

**RULES REVIEW COMMISSION MEETING  
MINUTES  
March 19, 2020**

The Rules Review Commission met on Thursday, March 19, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via telephone. The Commissioners held a telephonic meeting due to multiple Executive Orders limiting mass gatherings, such as Executive Order 117, which were issued to address the COVID-19 virus.

Commissioner Jeff Hyde was present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, Paul Powell, and Tommy Tucker.

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

The meeting was called to order at 9:05 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.

**APPROVAL OF MINUTES**

Chairman Hyde asked for any discussion, comments, or corrections concerning the minutes of the February 20, 2020 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 Department of Insurance.

**FOLLOW UP MATTERS**

**Department of Natural and Cultural Resources**

07 NCAC 13F .0202, .0303, and .0304 – All rewritten rules were approved with the following exception:

The Commission objected to 07 NCAC 13F .0202 based upon ambiguity.

Specifically, the Commission found that as reflected in the Request for Technical Changes, the rule contains multiple terms, such as “high quality” [in Subparagraph (a)(2)] and “substantial evidence” [in Part (b)(3)(A)], that are ambiguous and therefore make the rule unclear as written.

**Board of Elections**

The agency is addressing the objection for 08 NCAC 10B .0103. 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.

**Department of Insurance**

11 NCAC 12 .0321, .0514, .1501, .1502, .1503, .1504, .1505, .1506, .1507, .1508, .1509, .1803 - The agency is addressing the request for technical changes from the February meeting. No action was required by the Commission.

**Criminal Justice Education and Training Standards Commission**

12 NCAC 09E .0105 – The rule was returned to the agency. No action was required by the Commission.

### **Environmental Management Commission**

15A NCAC 02B .0240 (to be recodified as 15A NCAC 02B .0703) was unanimously approved.

### **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.

### **Sedimentation Control Commission**

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 - All rules were unanimously approved with the following exceptions:

The Commission objected to 15A NCAC 04C .0103 based upon lack of necessity. Specifically, the Commission found that the rule states that the Secretary may assess civil penalties. However, both of the statutes cited in the History Note for this Rule, G.S. 113A-55 and 113A-64, state that the Secretary assesses civil penalties. As this Rule simply repeats statute, the Commission determined that it is unnecessary.

The Commission objected to Rule 15A NCAC 04C .0106 for lack of statutory authority. Specifically, the Commission found that the rule purported to set criteria the Secretary will use in assessing civil penalties, which were in addition to the criteria set forth in G.S. 113-64(a)(3). The Commission determined the agency does not have authority to create new criteria through rulemaking.

### **Coastal Resources Commission**

15A NCAC 07H .0304, .0305, .0309, .0313, .1901, .1902, .1904, and .1905 - All rules were unanimously approved.

### **Psychology Board**

21 NCAC 54 .2006 and .2008 - The agency is addressing the objections from the February meeting. No action was required by the Commission.

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, .2007, .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 - All rules were unanimously approved.

### **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)**

### **Structural Pest Control Committee**

The Commission extended the period of review for 02 NCAC 34 .0302, .0309, .0328, .0331, .0501, .0502, .0503, .0504, .0505, .0506, .0602, .0703, and .1206 in accordance with G.S. 150B-21.10. They did so in response to a request from the Structural Pest Control Committee to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

### **Medical Care Commission**

10A NCAC 13B – All rules were unanimously approved.

10A NCAC 13F and G - The Commission extended the period of review for 10A NCAC 13F .0202, .0204, .0208, .0209, .0212; and 13G .0202, .0204, .0208, .0209, .0212, and .0213 in accordance with G.S. 150B-21.10. They did so in response to a request from the Medical Care Commission to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

### **Commission for Public Health/DHHS 10A NCAC 41B**

All rules were unanimously approved.

### **Department of Insurance**

All rules were unanimously approved with the following exception:

The Commission objected to 11 NCAC 04 .0418 in accordance with G.S. 150B-21.10.

The Commission objected to this Rule for ambiguity in Subparagraph (b)(3) and Paragraph (d). Specifically, Subparagraph (b)(3) does not define or explain what qualifies as a “pricing guide.” In Paragraph (d), the process for calculating a car’s “actual cash value” is unclear as written.

Daniel Wyatt with Collision Service Investigators of North Carolina addressed the Commission.

John Hoomani, with the agency, addressed the Commission.

### **Commission for Public Health**

15A NCAC 18C .1305 was unanimously approved.

### **Cemetery Commission**

21 NCAC 07D .0108 was unanimously approved.

### **Board of Dental Examiners**

21 NCAC 16A .0106 was unanimously approved.

### **Medical Board**

All rules were unanimously approved.

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

### **Midwifery Joint Committee**

All rules were approved with Commissioner Tucker voting against.

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

**Board of Pharmacy**

All rules were unanimously approved.

**EXISTING RULES REVIEW**

**Department of Environmental Quality**

01 NCAC 41C, D and 04 NCAC 12 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than January 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

**Environmental Management Commission**

15A NCAC 02I, J - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than January 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

**COMMISSION BUSINESS**

The meeting adjourned at 10:34 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 16, 2020 at 9:00 a.m.

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Alexander Burgos, Paralegal

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

March 19, 2020

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Dannig Wyatt	CSI-NC
<del>DAVID PICANO</del>	<del>DHS-OCPE</del>

Via Teleconference

Individual and Agency
Jennifer Everett, DEQ
Phillip Reynolds, DOJ
Sondra Panico, DOJ
Daniel Collins, Psychology Board
Jay Frick, DEQ
John Huisman, DEQ
Charminique Williams, CJETS
Virginia Niehaus, CPH
Kirsten Leloudis, DHHS
John Barkley, DHHS
Kenny Benfield, DPH
John Hoomani, DOI
Loretta Peace-Bunch, DOI
Kathy Shortt, DOI



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

March 19, 2020

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

Re: **01 NCAC 41C, D and 04 NCAC 12**

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 March 19, 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 January 31, 2021.

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

Sincerely,

A handwritten signature in blue ink that reads "Amber May".

Amber May  
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
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An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
December 13, 2018  
APO Review: February 16, 2019  
Environmental Quality, Department of  
Total: 22**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<a href="#">01 NCAC 41C .0101</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0201</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0202</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0203</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0204</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0205</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0206</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0207</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0208</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0209</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0210</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0211</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0301</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0302</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41C .0303</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0101</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0102</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0201</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0202</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0301</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0302</a>	Necessary with substantive public interest
<a href="#">01 NCAC 41D .0401</a>	Necessary with substantive public interest

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
August 17, 2017  
APO Review: October 17, 2017  
Environmental Quality, Department of  
Total: 5**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<a href="#">04 NCAC 12C .0108</a>	Necessary with substantive public interest
<a href="#">04 NCAC 12D .0102</a>	Necessary with substantive public interest
<a href="#">04 NCAC 12D .0103</a>	Necessary with substantive public interest
<a href="#">04 NCAC 12D .0116</a>	Necessary with substantive public interest
<a href="#">04 NCAC 12D .0117</a>	Necessary with substantive public interest



STATE OF NORTH CAROLINA  
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Mailing address:  
6714 Mail Service Center  
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March 19, 2020

Jennifer Everett, Rulemaking Coordinator  
Environmental Management Commission  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 02I and 02J**

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 March 19, 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 printout shall be readopted by the agency no later than January 31, 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  
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  
December 13, 2018  
APO Review: February 16, 2019  
Environmental Management Commission  
Total: 15**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<a href="#">15A NCAC 02I .0101</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02I .0102</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02I .0103</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02I .0106</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02I .0203</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02I .0302</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0102</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0103</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0104</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0106</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0107</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0108</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0109</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0110</a>	Necessary with substantive public interest
<a href="#">15A NCAC 02J .0111</a>	Necessary with substantive public interest