

**RULES REVIEW COMMISSION MEETING
MINUTES
December 13, 2018**

The Rules Review Commission met on Thursday, December 13, 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, Brian LiVecchi, 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 9:03 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.

Chairman Dunklin read into the record the following statement of economic interest for:

Robert Angus Bryan, Jr. and Margaret Person Currin, which stated there was no actual or likely conflict of interest.

Andrew Perry Atkins, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Mr. Atkins fills the role of a public member on the Commission. He is an Associate Attorney with the law firm of Smith Anderson Blount Dorsett Mitchell & Jernigan, LLP. He has disclosed that the law firm provides representation to various state agencies, boards and commissions. As such, Mr. Atkins has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues regarding the State agency, board or commission clients of the law firm come before the Commission for official action.

Anna Baird Choi, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Ms. Choi fills the role of a public member on the Commission. She is an Attorney with the law firm of Nichols, Choi & Lee, PLLC. She has disclosed that the law firm provides representation to several occupational licensing boards. As such, Ms. Choi has the potential for a conflict of interest and should exercise appropriate caution in the performance of her public duties should issues regarding the occupational licensing board clients of the law firm come before the Commission for official action.

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: the permanent rules for the Industrial Commission and the report for the Medical Care Commission.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the November 15, 2018 meeting and the November 26, 2018 special meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Elections and Ethics Enforcement

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104,

.0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 - No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

DHHS/Division of Medical Assistance

10A NCAC 22F .0301 - No action was required by the Commission, as the rewritten rule was approved at the November 15, 2018 meeting, but the changes were determined to be substantial pursuant to G.S. 150B-21.12(c). The agency is required to republish the rule in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

Commission for the Blind

10A NCAC 63C .0203, .0204, .0403, and .0601 - No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

12 NCAC 09G .0103 was unanimously approved.

Department of Public Safety

14B NCAC 01C .0401, .0402; 07A .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0115, .0116, .0118, and .0119 – All rules were unanimously approved.

Board of Nursing

21 NCAC 36 .0109, .0112, .0113, .0120, .0201, .0202, .0203, .0207, .0208, .0211, .0213, .0217, .0218, .0219, .0220, .0221, .0223, .0224, .0225, .0226, .0228, .0232, .0233, .0302, .0303, .0309, .0317, .0318, .0320, .0321, .0322, .0323, .0401, .0402, .0403, .0404, .0405, .0406, .0502, .0503, .0504, .0505, .0506, .0507, .0601, .0602, .0603, .0604, .0605, .0801, .0802, .0803, .0804, .0805, .0806, .0807, .0808, .0809, .0810, .0811, .0812, .0813, .0814, and .0815 - 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 services to the Board, including questions on rulemaking from time to time.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Medical Care Commission

All rules were unanimously approved.

Prior to the review of the rules from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rules because the Medical Care Commission is a client of his law firm.

Department of Public Safety

All rules were unanimously approved.

Alcoholic Beverage Control Commission

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 02K

15A NCAC 02K .0224 was unanimously approved.

Environmental Management Commission 15A NCAC 13B

The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period in order to allow the agency to make technical changes and submit the rewritten rules at a later meeting.

Commission for Public Health

15A NCAC 18C .1305 was unanimously approved.

Board of Dental Examiners

All rules were unanimously approved.

*Non Pre-Reviewed Rules***North Carolina Housing Finance Agency 04 NCAC 19S**

All rules were unanimously approved.

Child Care Commission

All rules were unanimously approved.

Commission for Mental Health

10A NCAC 26F .0106 was unanimously approved.

Department of Insurance

All rules were unanimously approved.

Industrial Commission

All rules in 11 NCAC 23A and 23H were approved.

Rules 11 NCAC 23B .0206 and .0207 were approved with Commissioners Atkins, Bryan, Choi, Currin, Doran, and LiVecchi, voting in favor of the rules; Commissioners Dunklin, Hyde, and Powell voted against. Commissioner Poley was not present for the discussion or vote on these Rules.

Rule 11 NCAC 23B .0503 was unanimously approved contingent upon receiving technical changes to remove "government entities" from the rule. The rule with the technical change was received after the meeting.

Margaret McDonald, Assistant General Counsel and DPS Rulemaking Coordinator, addressed the Commission.

Jerrel Jordan, with DPS, addressed the Commission.

Theresa Stephenson, Senior Deputy General Counsel with DPS, addressed the Commission.

Stephanie Brennan, with the Attorney General's Office, addressed the Commission on behalf of the NC DOJ.

Kenneth Lassiter, Director of Prisons for DPS, addressed the Commission.

Ashley Snyder, the rulemaking coordinator with the agency, addressed the Commission.

Summit Gupta, the Chief Deputy Commissioner with the agency, addressed the Commission.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of Rules 11 NCAC 23B .0206, .0207, and .0503.

Environmental Management Commission 15A NCAC 02B

15A NCAC 02B .0304 was unanimously approved.

North Carolina Housing Finance Agency 24 NCAC 01N

24 NCAC 01N .0204 was unanimously approved.

EXISTING RULES REVIEW

Department of Environmental Quality

01 NCAC 41A – The Commission unanimously approved the report as submitted by the agency.

01 NCAC 41C – The Commission unanimously approved the report as submitted by the agency.

01 NCAC 41D – The Commission unanimously approved the report as submitted by the agency.

01 NCAC 41E – The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission

10A NCAC 13G -The Commission unanimously approved the report as submitted by the agency, with the following exceptions for rules that received public comment that were deemed to have merit as defined by G.S. 150B-21.3A(c)(2): .0317 and .0318. The RRC designated those rules as “necessary with substantive public interest”, with Commissioner Atkins voting against.

Steven Lewis, with Division of Health Service Regulation, addressed the Commission.

Prior to the review of the report from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the report because the Medical Care Commission is a client of his law firm.

Commission for Public Health

10A NCAC 41C – The Commission unanimously approved the report as submitted by the agency.

Department of Health and Human Services

15A NCAC 01O - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02G – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02I – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02J – The Commission unanimously approved the report as submitted by the agency.

Wildlife Resources Commission

15A NCAC 10A – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10D – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10E – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10G – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10I – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10J – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 10K – The Commission unanimously approved the report as submitted by the agency.

Pesticide Board

02 NCAC 09L – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Structural Pest Control Committee

02 NCAC 34 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than April 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

The Chair called the meeting into a brief recess at 11:16 a.m. The meeting resumed at 11:30 a.m.

COMMISSION BUSINESS


At 11:57 a.m., upon a motion and second, and unanimous vote, the Commission ended the public meeting of the Rules Review Commission and called the meeting into closed session pursuant to G.S. 143-318.11(a)(3) to discuss the lawsuit filed by the Department of Health and Human Services and the Commission for Public Health against the Rules Review Commission.

The Commission came out of closed session and reconvened at 12:32 p.m.

The Commission authorized litigation counsel to negotiate a consent order in the matter of DHHS/CPH v. RRC consistent with the action taken at the Commission's special called meeting on November 26, 2018, and further authorized the Chair to give final approval to the consent order on the Commission's behalf.

The meeting adjourned at 12:33 p.m.

The next regularly scheduled meeting of the Commission is Thursday, January 17th, 2019 at 9:00 a.m.



Alexander Burgos, Paralegal



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

December 13, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Beverly Spencer	NC DHSR
Kenneth Asster	NC DPS
Channing Williams	CJETS
Meredith Henderson	NCIC
Ed Dorman	NC DHHS
Angela Ellis	NC BON
Amy Fitzhugh	NC BON
Carrie Hollis	OSBM
Eddie Thomas	DPS
Lichina Hauer	NC DHSR
Walter Redden	ABC Commission
Casey Howard	NATFA
Virginia Michaels	NC DHHS, DPH
Ann Anderson	OSBM
Meagan Hornold	OSBM
Jay Finkle	DWR
Anita Grozan	OSBM
Charlton Allen	NC IC
John Green	NC DOJ
Doug Barriek	DHSR - ACCS

December 13, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Alison Neely	NC DOJ
Theresa Stephenson	NC DPS
Tate Dolinger	NC DPH
Angie Edwards	NC DPH
Jennifer Everett	DEQ
Nadine Pfeiffer	DHHS - DHSR
Marjorie Acker	DHHS - DHSR
Ashley Snyder	IL
Brian Liebman	IL
Hannah Xenigian	NC DOT
Stephanie Brennan	NC DOJ
Whitney Belich	NC DOJ
Margaret McDonald	NC DPS
Erica Romain	NC DPS
John H. Schaeffer	NC DOJ
Annie Harvey	NC DPS
N. Denise Baker	NC DHHS Comm/Ad/Reg
Alexandra Gruber	NC DOJ
Kristi Snaggs	QDCDEE
Opie Hing	DCOEE
Kevin C. Lewis	DHSR



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

December 13, 2018

Christina L. Waggett, Rulemaking Coordinator
Pesticide Board
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 09L

Dear Ms. Waggett:

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 December 13, 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 April 30, 2020.

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
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
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Rules Review
Commission
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Civil Rights
Division
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fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2018 through June 30, 2019
Pesticide Board
Total: 74**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>02 NCAC 09L .0101</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0102</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0103</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0308</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0310</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0317</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0318</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0402</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0502</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0503</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0504</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0505</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0509</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0515</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0516</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0519</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0520</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0522</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0523</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0524</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0525</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0526</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0527</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0529</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0602</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0603</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0701</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0702</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0703</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0705</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0706</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0707</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .0810</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .1001</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 09L .1002</u>	Necessary with substantive public interest	November 22, 2018

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December 13, 2018

Christina L. Waggett, Rulemaking Coordinator
Structural Pest Control Committee
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 34

Dear Ms. Waggett:

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 December 13, 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 April 30, 2020.

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Amber May
Commission Counsel

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**RRC DETERMINATION
PERIODIC RULE REVIEW
July 01, 2018 through June 30, 2019
Structural Pest Control Committee
Total: 13**

RRC Determination: Necessary with substantive public interest

Rule	Determination	APO Review Date
<u>02 NCAC 34 .0302</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0309</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0328</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0331</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0501</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0502</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0503</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0504</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0505</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0506</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0602</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .0703</u>	Necessary with substantive public interest	November 22, 2018
<u>02 NCAC 34 .1206</u>	Necessary with substantive public interest	November 22, 2018