

**RULES REVIEW COMMISSION MEETING
MINUTES
June 14, 2018**

The Rules Review Commission met on Thursday, June 14, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, Cathy Matthews-Thayer, and Dana McGhee.

The meeting was called to order at 10:21 a.m. with Chairman Dunklin presiding.

Commissioner Powell joined the meeting via conference call at 10:21 a.m.

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 May 17, 2018 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Department of Agriculture and Consumer Services

02 NCAC 52B .0213 and 52C .0701 - Both rules were unanimously approved.

Commission of Navigation and Pilotage for the Cape Fear River and Bar

04 NCAC 15 .0119, .0121, .0123, .0124, .0127, and .0128 - Pursuant to G.S. 150B-21.12(d), the Commission objected to the rules in accordance with G.S. 150B-21.10.

The Commission objected to 04 NCAC 15 .0119 because it is unclear and ambiguous. In line 7 it is unclear whether the word "can" is permissive or mandatory. In addition, in the same line the phrase "at any time" seems to obscure the appropriate averaging period. Finally, the use of the word "may" in line 12 arrogates to the Commission the power to issue or not issue temporary licenses in its absolute, unguided discretion.

The Commission objected to 04 NCAC 15 .0121 because it is unclear and ambiguous and is not within the statutory authority delegated to the agency. In line 28 it is unclear what "the various vessels traversing the same" means. Similarly, the sentence on lines 36-37 is ambiguous: is it intended to allow the association to act or to require that a termination recommendation by the association be supported by a majority vote of its members? Finally, there appears to be no statutory authority for the nepotism restriction in Subparagraph (g)(6).

The Commission objected to 04 NCAC 15 .0123 because it is unclear and ambiguous. On line 7 the word "immediately" is not defined. In addition, on lines 7-8 the phrase "appropriate sketches and diagrams" is ambiguous.

The Commission objected to 04 NCAC 15 .0124 because it is unclear and ambiguous. The use of the word "may" in lines 13 and 15 arrogates to the Commission the power to act in its absolute, unguided discretion.

The Commission objected to 04 NCAC 15 .0127 because it is unclear and ambiguous. It is unclear whether the use of the word "will" is a statement of fact or a regulatory requirement.

The Commission objected to 04 NCAC 15 .0128 because it is not within the statutory authority delegated to the agency. G.S. 76A-24 unambiguously authorizes the Commission to receive payments from the pilots' association and is silent regarding payments directly from "each pilot," as required by this Rule.

Child Care Commission

The agency is addressing the objections for 10A NCAC 09 .0401, .1904, .2201, .2202, .2203, .2204, .2205, .2206, .2207, .2208, .2209, .2213, .2216, and .2217. No action was required by the Commission.

Alarm Systems Licensing Board

14B NCAC 17 .0402 and .0403 – Pursuant to G.S. 150B-21.12(d), the rules were returned to the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Department of Commerce - Division of Employment Security

All rules were unanimously approved.

Prior to the review of the rules from Department of Commerce - Division of Employment Security, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she works at the Division of Employment Security on the Board of Review.

Medical Care Commission

All rules were unanimously approved.

DHHS/Division of Medical Assistance

Pursuant to Rule 26 NCAC 05 .0112, the Commission voted to waive Rule 26 NCAC 05 .0103 and allow written comments submitted after the deadline from Matthew Cochran.

Commissioner Poley entered the meeting and participated for the remainder of the meeting.

Commissioner Powell left the conference call and did not participate in the remainder of the meeting.

All rules were unanimously approved with the following exceptions:

The Commission approved 10A NCAC 21A .0302, with Commissioner Doran opposed.

The Commission unanimously approved 10A NCAC 21A .0303, contingent upon the agency changing "established in" to "established pursuant to" in Paragraph (f). The agency subsequently submitted the rule with the technical changes included.

The Commission approved 10A NCAC 22B .0104, contingent upon the agency changing "an action uncontrollable by the provider" to "an action outside the control of the provider" in Paragraph (d), with Chairman Dunklin opposed. The agency subsequently submitted the rule with the technical changes included.

The Commission objected to 10A NCAC 22F .0104 for lack of statutory authority and ambiguity in Subparagraph (e)(6).

The Commission objected to 10A NCAC 22F .0301 for lack of statutory authority and necessity, with Commissioner Bryan opposed.

Prior to the review of 10A NCAC 22F .0301, Commissioner Poley recused himself and did not participate in the discussion or vote for this Rule because he was not present for the discussion of the Rule.

The Commission objected to 10A NCAC 22F .0302 for lack of statutory authority regarding Subparagraph (c)(1).

The Commission objected to 10A NCAC 22F .0602 for lack of statutory authority regarding Subparagraph (a)(3).

The Commission objected to 10A NCAC 22F .0603 for lack of authority and ambiguity in Subparagraph (a)(2).

The Commission objected to 10A NCAC 22F .0604 for necessity regarding Paragraph (b), with Commissioner Atkins opposed.

The Commission unanimously approved 10A NCAC 22J .0103, contingent upon the agency changing "an action uncontrollable by the provider" to "an action outside the control of the provider" in Paragraph (a). The agency subsequently submitted the rule with the technical changes included.

The Commission objected to 10A NCAC 22J .0105 for lack of statutory authority regarding the recoupment of an overpayment prior to the exhaustion of all appeal rights.

The Commission objected to 10A NCAC 22J .0106 for lack of statutory authority regarding Subparagraphs (c)(2) and (c)(4), with Commissioners Atkins and Bryan opposed.

Mathew Cochran, with the law firm of Ott Cone & Redpath, addressed the Commission.

Brenda Eaddy, with the Attorney General's office and representing the agency, addressed the Commission.

Virginia Niehaus, the rulemaking coordinator with the agency, addressed the Commission.

Catherine McGraw with the Attorney General's office and representing the agency, addressed the Commission.

The chair called the meeting into a brief recess at 12:26 p.m.

The meeting resumed at 12:38 p.m.

Alcoholic Beverage Control Commission

All rules were unanimously approved.

Respiratory Care Board

All rules were unanimously approved.

Non Pre-Reviewed Rules

Commission for Public Health

10A NCAC 43D .0708 was unanimously approved.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Environmental Management Commission

All rules were unanimously approved.

Wildlife Resources Commission 10A, 10H

All rules were unanimously approved.

Wildlife Resources Commission 10F

All rules were unanimously approved.

Irrigation Contractors Licensing Board

All rules were unanimously approved.

Medical Board

21 NCAC 32R .0103 was unanimously approved.

Board of Occupational Therapy

All rules were unanimously approved.

Appraisal Board

All rules were 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 21 NCAC 57B .0102 and .0103.

EXISTING RULES REVIEW**Cemetery Commission**

21 NCAC 07– The Commission unanimously approved the report as submitted by the agency.

Marine Fisheries Commission

15A NCAC 03 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2022 pursuant to G.S. 150B-21.3A(d)(2).

Board of Physical Therapy Examiners

21 NCAC 48F, G - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Banking Commission

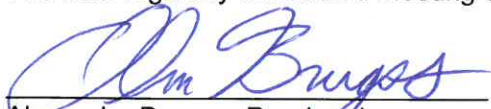
04 NCAC 16 —The agency requested an extension of the deadline established in Rule 26 NCAC 05 .0203, to submit the report on August 22, 2018.

The Commission approved the extension request, with Commissioner Doran opposed.

COMMISSION BUSINESS

The meeting adjourned at 2:57 p.m.

The next regularly scheduled meeting of the Commission is Thursday, July 19th at 10:00 a.m.

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Alexander Burgos, Paralegal

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

June 14, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Adrienne Bryant Clark	DMA, Policy, & Regulatory Affairs
Brenda Eaddy	DOJ
Katherine McCraw	DOJ
Virginia Nicholas	DMA
Susan Poyan	DMA
MIKE D'ALESSIO	DMA
Tabitha Bryant	DHB
<i>[Signature]</i>	DMA
David Cope	DMA
Nadine Pfeiffer	DHHS/DHSR
Sheena Cobrand	Commerce - DES
Nelly Amador	NCORIS
Azarea C. Phillips	DMA
<i>[Signature]</i> Meyer	OCPI
Shula Platts	DMA
Charmaine A. Williams	CJETS
<i>[Signature]</i> Cope	NCRCB
Betsy Hayward	NCWRC
Lou Ann Caskey	DMA
Roberta Omeltette	NCA B
<i>[Signature]</i>	NCCOB

June 14, 2018

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Katie Bosken	NCCOB
Lareek y	DMA
Lacesta D. Parker	DMA
Gregory Daniels	DMA
Bob MARTIN	DPH
Bris Horton	DMA
Kecris LITTLE	DMA
Joelle Burleson	NCDEQ-DAQ
Mike Hutchinson	
Jennifer Everett	DEQ
WACKER REAGAN	ABC Comm
Ramon Badwan	NCICLB
Elizabeth Kirk	NCBOT
Charles Williams	NCBOT
Kathy Arney	NCB ATE
MATTHEW JORDAN COCHRAN	Off Cons + Redpath, P.A.
M. Sorellwood	NC WRC
Chindy Terrell	NC DMA



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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6714 Mail Service Center
Raleigh, NC 27699-6714

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

June 14, 2018

Jennifer Everett
Marine Fisheries 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 03

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 June 14, 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 June 30, 2022.

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

Sincerely,

A handwritten signature in cursive script, 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
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 14, 2017
APO Review: January 09, 2018
Marine Fisheries Commission
Total: 163**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 03I .0101</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0104</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0105</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0108</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0109</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0113</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0114</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0115</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0118</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0120</u>	Necessary with substantive public interest
<u>15A NCAC 03I .0122</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0101</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0102</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0103</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0104</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0105</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0106</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0108</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0109</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0110</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0111</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0202</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0203</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0204</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0206</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0207</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0208</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0209</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0301</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0302</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0303</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0304</u>	Necessary with substantive public interest
<u>15A NCAC 03J .0305</u>	Necessary with substantive public interest

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Street address:
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Raleigh, NC 27609-6285

June 14, 2018

Deborah Ragan, Rulemaking Coordinator
Board of Physical Therapy Examiners
18 W. Colony Place, Suite 140
Durham, NC 27705

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 48F, G

Dear Ms. Ragan:

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 14, 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 November 30, 2019.

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Sincerely,


Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW**

March 15, 2018

APO Review: May 01, 2018

**Physical Therapy Examiners, Board of
Total: 3**

RRC Determination: Necessary with substantive public interest

Rule	Determination
21 <u>NCAC 48F .0102</u>	Necessary with substantive public interest
21 <u>NCAC 48F .0103</u>	Necessary with substantive public interest
21 <u>NCAC 48G .0504</u>	Necessary with substantive public interest