

**RULES REVIEW COMMISSION MEETING
MINUTES
June 20, 2019**

The Rules Review Commission met on Thursday, June 20, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, and Jeff Poley.

Staff members present were Commission Counsel Amber Cronk May and Amanda Reeder; and Alex Burgos and Dana McGhee.

The meeting was called to order at 9:04 a.m. with Chairman Dunklin presiding.

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 May 16, 2019 meeting. There were none and the minutes were approved as distributed.

The Chairman 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 Department of Justice.

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.

DHHS/ Division of Health Benefits

10A NCAC 23E .0105, .0202; 23G .0203, .0304; 23H .0109 - The agency is addressing the technical change requests from the May meeting. No action was required by the Commission.

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.

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 Commission objected based upon ambiguity as reflected in the Requests for Technical Changes issued on April 4, 2019.

Environmental Management Commission

15A NCAC 02H .0901, .0902, .0903, .0904, .0905, .0906, .0907, .0908, .0909, .0910, .0912, .0913, .0914, .0915, .0916, .0917, .0918, .0919, .0920, .0921, and .0922 – All rules were unanimously approved.

Marriage and Family Therapy Licensure Board

21 NCAC 31 .0201, .0202, .0203, .0301, .0401, .0403, .0404, .0501, .0502, .0503, .0504, .0505, .0506, .0609, .0701, .0801, .0802, .1001, and .1002 – All rules were unanimously approved.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture

All rules were unanimously approved.

DHHS - Division of Aging and Adult Services

All rules were unanimously approved.

Social Services Commission 10A NCAC 06R, 06S, 06T

The Commission extended the period of review for the rules in 10A NCAC 06R, 06S, and 06T in accordance with G.S. 150B-21.10. They did so in response to a request from the Social Services Commission to extend the period in order to allow the agency to address technical changes and Staff Opinions and submit the rewritten rules at a later meeting.

Department of Health and Human Services

All rules were unanimously approved.

Social Services Commission 10A NCAC 67A, 68, 69, 72

The Commission extended the period of review for the rules in 10A NCAC 67A, 68, 69, and 72 in accordance with G.S. 150B-21.10. They did so in response to a request from the Social Services Commission to extend the period in order to allow the agency to address technical changes and Staff Opinions and submit the rewritten rules at a later meeting.

Code Officials Qualification Board

All rules were unanimously approved.

Department of Justice

The Commission objected to 12 NCAC 02I .0213 and .0306 in accordance with G.S. 150B-21.10.

The Commission objected to 12 NCAC 02I .0213 for lack of statutory authority and ambiguity. Specifically, the Commission found that the rule is ambiguous as it does not set forth the process by which the Attorney General or the designee will act to revoke or deny the summary suspension. Further, it is unclear whether this will be a summary action or if it will include a hearing. Finally, the Commission found that the agency lacks statutory authority to take this action if it is not taken in compliance with G.S. 150B, Article 3, as required by G.S. 74E-4(5).

The Commission objected to 12 NCAC 02I .0306 for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required in its Notice of Text, published March 1, 2019. However, members of the regulated public stated that the adoption of this Rule would create a substantial economic impact. Pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the Commission found that the agency did not comply with the APA. The Commission sent this Rule to OSBM pursuant to G.S. 150B-21.9(a) for further review.

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

Roy Taylor, speaking in opposition to the rules, addressed the Commission.

Keith Williams, speaking in opposition to the rules, addressed the Commission.

Natasha Williams, speaking in opposition to the rules, addressed the Commission.

Randy Munn, Administrator with the Company/Campus Police Program, addressed the Commission.

Marie Evett, with the Attorney General's Office and representing the agency, addressed the Commission.

Environmental Management Commission 15A NCAC 02C

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for the rules in 15A NCAC 02C, Sections .0100 and .0200 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 rules at a later meeting.

Environmental Management Commission 15A NCAC 02H

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02T

The Commission extended the period of review for the rules in 15A NCAC 02T in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to submit the rewritten rules at a later meeting.

Coastal Resources Commission

All rules were unanimously approved with the following exception:

The Commission extended the period of review for 15A NCAC 07J .0409 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.

Commission for Public Health

All rules were unanimously approved.

Department of Transportation

All rules were unanimously approved.

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.

Prior to the review of the rules from the Medical Board, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because his law firm may have a conflict.

Onsite Wastewater Contractors and Inspectors Certification Board

All rules were unanimously approved.

State Human Resources Commission

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 25 NCAC 01E .0210 and all rules submitted in Subchapter 01I 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 rules at a later meeting.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is a State employee.

EXISTING RULES REVIEW

DHHS - Division of Health Service Regulation

10A NCAC 14E - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from DHHS - Division of Health Service Regulation, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the report because his law firm may have a conflict.

Commission for Mental Health/DD/SAS

10A NCAC 28F(Section .0100; Rules .0201-.0209, .0212; Sections .0300, .0400, .0700) - The Commission unanimously approved the report as submitted by the agency.

Commission for Mental Health/DD/SAS & Division of Mental Health/DD/SAS

10A NCAC 28F (Rules .0210, .0211, .0213; Sections .0500, .0600, .0800, .0900) – The Commission unanimously approved the report as submitted by the agency.

Commission for Mental Health/DD/SAS

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

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

10A NCAC 28I (Section .0300) - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 29D (Sections .0600, .0700) - The Commission unanimously approved the report as submitted by the agency.

Commission for Mental Health/DD/SAS & Division of Mental Health/DD/SAS

10A NCAC 28I (Section .0200) - The Commission unanimously approved the report as submitted by the agency.

Division for Mental Health/DD/SAS

10A NCAC 28I (Sections .0100, .0400) - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 29C - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 29D (Sections .0500, .0800) - The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 04, 05 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than March 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The meeting adjourned at 11:05 a.m.

The next regularly scheduled meeting of the Commission is Thursday, July 18, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

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

DRAFT

June 20, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Denise Marz	OSHR - SHRC
Xhelm Vaud	DOT
Robert Midgette	DEQ, DWR, Public Water Supply
Jay Frick	DEQ - DWR
R. Logan	CJSTL - DOJ
Paris Penny	NC DHHS
RAJ KREMARKAR	DOJ
Charmirgale Williams	CJETS
Randy Mann	NC DOJ
Denise Baker	NC DHHS OMA/Linkers
Michael Rogers	DEQ - DWR
Nanda Nicholson	MFT Board
Tom Felling	Code Officials - DOJ
Heide Wilkin	South Eastern
Michael Beckwith	NC DHHS
Debra Wot	NC DWR
John P. Brinkley	DOJ A - CVH
Glenn Artis	NC DHHS
Marcelo Jimenez	NC MB
Carlo Staples	NCOWICB

June 20, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Loretta Bunch	NC DOI
Jennifer Everett	DEQ
Nadine Pfeiffer	DHHS-DHSR
Clarence Furson	DHHS-DHSR
Lynne Taylor	nc medical Board
Kellie Wade	NC DOT
Jim Duff-Williams	NC DAAS
Kathy Williams	NC DOI
Chrissy Waggett	NCDACS
Shawn Maier	NC DOS
Ricardo Leroy SR	Richmond County Scheds
Justin Cable	Allied Universal Special Police
Jeff Talbot	NC DEQ
Roy Taylor	Capitol Special Police
Dana Satterwhite	NC DEQ
Thomas Campbell	NC DOJ
Martina Roca	NCSCAP/OSMSSP
HEATHER CARTER	NC DHHS - DAAS
Cindy Moore	NC DEQ
Hannah Gougeon	NC DOT
Christine Ryan	OSHR



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 20, 2019

Loretta Peace-Bunch, Rulemaking Coordinator
Department of Insurance
1201 Mail Service Center
Raleigh, North Carolina 27699-1201

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **11 NCAC 04 and 05**

Dear Ms. Peace-Bunch:

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 June 20, 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 March 31, 2021.

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", is written over a horizontal line.

Amber May
Commission Counsel

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fax: 919/431-3100

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919/431-3000
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Judges and
Assistants
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Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Insurance, Department of
Total: 45**

RRC Determination: Necessary with substantive public interest

Rule	Determination
11 <u>NCAC 04 .0115</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0116</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0117</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0118</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0119</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0120</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0121</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0122</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0123</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0124</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0312</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0313</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0314</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0315</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0316</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0317</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0318</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0319</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0320</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0415</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0416</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0417</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0418</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0419</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0420</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0421</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0422</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0423</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0425</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0426</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0427</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0429</u>	Necessary with substantive public interest
11 <u>NCAC 04 .0430</u>	Necessary with substantive public interest

<u>11</u>	<u>NCAC 04</u>	<u>.0431</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0432</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0433</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0501</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0502</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0503</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0504</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0505</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0506</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0507</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0508</u>	Necessary with substantive public interest
<u>11</u>	<u>NCAC 04</u>	<u>.0509</u>	Necessary with substantive public interest

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 15, 2018
APO Review: January 19, 2019
Insurance, Department of
Total: 4**

RRC Determination: Necessary with substantive public interest

Rule	Determination
11 <u>NCAC 05B .0301</u>	Necessary with substantive public interest
11 <u>NCAC 05D .0113</u>	Necessary with substantive public interest
11 <u>NCAC 05D .0114</u>	Necessary with substantive public interest
11 <u>NCAC 05D .0115</u>	Necessary with substantive public interest