

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0501

DEADLINE FOR RECEIPT: January 16, 2024

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 14B NCAC 03 .0501 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3 **SECTION .0500 NORTH CAROLINA HAZARDOUS MATERIAL REGIONAL RESPONSE PROGRAM**

4 **14B NCAC 03 .0501 PURPOSE**

5 (a) The purpose of this section is to prescribe requirements pertaining to the North Carolina Department of
6 Public Safety’s Division of Emergency Management administered North Carolina Hazardous Materials Regional
7 Response Team Program.

8 (b) This section applies to all persons or entities of the North Carolina Hazardous Materials Regional Response
9 Team Program made parties pursuant to G.S. 166A-22.

10

11 *History Note: Authority GS 166A-22;*

12 *Eff: [Date]*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0502

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 9: What is “applicable capability”?

Page 1, Line 15: Strike either “means” or “is”.

Page 2, Line 7: Strike either “acting” or “functioning”.

Page 2, Line 14: It appears that there should be a comma after “recordings”.

Page 2, Line 32: Define “event”.

Page 3, Line 2: It appears that there should be a comma after “government”.

Page 3, Line 8-9: “Approved” by what procedure? A reference to a rule establishing the procedure would resolve this.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0502 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0502 ABBREVIATIONS AND DEFINITIONS**

5 As used in this section, the following abbreviations and terms mean:

- 6 (1) “Activation” means the status of a program resource placed at the direction, control, and funding of NCEM as
7 part of the NC RRT Program.
- 8 (2) “All-hazards Disaster Response Model” means a response methodology where program resources provide all
9 applicable capability to respond to any threat or hazard that is impacting the state or is forecasted to impact
10 the State as determined by the NCEM Director.
- 11 (3) “Authority Having Jurisdiction” (AHJ) means those local, State, tribal or federal entities having a duty to act
12 over a specific aspect of hazardous materials in a specific geographic area.
- 13 (4) “County to County Mutual Aid” means public safety resource sharing under the conditions of the NC
14 Statewide Mutual Aid Agreement or another similar agreement between political subdivisions.
- 15 (5) “Federal Emergency Management Agency” (FEMA) means is an agency of the United States Department of
16 Homeland Security with the responsibility to coordinate the federal response to a Presidentially-declared
17 disaster that has occurred in the United States and that overwhelms the resources of local and State authorities.
- 18 (6) “FEMA Public Assistance Program” means a federal reimbursement grant program that provides federal
19 funding to help communities respond to and recover from disasters.
- 20 (7) “Functionally equivalent” means an item or group of items that can be used in the same basic manner as
21 another item or items to perform a task to the same standard.
- 22 (8) “Incident Commander” (IC) means the individual responsible for all incident activities, including the
23 development of strategies and tactics and the ordering and release of resources. The IC has overall authority
24 and responsibility for conducting incident operations and is responsible for the management of all incident
25 operations at the incident site.
- 26 (9) “Local Emergency Management Coordinator” (LEMC) means the County Emergency Management
27 Coordinator as defined in G.S. 166A-19.15 who is responsible for all local disaster preparedness, response,
28 and recovery activities in a specific geographic area. county.
- 29 (10) “North Carolina Hazardous Materials Regional Response Team Technical Advisory Committee” (NC RRT
30 TAC) means an advisory committee established in Article 2 of Chapter 166A of the North Carolina General
31 Statutes to advise the Secretary of the North Carolina Department of Public Safety and the North Carolina
32 Division of Emergency Management on the management of hazardous materials emergencies.
- 33 (11) “North Carolina Division of Emergency Management” (NCEM) means a division of the North Carolina
34 Department of Public Safety established in G.S. 143B-1000 with the responsibility to coordinate the
35 mitigation, planning, preparedness, response, and recovery to a disaster or emergency that has or is forecasted
36 to occur in the State as determined by the NCEM Director.
- 37 (12) “North Carolina Emergency Management Operations Chief” (NCEM OSC) means the Assistant Director of
38 Operations for the North Carolina Division of Emergency Management.

- 1 (13) “North Carolina Emergency Management Director” (NCEM Director) means the Director of the North
2 Carolina Division of Emergency Management.
- 3 (14) “National Incident Management System” (NIMS) means a federal policy that provides a systematic, proactive
4 approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to
5 work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of
6 cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.
- 7 (15) “On-duty” means when a person is acting functioning, paid or unpaid, as an agent of their Sponsoring Agency
8 or of the NC Division of Emergency Management as part of the NC RRT Program.
- 9 (16) “Program agreements” means contracts, memoranda of agreements, or memoranda of understanding between
10 NCEM and regional response teams for the purposes of establishing and maintaining the NC RRT Program.
- 11 (17) “Program costs” means training, equipment, personnel, or administrative expenses incurred by a Sponsoring
12 Agency during activities of the NC RRT Program.
- 13 (18) “Program personnel” means human resources from a regional response team with an active program
14 agreement with the Division of Emergency Management for hazardous materials response or human resources
15 employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility
16 for hazardous materials response.
- 17 (19) “Program resource” means personnel or equipment from a regional response team that is participating in the
18 NC RRT Program with an active program agreement with the North Carolina Division of Emergency
19 Management for hazardous materials response.
- 20 (20) “Qualified personnel” means an individual that meets the training and medical monitoring requirements
21 established by 29 CFR 1910.120(a)(3) which are adopted and are incorporated by reference with subsequent
22 changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
23 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120>; National Fire Protection
24 Association Standard 470 as it relates to Hazardous Materials Technicians which are adopted and are
25 incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be
26 found for ninety dollars \$90 at: [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470)
27 [codes-and-standards/detail?code=470](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470); and 29 CFR 1910.134 which are adopted and are incorporated by
28 reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
29 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>
- 30 (21) “Resource typing” means a document defining and categorizing, by capability, the program resources
31 requested, deployed, and used in incidents.
- 32 (22) “Responsible Party” means the entity whose actions or inactions caused an event as determined by the
33 authority having jurisdiction requiring program resources to respond and incur costs.
- 34 (23) “Sensitive information” means any information, to include but not limited to audio recordings, images, and
35 video recordings obtained during an activation that has not been released to the public by the AHJ.

1 (24) “Sponsoring Agency” means a local or tribal unit of government or a corporation with an active response
2 agreement with a local unit of government that organizes and coordinates a regional response team in the NC
3 RRT Program.

4 (25) “State Emergency Operations Plan” (SEOP) means a document maintained under the authority of G.S. 166A-
5 19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring State
6 assistance utilizing an established comprehensive, all-hazards approach All-Hazards Disaster Response
7 Model.

8 (26) “State Mission Assignment” (State Mission) means a NCEM approved request for assistance to deploy
9 program resources at the request of a local unit of government.

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13 *History Note: Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;*
14 *Eff. [Date]*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0503

DEADLINE FOR RECEIPT: January 16, 2024

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 6-7: Explain the authority to “maintain direction and control” by the NCEM by rule. It appears that the Secretary can contract with local governments for the use of local resources and the authority to direct and control would be a matter of contract, but not by rule.

Page 1, Line 7: Who determines when the program resource is “needed” by the sponsoring agency? What criteria will be employed in making this determination? If the sponsoring agency can make this determination, there appears to be a conflict within the Paragraph.

Page 1, Line 9: At what time or instance is a local resource “deployed by NCEM”?

Page 1, Lines 14-16: Why do any of the entities listed need “authority” to “request program resources”? Is there a limitation on who can make the request? If so, where?

Page 1, Lines 15-16: Why is it necessary to state that the IC “may” come from these sources? Is there some limitation? If so, where? Or is the agency requiring that the IC come from those entities exclusively? How is the IC determined? By what procedure?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0503 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0503 DISPATCH OF A REGIONAL RESPONSE TEAM**

- 5 (a) Program resources shall employ the All-Hazards Response Model.
- 6 (b) NCEM shall maintain direction and control of any deployed program resources that have been deployed through
7 action of NCEM until a time that they have been demobilized or the program resource is needed by the Sponsoring
8 Agency.
- 9 (c) Any resource of the NC RRT Program remains a local resource when not deployed by NCEM and may deploy
10 within their county under their local authorities or agreements, notwithstanding any action by the State.
11 Participation in the NC RRT Program shall not limit or supersede their local authorities, responsibilities, or
12 agreements when the program resource is deploying under those authorities or agreements.
- 13 (d) Program resources shall be deployed by the State using a State Mission Assignment.
- 14 (e) The IC, LEMC, an NCEM official, Secretary of Public Safety, and the Governor shall have the authority to request
15 program resources. The IC may be from local law enforcement agencies, fire departments, rescue squads, and any
16 other local, state, or federal authority having jurisdiction.

17
18 *History Note: Authority G.S. 166A-22; 166A-23;*

19 *Eff. [Date]*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0504

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 9-10: Explain the authority to require compliance with NCEM personnel direction. G.S. 166A-19.12 grants authority to coordinate "all State agencies". G.S. 166A-23 empowers the Secretary to "contract" with local governments for the provision of resources. The Secretary does not appear to be authorized to usurp local assets by administrative rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0504 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0504 ON-SITE OPERATIONS OF A PROGRAM RESOURCE**

5 All NC RRT Program resources shall operate in accordance with the following standards of response:

6 (a) FEMA NIMS standards which are adopted and are incorporated by reference with subsequent changes or
7 amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:

8 https://www.fema.gov/sites/default/files/2020-07/fema_nims_doctrine-2017.pdf;

9 (b) following all direction from NCEM personnel acting pursuant to G.S. 166A-19.12(1) when deploying as a program
10 resource;

11 (c) when responding in support of law enforcement operations, program resources shall coordinate activities
12 with the law enforcement authorities to ensure their actions support any potential criminal investigation; and

13 (d) program resources shall not release any sensitive information to the public or media during operations without the
14 consent of the local, State, or federal authority having jurisdiction consistent with Chapter 132 of the North
15 Carolina General Statutes.

16
17 History Note: Authority G.S. 166A-22;

18 Eff. [Date]

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0505

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 6: Audit by whom?

Page 1, Line 15: Compliance with what?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0505 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0505 STANDARDS FOR ADMINISTRATION OF A REGIONAL RESPONSE TEAM,**
5 **INCLUDING PROCEDURES FOR REIMBURSEMENT OF RESPONSE COSTS.**

- 6 (a) Program resources shall maintain the following personnel records and have them available for audit:
7 (1) Responder medical history; and
8 (2) Emergency contact information.
9 (b) Program personnel shall be in an on-duty status as an emergency management worker as defined in G.S. 166A-
10 19.60(e).
11 (c) Program resources shall maintain a current team roster.
12 (d) Program resources shall maintain all program personnel training, certification, and credentials as outlined in
13 Rule .0509 in this Section.
14 (e) Program resources shall maintain all inventory and maintenance records for deployable equipment.
15 (f) Program resource records must be available for review by NCEM officials to ensure compliance.
16 (g) Within 45 days of demobilization from a state mission, system resources shall submit documentation receipts,
17 expense reports, and supporting documentation of actual costs to NCEM for reimbursement consistent with the
18 FEMA Public Assistance Program and Policy Guide which is adopted and incorporated by reference with
19 subsequent changes or amendments pursuant to G.S. 150B-21.6 and is available at no cost at:
20 https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.

21
22 History Note: Authority G.S. 166A-22; 166A-23; 166A-19.60; 42 U.S.C.5121 et seq; 44 CFR Part 206;
23 Eff. [Date]

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0506

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 6: The rule states that the NCEM shall determine the responsible party; however, "responsible party" is defined in Rule .0502 as the entity whose actions caused an event "as determined by the authority having jurisdiction". There seems to be conflict between the rules unless, by this rule, the agency is claiming jurisdiction in all events.

Page 1, Lines 9-10: Why is this item (2) necessary? The NCEM is regulating itself.

Page 1, Lines 9-10: "consistent with FEMA Public Assistance Program and Policy Guide" appears to be an incorporation by reference. The Guide does not conform with G.S. 150B-21.6.

Page 1, Line 11: What happens if a responsible party fails to remit payment within 30 days? What is the penalty?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0506 is proposed for adoption as follows:

2 **CHAPTER 03 - EMERGENCY MANAGEMENT**

3

4 **14B NCAC 03 .0506 RECOVERING THE COSTS OF A REGIONAL RESPONSE TEAM**

5 NCEM shall seek reimbursement from the responsible party for system response costs.

6 (1) NCEM shall determine who the responsible party is for all State Missions in coordination with the authority
7 having jurisdiction. Determination as the responsible party shall not be a determination of contributory
8 negligence or other potential liabilities of any third parties for some aspect of the incident.

9 (2) NCEM shall bill responsible parties' response costs to include personnel and equipment costs payable to
10 NCEM for reimbursement consistent with FEMA Public Assistance Program and Policy Guide.

11 (3) Responsible parties shall remit payment to NCEM within 30 days of receipt of the invoice via certified mail.

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13 *History Note: Authority G.S. 166A-22; 166A-27;*

14 *Eff. [Date]*

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0507

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: The rule seems to mix concepts of procedure, eligibility, requirements, and necessary contract terms. The relationship between Paragraph (b) and its subparagraphs is confusing. Also, the relationship between Subparagraph (6) and its Parts is odd.

Page 1, Line 7: What does the agency mean by “eligibility for participation”? G.S. 166A-23 does not allow for contracts with corporations notwithstanding active response agreements.

Page 1, Line 11 or 12: Either “electronically” or “electronic” appears to be unnecessary. If necessary, please explain.

Page 1, Line 19: If the criteria is outlined in Rule .0508, what is the “agree-upon” criteria? “Agree-upon” by whom? Can the agreeing parties, whoever they are, agree to disregard Rule .0508?

Page 1, Line 23: Consider changing “approved”. Must the NCEM Director “approve”?

Page 1, Lines 26-27: As written, if the NCEM fails to maintain a program agreement, it can unilaterally dissolve the agreement? Was the agency’s intention?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0507 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0507 PROCEDURES FOR BIDDING AND CONTRACTING FOR REGIONAL**
5 **RESPONSE TEAM.**

6 (a) Eligibility for participation as a Sponsoring Agency as a regional response team:

7 (1) be a local unit of government, tribal government, or a corporation with an active response agreement
8 with a local or tribal unit of government;

9 (2) maintain participation in the statewide mutual aid agreement; and

10 (3) ensure all personnel possess the qualifications as outlined in Rule .0509 of this Section.

11 (b) Regional response teams – Within 18 months of a new contract period, NCEM shall electronically distribute a
12 bid announcement via electronic mail to all program resources and local emergency management coordinators
13 for interested parties to return a letter of interest. NCEM shall distribute an electronic bid package to all interested
14 parties that shall be returned to NCEM.

15 (1) Regional response teams shall be limited to seven regionally based teams. Each team will be assigned a
16 primary response region in the state.

17 (2) The bidding agency agencies shall be in that specified response region.

18 (3) The NCEM Director or designee shall establish a review committee. This committee will open all
19 completed sealed bid packages and evaluate them based on an agreed-upon criteria as outlined in Rule
20 .0508 of this Section at a date to be set by the NCEM Director or designee.

21 (4) The committee shall develop a bid package review summary that includes their recommendations for
22 selections that will be sent to the NCEM Operations Chief for concurrence before being reviewed and
23 approved by the NCEM Director.

24 (5) Agencies that are successful in the bid process will be notified and program agreements shall be drafted
25 and executed.

26 (6) NCEM shall draft, execute, and maintain a program agreement with the Sponsoring Agency for the
27 program resource to maintain participation in the program.

28 (A) NCEM shall execute and maintain a program agreement with the Sponsoring Agency that
29 outlines the scope of work that the team shall follow to enable reimbursement of eligible
30 training, equipment, administrative, and personnel costs associated with maintaining and
31 deploying a regional response team. The program agreement shall be limited to the four-year
32 contract period with an optional one-year extension.

33 (B) Funds reimbursed through this agreement shall go directly to cover program costs and be
34 utilized by the Sponsoring Agency for the purposes of this program.

35 (C) The Sponsoring Agency shall maintain all records of any program spending and shall not
36 comingle funds or use program funding for any other purpose other than for the purposes of
37 this program.

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History Note: Authority G.S. 166A-22, 166A-23;
Eff. [Date]

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0508

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: It appears that Paragraph (a) should have been in Rule .0507 as this appears to be part of the procedure and requirements and is not "criteria" as the title to the rule suggests.

Page 1, Lines 6-7: To whom? To where?

Page 1, Line 9: To whom? Is there a particular method of delivery that is required?

Page 1, Lines 10-11: To whom? Is there a particular method of delivery that is required?

Page 1, Line 15: Add a semicolon at the end.

Page 1, Line 17: Add "(4)" and adjust the remaining Subparagraphs accordingly.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

1 14B NCAC 03 .0508 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0508 CRITERIA FOR EVALUATING BIDS FOR CONTRACT RESPONSE TEAM**

5 (a) Bidding agency shall:

- 6 (1) be submitted via courier, United States Mail, or hand delivered by an authorized representative of a local
7 unit of government, tribal government, or corporation that maintains an active response agreement with
8 a local or tribal unit of government;
9 (2) provide a plan for the bidding entity to deploy the required personnel;
10 (3) provide a plan for the bidding entity to maintain the required number of personnel trained per Rule .0509
11 of this Section; and
12 (4) ensure all participating members possess the qualifications outlined in Rule 0509 of this Section.

13 (b) Bids shall be evaluated on:

- 14 (1) geographic location of team base;
15 (2) ability to maintain the required number of trained personnel to ensure response readiness
16 (3) ability to maintain and care for any program-provided equipment;
17 availability of local equipment to support response activities;
18 (4) availability to maintain dedicated administrative staff to ensure management of administrative duties,
19 training, and logistical requirements;
20 (5) experience responding to hazardous materials incidents as a technician-level entry capability;
21 (6) consistent with federal procurement rules as outlined in 2 CFR Part 200 which is adopted and
22 incorporated by reference with subsequent changes or amendments pursuant to 150B-21.6 and can be
23 found at no cost at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and
24 (7) consistent with State procurement rules as outlined in Title 01 NCAC Chapter 05 which is adopted and
25 incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and
26 can be found at no cost at: [http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-](http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract)
27 [%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract](http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract)

28
29 *History Note: Authority G.S. 166A-22; 166A-23;*

30 *Eff. [Date]*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0509

DEADLINE FOR RECEIPT: January 16, 2024

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 12: Who decides whether the personnel have received the training? Are there any requirements concerning the training? Can someone watch 48 hours of training on the YouTube channel of their choice?

Page 1, Lines 13-14: The agency lacks authority to extend by rule the provisions of G.S. 166A-19.60 to program activity personnel. Either G.S. 166A-19.60 covers them, or it does not.

Page 1, Lines 17: Either add a comma after "public".

Page 1, Line 31: Define or delete "qualifying event".

Page 1, Line 33: Define or delete "qualifying event".

Page 1, Lines 35-36: Define "served by a judicial official". Consider referencing the appropriate statute. Does this apply to both civil and criminal service of process?

Page 1, Lines 30-36, and Page 2, Lines 1-8: Page 2, Lines 1-8 should be in a separate Paragraph as they govern Sponsoring Agencies, not "system personnel" in Page 1, Line 6.

Page 2, Line 13: "Program resources", as defined in Rule .0502, includes equipment. Equipment cannot act independent of a person or entity. Perhaps "Program Resource personnel." Or perhaps "parties to a program agreement."

Page 2, Lines 16-17: What is a "technician-level entry team"? This is an undefined term.

Page 2, Line 17: The agency has to incorporate by reference here.

Page 2, Lines 20-21: Subparagraph (3) seems out of place.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

Page 2, Line 26: The agency has to incorporate by reference here unless it has already done so in this Rule.

Page 2, Line 29: The link in the rule did not work so it is impossible for me to determine if the materials being referenced comply with G.S. 150B-21.6. I also tried googling it. Please provide me with the CFR reference number.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 14B NCAC 03 .0509 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0509 PERSONNEL, TRAINING, AND EQUIPMENT STANDARDS FOR REGIONAL**
5 **RESPONSE TEAM REQUIREMENTS FOR ALL PROGRAM PERSONNEL:**

6 (a) Requirements for all system personnel

- 7 (1) Qualified personnel shall be no less than 18 years of age;
- 8 (2) Qualified personnel shall be an employee of a Sponsoring Agency or an employee of the North
9 Carolina Division of Emergency Management. By participating in this program, program personnel
10 remain employees of their Sponsoring Agency and at no time become State employees entitled to State
11 benefits unless they are an employee of NCEM;
- 12 (3) Qualified personnel shall maintain no less than 48 hours of hazardous material training annually;
- 13 (4) while participating in any program activity personnel shall be considered emergency management
14 workers as defined in G.S. 166A-19.60; and
- 15 (5) Qualified personnel shall possess the qualifications of character and general fitness requisite for a
16 public servant and be of good moral character and entitled to the high regard and confidence of the
17 public as evidenced by not having been convicted by a local, state, federal, or military court of:
- 18 (A) a felony;
- 19 (B) a crime or unlawful act defined as a Class 1A, Class 1, or Class 2 misdemeanor within the
20 five-years prior or four or more crimes or unlawful acts as defined as a Class 1A, Class 1,
21 or Class 2 misdemeanor regardless of the date of conviction;
- 22 (C) not having been convicted of an offense that would prohibit the possession of a firearm or
23 ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with
24 subsequent amendments and editions under G.S. 150B-21.6 can be found at no cost
25 <https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18->
26 [partI-chap44.pdf;](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)
- 27 (D) being truthful in providing information to the appointing agency;
- 28 (E) not having pending or outstanding charges that, if convicted, would exclude eligibility
29 under this Rule.
- 30 (6) make the following notifications:
- 31 (A) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
32 criminal or traffic offenses for which the individual is charged or arrested;
- 33 (B) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
34 criminal offenses for which the individual pleads no contest, pleads guilty, or convicted;
- 35 (C) within seven days of service, shall notify the Sponsoring Agency that he or she has been
36 served by a judicial official;

1 (D) within seven days of the date the case was disposed of in court, the Sponsoring
2 Agency, provided they have knowledge of program personnel's arrests or criminal
3 charges and final dispositions, shall also notify the NCEM of arrests or criminal
4 charges and final disposition of the criminal charges against program personnel; and

5 (E) within seven days of the issuance of all Domestic Violence Protective Orders pursuant
6 to G.S. 50B and Civil No Contact Orders pursuant to G.S. 50C , the Sponsoring
7 Agency, provided they have the knowledge of the order, shall also notify NCEM of
8 these orders.

9 (b) Requirements for all system equipment:

10 (1) equipment shall be made available for inspections and inventory by NCEM personnel;

11 (2) program resources shall maintain any state-owned equipment per manufacturer's recommendations
12 and immediately notify NCEM of any damage to state owned and issued equipment; and

13 (3) upon separation, all program resources shall return all state property within 30 days to NCEM.

14(c) Regional Response Team Personnel and Training Requirements:

15 (1) Regional Response Teams shall maintain at all times a minimum of 28 qualified personnel;

16 (2) Regional Response Teams shall maintain any additional support personnel as required for a technician-
17 level entry team. These personnel must additionally meet the requirements of 29 CFR 1910.120 to
18 operate on a hazardous materials incident scene but are not required to be qualified to make entry into a
19 hazardous or potentially hazardous environments;

20 (3) NCEM shall be responsible to provide any additional technical specialists required to support Regional
21 Response Team operations;

22 (4) Regional Response Teams shall respond with qualified personnel who are capable of providing a
23 regional response to hazardous materials incidents requiring technician-level entry capability as that term
24 is and as defined in G.S. 166A-21; and

25 (5) Regional Response Teams shall limit its hazardous materials response team activity to that within the
26 safety and training levels specified by 29 CFR 1910.120.

27(d) Regional Response Team Equipment Requirements:

28 (1) Regional response teams shall maintain a functionally equivalent cache of equipment required in the
29 FEMA Resource Typing Document for a Type II Hazardous Materials Response Team, which is adopted
30 and incorporated by reference with subsequent changes or amendments under G.S. 150B-21.6. as
31 outlined in the latest published standard by FEMA and can be found at:
32 <https://rtlt.preptoolkit.fema.gov/Public/Resource/View/4-508-1248?q=hazardous%20materials> at no
33 cost.

34 (2) Equipment shall be maintained in a state of readiness and with a means to transport all required
35 equipment.

36
37 History Note: Authority G.S. 166A-21; 166A- 22; 166A-23

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Eff. [Date]