, .1608, .1609, .1610, .1611, .1612, .1701, .1702, .1703, .1705, .1706, .1707, .1802, .1803, .1901, .1903, .1904, .2001, .2002, .2005, .2006, .2007, .2008, .2009, .2101, .2102, .2103, .2104, .2202, .2203, .2301, .2302, .2303, .2304, .2305, .2308, .2309, .2311, .2314, .2401, .2402, .2601, .2701, .2703, .2704, .2705, .2706, .2801, .2802, .2803, .2804, .2805, and .2806 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 address technical changes.

Social Work Certification and Licensure Board

21 NCAC 63 .0215 was unanimously approved.

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

State Human Resources Commission

25 NCAC 01E .0210 was unanimously approved.

LOG OF FILINGS (TEMPORARY RULES)

DHHS - Division of Health Service Regulation

10A NCAC 14C .2203 was unanimously approved.

2020 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2020 Plan.

Amy Craddock, PhD, the Assistant Chief of Healthcare Planning with the Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section, addressed the Commission.

EXISTING RULES REVIEW

Marine Fisheries Commission

15A NCAC 18A - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2024 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The meeting adjourned at 10:09 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 20, 2020 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

January 16, 2020

Rules Review Commission
Meeting
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Name	Agency
Steven Shaber	N.C. Psychological Assn.
CATHERINE BLUM	NCDEQ-DMF
Charminique Williams	CSETS
John Batherson	NCDEQ
Marthi Turner-Duest	N.C. Psychological Ass.
Nadine Pfeiffer	DHHS- DHSR
ELIZABETH POPE	NCSWCLB
Jeff Welty	NCDOJ
Brenda Rivera	NCDOJ
- BOBBY WHITE	NC DENTAL BOARD
Christine Ryan	OSHR
Christine Kidd	OSHR
Shannon Gerger	DOA
Alex Fowler	OAH/Morrison
Brady Blackburn	NC Oral Health Collaborative
Ben Popkin	NC OHC
Sonda Farrow	NC State Ant. H. Lr. NC Bd. of
Michael Smallwood	NC WAC
Bethany Ferguson	NCDOJ / DHSR
Denise Mazza	NC OSHR
Julie Havlak	Carolina Journal

January 16, 2020

Rules Review Commission
Meeting
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STATE OF NORTH CAROLINA
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January 16, 2020

Jennifer Everett, Rulemaking Coordinator
Marines Fisheries Commission
Commission for Public Health
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 15A NCAC 18A (.0100, .0300-
.0900, .3400)

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 January 16, 2020 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 document shall be readopted by the agency no later than June 30, 2024.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Amber May".

Amber May
Commission Counsel

Administration
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fax: 919/431-3100

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

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Assistants
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Marine Fisheries Commission
Total: 164**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 18A .0134</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0135</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0136</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0137</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0138</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0139</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0140</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0141</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0142</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0143</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0144</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0145</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0146</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0147</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0148</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0149</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0150</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0151</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0152</u>	Necessary with substantive public interest
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<u>15A NCAC 18A .0155</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0156</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0157</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0158</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0159</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0160</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0161</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0162</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0163</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0164</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0165</u>	Necessary with substantive public interest
<u>15A NCAC 18A .0166</u>	Necessary with substantive public interest

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