

**RULES REVIEW COMMISSION MEETING
MINUTES
May 16, 2019**

The Rules Review Commission met on Thursday, May 16, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Margaret Currin, Anna Baird Choi, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Jeff Poley, and Paul Powell.

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

The meeting was called to order at 9:02 a.m. with Chairman Dunklin presiding.

The Chair introduced OAH Extern, Kelsi M. Williams, to the Commission.

The Chair introduced new Commission Counsel, Ashley Snyder, to the Commission.

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 April 18, 2019 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Elections

08 NCAC 02 .0112, .0113; 03 .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301; 04 .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, and 0108 were unanimously approved.

At the August 2018 meeting, the Commission objected to existing language contained in 08 NCAC 03 .0101 for ambiguity; 03 .0302 for necessity; and 08 .0104 and 09 .0109 for statutory authority. In accordance with G.S. 150B-21.12(d), the agency requested that the Rules be returned. The Commission's objections are to existing language. These Rules will be removed from the NCAC.

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.

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

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

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.

Commissioner LiVecchi was not present for the discussion on these Rules.

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 technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

Environmental Management Commission

15A NCAC 02B .0601, .0602, .0603, .0604, .0605, .0606, .0608, .0610, .0611, .0612, .0715, .0720, .0721, .0722, .0735; 02H .0501, .0502, .0503, .0504, .0507, .1301, .1302, .1303, .1304, and .1306 were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

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 - The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

Environmental Management Commission

15A NCAC 02L .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0411, .0412, .0413, .0414, .0415, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515 were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

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. – The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Commissioner LiVecchi was not present for the discussion on these Rules.

LOG OF FILINGS (PERMANENT RULES)

Department of Natural and Cultural Resources

07 NCAC 02I .0201 was unanimously approved.

DHHS - Division of Health Benefits

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 10A NCAC 23E .0105, .0202; 23G .0203, .0304; and 23H .0109 in accordance with G.S. 150B-21.10. They did so in response to a request from DHHS - Division of Health Benefits to extend the period in order to allow the agency to address public comments and submit the rewritten rules at the July meeting.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Sheriffs' Education and Training Standards Commission

12 NCAC 10B .0503 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Wildlife Resources Commission

15A NCAC 10C .0401 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Department of Transportation

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Supplemental Retirement Board of Trustees/ Department of State Treasurer

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Landscape Contractors' Licensing Board

All rules were unanimously approved.

Prior to the review of the rules from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and are actively involved in the rulemaking process.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Appraisal Board

All rules were unanimously approved.

Prior to the review of the rules from the Appraisal Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and are actively involved in the rulemaking process.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Real Estate Commission

All rules were unanimously approved.

Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Commission and was involved with some of the subject rules.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Respiratory Care Board

21 NCAC 61 .0204 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Building Code Council

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

LOG OF FILINGS (TEMPORARY RULES)

Board of Funeral Service

All rules were unanimously approved.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm previously (but recently) represented the Board.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

EXISTING RULES REVIEW

Commission for Mental Health/DD/SAS

10A NCAC 27G - 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): 10A NCAC 27G .0207 and .2202. The RRC designated those rules as "necessary with substantive public interest."

DHHS - Division of Mental Health/DD/SAS

10A NCAC 27G - 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 27G - The Commission unanimously approved the report as submitted by the agency.

Commission for Public Health

15A NCAC 18A - The Commission unanimously approved the report as submitted by the agency.

Board of Agriculture

02 NCAC 48A, 61 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

Board of Agriculture

02 NCAC 52J – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

Commission for Public Health

10A NCAC 41C – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than February 28, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

State Registrar

10A NCAC 41H - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than June 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Commissioner Doran was not present for the discussion or vote on the proposed readoption schedule.

COMMISSION BUSINESS

Molly Masich, the Codifier of Rules, addressed the Commission on the Style Guide. Molly Masich introduced Gerry Cohen, the drafter of the Style Guide.

Gerry Cohen addressed the Commission on the Style Guide and opened the floor for comments and suggestions from the Commission.

The Commissioners directed the Codifier to disseminate the Style Guide to rulemaking coordinators for comments.

The meeting adjourned at 9:40 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 20, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal



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

May 16, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
W. Denise Beck	NC DHHS DMH/DD/SAS
Virginia Michaux	NC DHHS DPH/CPH
Diane Konopka	DOJ - Sherriff's Stds.
Phillip Reynolds	NC DOS
William Croft	NC Resp Care
Doug Lassiter	NC Septic Tank Assoc.

May 16, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Hannah Jennigan	DOT
Scott Bullock	DEQ UST
Janae Pate	DST
Sue Harnewood	DEQ
Melissa Vuotto	REC
Rob Patchett	REC
Larry Medel	DHHS
Sandra Tenice	NCDS
C. Hollis	OSTBM
Shazia Kellen	DAB
CALVIN KIRVEN	NCLCLB
BARRY GUSTON	NCR I/NCBCC
REBB CURTIS	NC DST
John Spachner	DHHS
Kathryn Love	SBE
[Signature]	NC DOT
Timothy Owens	DNCR
Karen Higgins	DEQ
Don Robinson	NCARS
John D Barkley	NC DOT for CPH
Jessica Macari	NC DOT DHHS



STATE OF NORTH CAROLINA
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Street address:
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May 16, 2019

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

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 48A, 61

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 May 16, 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 December 31, 2020.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

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919/431-3000
fax 919/431-3100

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Agriculture, Board of
Total: 15**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>02 NCAC 48A .0401</u>	Necessary with substantive public interest
<u>02 NCAC 48A .0402</u>	Necessary with substantive public interest
<u>02 NCAC 48A .0612</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0101</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0102</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0103</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0104</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0105</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0106</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0107</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0108</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0109</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0110</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0111</u>	Necessary with substantive public interest
<u>02 NCAC 61 .0112</u>	Necessary with substantive public interest



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May 16, 2019

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

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 02 NCAC 52J

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 May 16, 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 December 31, 2022.

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 17, 2019
APO Review: March 24, 2019
Agriculture, Board of
Total: 48**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>02 NCAC 52J .0101</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0102</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0103</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0104</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0201</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0202</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0203</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0204</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0205</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0206</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0207</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0208</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0209</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0210</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0301</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0302</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0303</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0304</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0401</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0402</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0403</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0404</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0405</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0406</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0407</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0408</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0409</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0410</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0411</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0412</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0413</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0414</u>	Necessary with substantive public interest
<u>02 NCAC 52J .0415</u>	Necessary with substantive public interest

<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0416</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0417</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0418</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0419</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0501</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0701</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0702</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0703</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0704</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0705</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0801</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0802</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0803</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0901</u>	Necessary with substantive public interest
<u>02</u>	<u>NCAC</u>	<u>52J</u>	<u>.0902</u>	Necessary with substantive public interest



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May 16, 2019

Virginia Niehaus, Rulemaking Coordinator
DHHS – Commission for Public Health
1931 Mail Service Center
Raleigh, NC 27699-1931

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 41C**

Dear Ms. Niehaus:

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 May 16, 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 February 28, 2021.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 13, 2018
APO Review: February 16, 2019
Public Health, Commission for
Total: 6**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 41C .0304</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0601</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0602</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0608</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0701</u>	Necessary with substantive public interest
<u>10A NCAC 41C .0703</u>	Necessary with substantive public interest



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May 16, 2019

Virginia Niehaus, Rulemaking Coordinator
State Registrar
1931 Mail Service Center
Raleigh, NC 27699-1931

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 10A NCAC 41H

Dear Ms. Niehaus:

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 May 16, 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 June 30, 2020.

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Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 18, 2018
APO Review: December 22, 2018**

**State Registrar
Total: 1**

RRC Determination: Necessary with substantive public interest

Rule

10A NCAC 41H .1201

Determination

Necessary with substantive public interest