# RULES REVIEW COMMISSION MEETING MINUTES July 18, 2019

The Rules Review Commission met on Thursday, July 18, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Margaret Currin, Garth Dunklin, Jeff Hyde, Brian LiVecchi, and Paul Powell; and Jeanette Doran present via telephone.

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

The meeting was called to order at 9:05 a.m. with Chairman Dunklin presiding and with Commissioner Doran present via telephone.

Commissioner LiVecchi joined the meeting at 9:06 a.m.

Commissioner Doran was advised quorum was established with the arrival of Commissioner LiVecchi. Commissioner Doran left the meeting at 9:07 a.m.

The Chair introduced OAH extern Stokes Lassiter to the Commission.

Chairman Dunklin read the notice required by G.S. 163A-159 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 20, 2019 meeting. There were none and the minutes were approved as distributed.

The Chairman notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matter for DHHS/Division of Health Benefits and Permanent Rules for Board of Dietetics/Nutrition.

#### **FOLLOW UP MATTERS**

#### **Board of Elections**

The agency is addressing the objections for 08 NCAC 10B .0101, .0102, .0103, .0104, .0105, .0106, and .0107. No action was required by the Commission.

#### **Social Services Commission**

10A NCAC 06R .0101, .0102, .0201, .0302, .0304, .0305, .0401, .0403, .0501, .0502, .0503, .0504, .0506, .0508, .0509, .0601, .0801, .0802, .0804, .0806, .0902, .0904; 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; and 06T .0201 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### **DHHS/ Division of Health Benefits**

The Commission unanimously waived Rule 26 NCAC 05 .0103 and allowed the speaker to submit written comments opposing the rules at the meeting.

Matthew Cochran, with Ott Cone and Redpath, speaking in opposition to the rules, addressed the Commission.

Shazia Keller, the rulemaking coordinator for the agency, addressed the Commission.

Brenda Edy, with the Attorney General's Office and representing DHHS, addressed the Commission.

Dana Lee, with the Attorney General's Office, addressed the Commission.

10A NCAC 23E .0105, .0202; 23G .0203; and 23H .0109 were unanimously approved.

The Commission objected to 10A NCAC 23G .0304 for ambiguity. Specifically, the Commission found that the rule is unclear regarding whether the individuals addressed in Paragraph (b) will receive the notice required by Paragraph (a). In addition, it is unclear if the term "change of situation" is intended to apply to Paragraph (b), as that term is not used in the Paragraph; instead, Paragraph (b) refers to "a change in the budget unit's situation."

#### **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.

#### **Social Services Commission**

10A NCAC 67A .0101, .0103 .0105, .0106, .0107, .0108, .0201, .0202, .0203, .0204, .0205, .0206; 68 .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0202, .0203, .0204, .0205, .0206, .0208, .0301, .0302, .0303; 69 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0601, .0602, .0603, .0604, .0605; 72 .0101, .0102, .0201, .0202, .0203, and .0301 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### **Department of Justice**

The agency is addressing the objections for 12 NCAC 02I .0213 and .0306.

At the June meeting, the RRC voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget to determine if 12 NCAC 02I .0306 has a substantial economic impact and therefore requires a fiscal note. The RRC is awaiting a response from the Office of State Budget. No action was required by the Commission.

#### **Environmental Management Commission**

The agency is addressing the objections for 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. No action was required by the Commission.

#### **Environmental Management Commission**

15A NCAC 02C .0101, .0102, .0105, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0116, .0117, .0118, .0119, .0201, .0202, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0217, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0229, .0230, .0240, .0241, and .0242 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### **Environmental Management Commission**

15A NCAC 02T .1601, .1602, .1604, .1605, .1606, .1607, and .1608 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### **Coastal Resources Commission**

15A NCAC 07J .0409 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### **State Human Resources Commission**

25 NCAC 01E .0210; 01I .1702, .1805, .1902, .1903, .1905, .2003, .2105, .2302, .2303, .2304, .2305, .2306, .2307, and .2310 - The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

#### LOG OF FILINGS (PERMANENT RULES)

#### **Department of Administration**

All rules were unanimously approved.

#### **Criminal Justice Education and Training Standards Commission**

All rules were unanimously approved.

#### **Sheriffs' Education and Training Standards Commission**

All rules were unanimously approved.

#### **Department of Transportation**

All rules were unanimously approved.

The Chair called the meeting into recess at 11:10 a.m.

The meeting resumed at 11:21 a.m.

#### **Board of Dietetics/Nutrition**

The Commission unanimously waived Rule 26 NCAC 05 .0103 and allowed the submission of untimely written comments opposing the rules at the meeting.

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 17 .0101 for lack of statutory authority. Specifically, the Commission found that the agency lacks statutory authority to narrow the terms to solely "medical nutrition therapy" in Subparagraphs (a)(2) and (3). Further, the Commission noted that Paragraph (b) contains both acronyms and initialisms.

The Commission objected to 21 NCAC 17 .0303 for lack of statutory authority. The Commission found that the agency lacks authority to contradict G.S. 90-368(2), which allows for supervision by those meeting the criteria in G.S. 90-357.5(a)(1)b and (c)(2).

Sabra Faires, with Bailey & Dixon, speaking in opposition to the rules, addressed the Commission.

Charla Burill, the rulemaking coordinator for the agency, addressed the Commission.

#### LOG OF FILINGS (TEMPORARY RULES)

#### **State Board of Elections**

08 NCAC 17 .0108 was unanimously approved.

#### **EXISTING RULES REVIEW**

#### **Radiation Protection Commission**

10A NCAC 15 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than February 28, 2027 pursuant to G.S. 150B-21.3A(d)(2).

### **Department of Health and Human Services**

10Å NCAC 15 (Section .1100) - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

#### **COMMISSION BUSINESS**

The meeting adjourned at 12:42 p.m.

The next regularly scheduled meeting of the Commission is Thursday, August 15, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

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

## July 18, 2019

## Rules Review Commission Meeting <u>Please **Print** Legibly</u>

Name	Agency
Shazia Keller	DHB
Jennifer Everett	DEQ
Harrah Gerrigan	DOT
Charminique Williams	CJETS
Matthew Jordan Cochran	OH Cone + Redpath, P.A.
Marie Enit	NCDOJ-Sheriffs
Clancy Phillips	NCD02
Charla Burill	NCBNN
Nadine Pfeiffer	NC NHHS- DH SR
Mish Preside - Hetrillians	DIC DULLS
Kyu Em (Darra) Lec	D07.
Paris Penn	NC DHITIS
Stokes Lassiter	OAH Exten
Kyan Eppenberger	DHB
Shawon Gerger	DOA
Sabra Faires	Bailey Dikon
Jomas Hbrint	DHUS DHSR RPS
Kelly Tornon	NCSBE
Glercle ats	DHAS-DAAS
Katelyn Love	SBE
Jon Care	SPO

## Rules Review Commission Meeting <u>Please **Print** Legibly</u>

Name	A
	Agency
andrea C. Phillips	DHB(DHHS)
Jehote Wal-	NCISOT
Henry W. Hones, Jr.	NEBO DAN
Kimelle	NCBDN
KEVIN LACY	NCDOT
1	



#### STATE OF NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address: 6714 Mail Service Center Raleigh, NC 27699-6700

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

July 18, 2019

Nadine Pfeiffer, Rulemaking Coordinator Radiation Protection 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 15

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 July 18, 2019 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 February 28, 2027.

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

Sincerely,

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

Civil Rights 919/431-3036 lax 919/431-3104 fax: 919/431-3103

An Equal Employment Opportunity Employer

## RRC DETERMINATION PERIODIC RULE REVIEW

April 18, 2019 APO Review: June 22, 2019

## **Radiation Protection Commission**

Total: 257

### RRC Determination: Necessary with substantive public interest

Rule		Determination
10A NCAC 15	.0101	Necessary with substantive public interest
10A NCAC 15	.0102	Necessary with substantive public interest
10A NCAC 15	.0103	Necessary with substantive public interest
10A NCAC 15	.0104	Necessary with substantive public interest
10A NCAC 15	.0105	Necessary with substantive public interest
10A NCAC 15	.0106	Necessary with substantive public interest
10A NCAC 15	.0107	Necessary with substantive public interest
10A NCAC 15	.0108	Necessary with substantive public interest
10A NCAC 15	.0109	Necessary with substantive public interest
10A NCAC 15	.0110	Necessary with substantive public interest
10A NCAC 15	.0113	Necessary with substantive public interest
10A NCAC 15	.0114	Necessary with substantive public interest
10A NCAC 15	.0115	Necessary with substantive public interest
10A NCAC 15	.0116	Necessary with substantive public interest
10A NCAC 15	.0117	Necessary with substantive public interest
10A NCAC 15	.0118	Necessary with substantive public interest
10A NCAC 15	.0202	Necessary with substantive public interest
10A NCAC 15	.0203	Necessary with substantive public interest
10A NCAC 15	.0204	Necessary with substantive public interest
10A NCAC 15	.0205	Necessary with substantive public interest
10A NCAC 15	.0206	Necessary with substantive public interest
10A NCAC 15	.0207	Necessary with substantive public interest
10A NCAC 15	.0209	Necessary with substantive public interest
10A NCAC 15	.0210	Necessary with substantive public interest
10A NCAC 15	.0213	Necessary with substantive public interest
10A NCAC 15	.0214	Necessary with substantive public interest
10A NCAC 15	.0301	Necessary with substantive public interest
10A NCAC 15	.0302	Necessary with substantive public interest
10A NCAC 15	.0303	Necessary with substantive public interest
10A NCAC 15	.0304	Necessary with substantive public interest
10A NCAC 15	.0305	Necessary with substantive public interest
10A NCAC 15	.0306	Necessary with substantive public interest
10A NCAC 15	.0307	Necessary with substantive public interest

10A NCAC 15 .0308 Necessary with substantive public interest 10A NCAC 15 .0309 Necessary with substantive public interest 10A NCAC 15 .0310 Necessary with substantive public interest 10A NCAC 15 .0311 Necessary with substantive public interest 10A NCAC 15 .0312 Necessary with substantive public interest 10A NCAC 15 .0313 Necessary with substantive public interest 10A NCAC 15 .0314 Necessary with substantive public interest 10A NCAC 15 .0315 Necessary with substantive public interest 10A NCAC 15 .0316 Necessary with substantive public interest 10A NCAC 15 .0317 Necessary with substantive public interest 10A NCAC 15 .0318 Necessary with substantive public interest 10A NCAC 15 .0319 Necessary with substantive public interest 10A NCAC 15 .0320 Necessary with substantive public interest 10A NCAC 15 .0321 Necessary with substantive public interest 10A NCAC 15 .0322 Necessary with substantive public interest 10A NCAC 15 .0323 Necessary with substantive public interest 10A NCAC 15 .0324 Necessary with substantive public interest 10A NCAC 15 .0327 Necessary with substantive public interest 10A NCAC 15 .0328 Necessary with substantive public interest 10A NCAC 15 .0329 Necessary with substantive public interest 10A NCAC 15 .0330 Necessary with substantive public interest 10A NCAC 15 .0331 Necessary with substantive public interest 10A NCAC 15 .0332 Necessary with substantive public interest 10A NCAC 15 .0333 Necessary with substantive public interest 10A NCAC 15 .0334 Necessary with substantive public interest 10A NCAC 15 .0335 Necessary with substantive public interest 10A NCAC 15 .0337 Necessary with substantive public interest 10A NCAC 15 .0338 Necessary with substantive public interest 10A NCAC 15 .0339 Necessary with substantive public interest 10A NCAC 15 .0340 Necessary with substantive public interest 10A NCAC 15 .0341 Necessary with substantive public interest 10A NCAC 15 .0342 Necessary with substantive public interest 10A NCAC 15 .0343 Necessary with substantive public interest 10A NCAC 15 .0344 Necessary with substantive public interest 10A NCAC 15 .0345 Necessary with substantive public interest 10A NCAC 15 .0346 Necessary with substantive public interest 10A NCAC 15 .0348 Necessary with substantive public interest 10A NCAC 15 .0349 Necessary with substantive public interest 10A NCAC 15 .0351 Necessary with substantive public interest 10A NCAC 15 .0352 Necessary with substantive public interest 10A NCAC 15 .0353 Necessary with substantive public interest 10A NCAC 15 .0354 Necessary with substantive public interest 10A NCAC 15 .0355 Necessary with substantive public interest Necessary with substantive public interest 10A NCAC 15 .0356

10A NCAC 15 .0357 Necessary with substantive public interest 10A NCAC 15 .0358 Necessary with substantive public interest 10A NCAC 15 .0359 Necessary with substantive public interest 10A NCAC 15 .0360 Necessary with substantive public interest 10A NCAC 15 .0361 Necessary with substantive public interest 10A NCAC 15 .0362 Necessary with substantive public interest 10A NCAC 15 .0363 Necessary with substantive public interest 10A NCAC 15 .0364 Necessary with substantive public interest 10A NCAC 15 .0365 Necessary with substantive public interest 10A NCAC 15 .0503 Necessary with substantive public interest 10A NCAC 15 .0504 Necessary with substantive public interest 10A NCAC 15 .0505 Necessary with substantive public interest 10A NCAC 15 .0507 Necessary with substantive public interest 10A NCAC 15 .0508 Necessary with substantive public interest 10A NCAC 15 .0521 Necessary with substantive public interest 10A NCAC 15 .0524 Necessary with substantive public interest 10A NCAC 15 .0601 Necessary with substantive public interest Necessary with substantive public interest 10A NCAC 15 .0602 10A NCAC 15 .0603 Necessary with substantive public interest Necessary with substantive public interest 10A NCAC 15 .0604 10A NCAC 15 .0605 Necessary with substantive public interest 10A NCAC 15 .0606 Necessary with substantive public interest 10A NCAC 15 .0607 Necessary with substantive public interest 10A NCAC 15 .0608 Necessary with substantive public interest 10A NCAC 15 .0609 Necessary with substantive public interest 10A NCAC 15 .0610 Necessary with substantive public interest 10A NCAC 15 .0701 Necessary with substantive public interest 10A NCAC 15 .0702 Necessary with substantive public interest 10A NCAC 15 .0901 Necessary with substantive public interest 10A NCAC 15 .0902 Necessary with substantive public interest 10A NCAC 15 .0903 Necessary with substantive public interest 10A NCAC 15 .0904 Necessary with substantive public interest .0905 Necessary with substantive public interest 10A NCAC 15 Necessary with substantive public interest 10A NCAC 15 .0906 .0907 Necessary with substantive public interest 10A NCAC 15 10A NCAC 15 .0908 Necessary with substantive public interest 10A NCAC 15 .0909 Necessary with substantive public interest .0910 Necessary with substantive public interest 10A NCAC 15 .1004 10A NCAC 15 Necessary with substantive public interest 10A NCAC 15 .1007 Necessary with substantive public interest 10A NCAC 15 .1008 Necessary with substantive public interest 10A NCAC 15 .1201 Necessary with substantive public interest .1202 10A NCAC 15 Necessary with substantive public interest 10A NCAC 15 .1203 Necessary with substantive public interest

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Necessary with substantive public interest 10A NCAC 15 .1606 10A NCAC 15 .1607 Necessary with substantive public interest 10A NCAC 15 .1608 Necessary with substantive public interest 10A NCAC 15 .1609 Necessary with substantive public interest 10A NCAC 15 .1610 Necessary with substantive public interest 10A NCAC 15 .1611 Necessary with substantive public interest 10A NCAC 15 .1612 Necessary with substantive public interest 10A NCAC 15 .1613 Necessary with substantive public interest 10A NCAC 15 .1614 Necessary with substantive public interest 10A NCAC 15 .1615 Necessary with substantive public interest 10A NCAC 15 Necessary with substantive public interest .1616 10A NCAC 15 .1617 Necessary with substantive public interest 10A NCAC 15 .1618 Necessary with substantive public interest 10A NCAC 15 .1619 Necessary with substantive public interest Necessary with substantive public interest 10A NCAC 15 .1620 10A NCAC 15 .1621 Necessary with substantive public interest 10A NCAC 15 .1622 Necessary with substantive public interest 10A NCAC 15 .1623 Necessary with substantive public interest 10A NCAC 15 .1624 Necessary with substantive public interest 10A NCAC 15 .1625 Necessary with substantive public interest 10A NCAC 15 .1626 Necessary with substantive public interest 10A NCAC 15 .1627 Necessary with substantive public interest 10A NCAC 15 .1628 Necessary with substantive public interest 10A NCAC 15 .1629 Necessary with substantive public interest 10A NCAC 15 .1630 Necessary with substantive public interest 10A NCAC 15 .1631 Necessary with substantive public interest 10A NCAC 15 .1632 Necessary with substantive public interest 10A NCAC 15 .1633 Necessary with substantive public interest 10A NCAC 15 .1634 Necessary with substantive public interest 10A NCAC 15 .1635 Necessary with substantive public interest 10A NCAC 15 .1636 Necessary with substantive public interest 10A NCAC 15 .1637 Necessary with substantive public interest 10A NCAC 15 .1638 Necessary with substantive public interest Necessary with substantive public interest 10A NCAC 15 .1639 10A NCAC 15 .1640 Necessary with substantive public interest 10A NCAC 15 .1641 Necessary with substantive public interest 10A NCAC 15 .1642 Necessary with substantive public interest 10A NCAC 15 .1643 Necessary with substantive public interest 10A NCAC 15 .1644 Necessary with substantive public interest 10A NCAC 15 .1645 Necessary with substantive public interest 10A NCAC 15 .1646 Necessary with substantive public interest 10A NCAC 15 .1647 Necessary with substantive public interest 10A NCAC 15 .1648 Necessary with substantive public interest 10A NCAC 15 .1649 Necessary with substantive public interest

10A NCAC 15	.1650	Necessary with substantive public interest
10A NCAC 15	.1651	Necessary with substantive public interest
10A NCAC 15	.1652	Necessary with substantive public interest
10A NCAC 15	.1653	Necessary with substantive public interest



#### STATE OF NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address: 6714 Mail Service Center Raleigh, NC 27699-6700

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

July 18, 2019

Joel Johnson, Rulemaking Coordinator Department of Health and Human Services 2001 Mail Service Center Raleigh, North Carolina 27699-2001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 15 - Section .1100

Dear Mr. Johnson:

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. consultation with your agency, this set of rules was discussed at the July 18, 2019 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 June 30, 2021.

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

Sincerely,

Amber May

Commission Counsel

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

Rules Division 919/431-3000 fav. 919-431-3104

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

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

Commission 919/431-3000

Civil Rights Division 919/431-3036 fax 919/431-3104 fax 919/431-3103

## RRC DETERMINATION PERIODIC RULE REVIEW April 18, 2019

APO Review: June 22, 2019

## Health and Human Services, Department of Total: 2

RRC Determination: Necessary with substantive public interest

Rule		Determination	
10A NCAC 15	.1102	Necessary with substantive public interest	
10A NCAC 15	.1106	Necessary with substantive public interest	