

**RULES REVIEW COMMISSION MEETING
MINUTES
February 15, 2018**

The Rules Review Commission met on Thursday, February 15, 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, and Jeff Poley.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield and Alex Burgos.

The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin 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 Dunklin asked for any discussion, comments, or corrections concerning the minutes of the January 25, 2018 meeting. There were none and the minutes were approved as distributed.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Alcoholic Beverage Control Commission

14B NCAC 15C .0505 was unanimously approved.

Environmental Management Commission 15A NCAC 02D, 02R

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 13A

All rules were unanimously approved.

Licensing Board for General Contractors

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 12 .0204, .0503, and .0504 in accordance with G.S. 150B-21.10.

Specifically, the Commission objected to the rules finding that the Board lacked the statutory authority to require financial statements be prepared by certified public accountants.

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

Henry Jones from the Jordan Price Law Firm, representing the NC Society of Accountants, addressed the Commission.

Eva Frongello from the Smith Anderson Law Firm, representing the NC Association of Certified Public Accountants, addressed the Commission.

Anna Baird Choi of Nichols, Choi & Lee, PLLC, the rulemaking coordinator for the agency, addressed the Commission.

Frank Weisner, the Executive Director with the agency, addressed the Commission.

Following the discussion of the rules from the Licensing Board for General Contractors, Commissioner Choi joined the meeting. She did not participate in any of the prior Commission discussions or votes on the agenda.

Hearing Aid Dealers and Fitters Board

All rules were unanimously approved.

Non Pre-Reviewed Rules

Board of Agriculture

The Commission extended the period of review for the rules 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 complete requested technical changes and submit the rewritten rules at a later meeting.

Social Services Commission

10A NCAC 10 .0308 was unanimously approved.

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 10A NCAC 10 .0308.

Environmental Management Commission 15A NCAC 02Q

The Commission extended the period of review for the rules 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 complete requested technical changes and submit the rewritten rules at a later meeting.

Board of Cosmetic Art Examiners

All rules were unanimously approved.

Prior to the review of the Rules from the Board of Cosmetic Art Examiners, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the Rules because of a conflict.

Building Code Council

The 2017 NC Electrical Code was unanimously approved.

Commissioner Poley left the meeting after the Electrical Code rules were approved by the Commission, and did not participate in any discussion or votes for the remainder of the agenda.

All other Building Code Council rules were unanimously approved with the following exceptions:

The Commission objected to the 2018 Residential Code Tables N1102.1.2, N1102.1.4, and the 2018 Energy Conservation Code Tables R402.1.2, and R402.1.4 in accordance with G.S. 150B-21.10.

The Commission objected to the 2018 Residential Code Table N1102.1.4 and the 2018 Energy Conservation Code Table R402.1.4 for failure to comply with the APA, as the agency did not publish these Rules in the NC Register as required by G.S. 150B-21.2. The Commission objected to the 2018 Residential Code Table N1102.1.2 and the 2018 Energy Conservation Code Table R402.1.2 based upon ambiguity, as it agreed with the agency's contention that these Rules are interconnected to Tables N1102.1.4 and R402.1.4. Therefore, without approving the corresponding changes to Tables N1102.1.4 and R402.1.4, these Rules are unclear as written.

Barry Gupton, the rulemaking coordinator for the agency, addressed the Commission.

Terence Friedman with the Attorney General's office, representing the agency, addressed the Commission.

LOG OF RULES (TEMPORARY RULES)

Alcoholic Beverage Control Commission

All rules were unanimously approved.

Department of Transportation

19A NCAC 02C .0116 was unanimously approved.

EXISTING RULES REVIEW

Department of Administration

01 NCAC 38 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 39 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 40 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 41B - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 43 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 44 - The Commission unanimously approved the report as submitted by the agency.

Department of Commerce

04 NCAC 19L - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she works at DES in the Department of Commerce.

Sheriffs Education and Training Standards Commission

12 NCAC 10 - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02L - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02N - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02O - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02P - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02K - As reflected in the attached letter, the Commission voted to schedule readoption of the rule no later than November 30, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Department of Environment Quality

15A NCAC 13B Section .1500 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than April 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Board of Dental Examiners

21 NCAC 16 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than May 31, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Board of Physical Therapy Examiners

21 NCAC 48 - The agency requested a waiver of Rule 26 NCAC 05 .0211 for the report for 21 NCAC 48.

The waiver request was approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the Board's report at its March 15, 2018 meeting.

COMMISSION BUSINESS

Staff gave a brief discussion on the Court of Appeals decision in the Ambulatory Surgical Center Association v. Industrial Commission.

The meeting adjourned at 11:37 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 15th at 10:00 a.m.

Alexander Burgos, Paralegal

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

DRAFT

February 15, 2018

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Terence Friedman	NC DOJ
BARRY GUTMAN	NC DOI / BEC
Jennifer Everett	DEQ
Diane Konopka	NC DOT
Helen Landi	NC DOT
Jim Stanfill	NC DMS
JOHN F. MADDREY	DEPT. OF ADMINISTRATION
Tien Cheng	NC DA & CS
Henry Jones	Jordan Price, et al.
D. P. Parnell	NC STATE
Patrick GRANSON	Mecklenburg County Code
Frank W. Fisher	NCLBEC
Charlie Diehl	NC ALB
DEBRA ALLEN	NC DEPEC
Alexi Gruber	DOJ
Laurey Samwardt	NC Sheriff's
Jim Payne	NC Commerce
Lynda Elliott	NC State Bd of Cosmetology
Jenny Patterson	NC DEQ
Tim Baumgarten	NC DMS
Doug Howey	NC Petroleum Marketers Assoc.

February 15, 2018

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
ANNA Choi	NEL on behalf of NCLB GC
WALKER REAGAN	ABC Commission
Kelly Williams	NC DMS
Steve Hall	NC DEQ-DIAQ
Rena Badwan	NCHALB
Kathy Arney	NC BPTC
Mary Elizabeth Wilson	DOX
Elizabeth Everett	DCPSE



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

February 15, 2018

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

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

Dear Ms. Everett:

Attached to this letter is the rule 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 rule was discussed at the February 15, 2018 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than November 30, 2018.

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

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
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
October 19, 2017
APO Review: December 16, 2017
Environmental Management Commission
Total: 1**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 02K .0212</u>	Necessary with substantive public interest



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February 15, 2018

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

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 13B Section .1500**

Dear Ms. Everett:

Attached to this letter is the rule 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 rule was discussed at the February 15, 2018 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than April 30, 2021.

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

Sincerely,

A handwritten signature in cursive script that reads "Abigail M. Hammond".

Abigail M. Hammond
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 14, 2017
APO Review: January 09, 2018
Environmental Quality, Department of
Total: 11**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 13B .1501</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1502</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1503</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1504</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1505</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1506</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1507</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1508</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1512</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1513</u>	Necessary with substantive public interest
<u>15A NCAC 13B .1514</u>	Necessary with substantive public interest



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Street address:
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Raleigh, NC 27609-6285

February 15, 2018

Doug Brocker, Rulemaking Coordinator
Whitney Waldenberg, Rulemaking Coordinator
Board of Dental Examiners
5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606-3363

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 16

Dear Mr. Brocker and Mrs. Waldenberg:

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 February 15, 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 May 31, 2019.

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

Sincerely,

A handwritten signature in black ink that reads "Abigail M. Hammond".

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
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Civil Rights
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 16, 2017
APO Review: January 20, 2018
Dental Examiners, Board of
Total: 4**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>21 NCAC 16H .0207</u>	Necessary with substantive public interest
<u>21 NCAC 16P .0105</u>	Necessary with substantive public interest
<u>21 NCAC 16Q .0402</u>	Necessary with substantive public interest
<u>21 NCAC 16T .0101</u>	Necessary with substantive public interest