

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2010-0742; FRL-9728-5-OSWER]

RIN 2050-AG62

#### Definition of Solid Waste

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA, or the Agency) is publishing a final rule that revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.

**DATES:** This final rule is effective on July 13, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-RCRA-2010-0742. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, such as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the RCRA Docket, EPA/DC, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the RCRA Docket is (202) 566-0276.

**FOR FURTHER INFORMATION CONTACT:** Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, at (703) 308-8672, ([atagi.tracy@epa.gov](mailto:atagi.tracy@epa.gov)) or Amanda Kohler, Office of Resource

Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460, at (703) 347-8975, ([kohler.amanda@epa.gov](mailto:kohler.amanda@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### A. Does this action apply to me?

Entities potentially affected by today's action include over 5,000 industrial facilities in 634 industries (at the 6-digit North American Industry Classification System (NAICS) code level) that generate or recycle hazardous secondary materials (HSM). Most of these 634 industries have relatively few entities that are potentially affected. The top-5 economic sectors (at the 2-digit NAICS code level) with the largest number of potentially affected entities are as follows: (1) 41% in NAICS code 33—the manufacturing sector, which consists of metals, metal products, machinery, computer & electronics, electrical equipment, transportation equipment, furniture, and miscellaneous manufacturing subsectors, (2) 23% in NAICS code 32—the manufacturing sector, which consists of wood products, paper, printing, petroleum & coal products, chemicals plastics & rubber products, and nonmetallic mineral products manufacturing subsectors, (3) 3.0% in NAICS code 92—the public administration sector, (4) 2.9% in NAICS code 61—the educational services sector, and (5) 2.8% in NAICS code 54—the professional, scientific and technical services sector.

Information on the estimated future economic impacts of today's action is presented in section XXI of this notice, as well as in the RIA available in the docket for today's action.

#### Preamble Outline

- I. Statutory Authority
- II. Which revisions to the regulations is EPA finalizing?
- III. History of the Definition of Solid Waste
- IV. When will the final rule become effective?
- V. Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator
- VI. Verified Recycler Exclusion Replacing the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation
- VII. Remanufacturing eXclusion
- VIII. Revisions to the Definition of Legitimacy and Prohibition of Sham Recycling
- IX. Revisions to Solid Waste Variances and Non-Waste Determinations
- X. Effect on Facilities Currently Operating Under Solid Waste Exclusions

- XI. Effect on Spent Petroleum Catalysts
- XII. Effect on CERCLA
- XIII. General Comments on the 2011 Proposed Revisions to the Definition of Solid Waste
- XIV. Major Comments on the Exclusion for Hazardous Secondary Materials Legitimately Reclaimed Under the Control of the Generator and Recordkeeping for Speculative Accumulation
- XV. Major Comments on the Replacement of the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation
- XVI. Major Comments on the Remanufacturing Exclusion
- XVII. Major Comments on Legitimacy
- XVIII. Major Comments on the Revisions to Solid Waste Variances and Non-Waste Determinations
- XIX. Major Comments on the Proposed Revisions to Pre-2008 Recycling Exclusions
- XX. State Authorization
- XXI. Statutory and Executive Order (E.O.) Reviews

#### I. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as “RCRA.”

#### II. Which revisions to the regulations is EPA finalizing?

In today's rule, EPA is revising a number of provisions related to the definition of solid waste as it applies to the regulation of hazardous waste under Subtitle C of RCRA (42 U.S.C. 6921 through 6939(e)). These revisions affect certain types of hazardous secondary materials that are currently conditionally excluded from the definition of solid waste when reclaimed. These exclusions were promulgated in October 2008 (73 FR 64688, October 30, 2008) and were intended to encourage the recovery and reuse of valuable resources as an alternative to land disposal or incineration, while at the same time maintaining protection of human health and the environment. In response to concerns raised by stakeholders about potential increases in risks to human health and the environment from hazardous secondary materials, today's rule revises the 2008 DSW final rule in order to ensure that the rule, as implemented, encourages reclamation in a way that protects human health and the environment from the

mismanagement of hazardous secondary materials.

The six major regulatory areas are summarized below.<sup>1</sup> The intent of this summary is to give a brief overview of the actions EPA is taking today. More detailed discussions, including the Agency's rationale for the changes, are found in later sections of this preamble.

#### *A. Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator*

Under today's final rule, EPA is retaining the exclusion for hazardous secondary materials that are legitimately reclaimed under the control of the generator ("generator-controlled exclusion"), with certain revisions from the 2008 DSW final rule. These revisions include (1) adding a codified definition of "contained," (2) adding recordkeeping requirements for same-company and toll manufacturing reclamation, (3) making notification a condition of the exclusion, (4) adding a requirement to document that recycling under the exclusion is legitimate, and (5) adding emergency preparedness and response conditions. In addition, we have amended the speculative accumulation provisions to add a recordkeeping requirement. This requirement applies to all persons subject to speculative accumulation.

The generator-controlled exclusion (40 CFR 261.4(a)(23)) excludes certain hazardous secondary materials (*i.e.*, listed sludges, listed by-products, and spent materials) from the definition of solid waste if they are generated and legitimately reclaimed within the United States or its territories under the control of the generator. Specifically, hazardous secondary materials are excluded if (1) the reclamation process meets the definition of legitimate recycling under 40 CFR 260.43; (2) the materials are not speculatively accumulated as defined in 40 CFR 261.1(c)(8) (including a new recordkeeping requirement, being finalized today); (3) they meet the notification condition under 40 CFR 260.42; (4) they are managed in a unit that meets the new definition of "contained" in 40 CFR 260.10, which specifies that storage units must be in good condition, properly labeled, do not hold incompatible materials, and address potential risks of fires or explosions; and (5) the generator satisfies certain emergency preparedness and response conditions.

<sup>1</sup> Any provisions promulgated in the 2008 DSW rule that are not addressed in this final rule remain in effect.

Further discussion of the generator-controlled exclusion can be found in section V of this preamble.

#### *B. Verified Recycler Exclusion Replacing the Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Legitimate Reclamation*

EPA is replacing the exclusions at 40 CFR 261.4(a)(24) and (25) for hazardous secondary materials that are transferred from the generator to other persons for the purpose of reclamation with an exclusion for hazardous secondary materials sent for reclamation to a verified recycler. By this change, EPA intends to promote safe and sustainable reclamation of these materials. Under this new exclusion, generators who want to recycle their hazardous secondary materials without having them become hazardous wastes must send their materials to either a RCRA-permitted reclamation facility or to a verified recycler of hazardous secondary materials who has obtained a solid waste variance from EPA or the authorized state. In order to obtain a variance from EPA or the authorized state, the recycler must (1) demonstrate their recycling is legitimate; (2) have financial assurance in place to properly manage the hazardous secondary material when the facility closes; (3) not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly; (4) have the proper equipment and trained personnel, and meet emergency preparedness and response conditions to safely recycle the material; (5) manage the residuals from recycling properly; and (6) take steps to protect nearby communities and reduce risk of potential unpermitted releases of the hazardous secondary material to the environment (*i.e.*, releases that are not covered by a permit (such as a permit to discharge to water or air). Further discussion of the replacement of the transfer-based exclusion with the verified recycler exclusion can be found in section VI of this preamble.

#### *C. Remanufacturing Exclusion*

EPA is also finalizing an exclusion from the definition of solid waste for certain higher-value solvents transferred from one manufacturer to another for the purpose of extending the useful life of the solvent by remanufacturing the spent solvent back into the commercial grade solvent. This remanufacturing exclusion will help promote sustainable

materials management by extending the productive use of these materials, which reduces the need for raw materials used and the environmental impacts associated with production of these materials. In addition, EPA is also making clear that a rulemaking petition pursuant to 40 CFR 260.20 can be submitted for adding other higher-value hazardous secondary materials that are destined to be remanufactured into similarly higher-value products. Further discussion of this exclusion can be found in section VII of this preamble.

#### *D. Prohibition of Sham Recycling and Revisions to the Definition of Legitimacy*

In this final rulemaking, EPA is codifying in its regulations at 40 CFR 261.2(g) the long-standing policy that hazardous secondary materials found to be sham recycled are discarded and solid wastes, thereby prohibiting materials that are sham recycled from being excluded from the definition of solid waste.

In addition, EPA has changed the definition of legitimate recycling in § 260.43 to make clear that all four factors identified in § 260.43 must be met, but also to provide some flexibility in determining legitimacy for certain types of recycling. In particular, in cases where there is no analogous product made from raw materials, EPA has clarified that the product of recycling is still a legitimate product when it meets widely recognized commodity standards (*e.g.*, commodity-grade scrap metal) or when the hazardous secondary material is recycled back into the production process from which it was generated (*e.g.*, closed-loop recycling). In addition, for cases in which the product of the recycling process has levels of hazardous constituents that are not comparable to analogous products, the revised legitimacy standard includes a process that allows the facility to document and certify that the recycling is still legitimate, keep such documentation at the facility, and send a notification to the regulatory authority to that effect. Further discussion of legitimacy can be found in section VIII of this preamble.

#### *E. Revisions to Solid Waste Variances and Non-Waste Determinations*

Today's rule finalizes revisions to the solid waste variances and non-waste determinations found in 40 CFR 260.30–260.34 in order to ensure protection of human health and the environment and foster greater consistency on the part of implementing agencies. Revisions include (1) requiring facilities to send a notice to the Administrator (or State Director, if the state is authorized) and

#### Comments: Support for Adding Requirements to Existing Exclusions

Some commenters, including environmental organizations, supported adding conditions to the pre-2008 exclusions and exemptions, arguing that EPA must adopt the regulatory conditions, including the legitimacy standard in light of the risks posed by the 32 recycling exclusions and the historical pattern of environmental contamination at facilities that are exempt from RCRA. These commenters believed that the prevention of one damage case every two years would more than offset the compliance costs. Some state commenters also supported adding conditions to the pre-2008 exclusions and exemptions, although some argued that EPA should exempt certain types of hazardous secondary materials, like scrap metal, spent lead-acid batteries, closed-loop recycling, and printed circuit boards, from the requirements.

Other commenters supported adding notification to the pre-2008 recycling provisions. These commenters argued that states may not be aware of excluded activities unless they are occurring at facilities that are otherwise regulated or are the subject of a citizen complaint. These commenters said that notifications would allow states to periodically evaluate these facilities to ensure they are meeting the terms of the exclusion and that, while the initial burden on states might be quite heavy, the long-term benefit of knowing where these facilities are justifies this burden.

#### EPA's Response: Support for Adding Requirements to Existing Exclusions

EPA acknowledges commenters who support additional requirements for the pre-2008 exclusions and exemptions in order to avoid potential damage cases and protect human health and the environment. However, based on the comments received, the EPA has determined that it does not have enough information to determine if adding requirements to the existing pre-2008 recycling exclusions and exemptions would be the most effective method for addressing the damage cases or whether a more targeted approach would be more appropriate.

Regarding legitimacy, in lieu of adding a legitimacy requirement to the specific recycling exclusions, EPA is instead codifying a general statement in § 261.2(g) that makes it clear that a hazardous secondary material found to be sham recycled is discarded and thus, is a solid waste. EPA finds that this will give implementing agencies a clear regulatory statement that can be used to

enforce against sham recyclers, yet not require the vast majority of recyclers that are performing legitimate recycling under the pre-2008 exclusions and exemptions to revisit previously-made legitimacy determinations. EPA also notes that today's final legitimacy standard includes modifications that address implementation concerns for certain hazardous secondary materials and processes, such as scrap metal and closed-loop recycling. For more information on these modifications, please see the other sections on legitimacy in this preamble.

Regarding the contained standard and notification, for reasons stated above, the Agency is deferring action on applying the contained standard and notification to the pre-2008 exclusions and exemptions in order to consider how best to implement these conditions in the context of the case-specific circumstances of the regulatory provisions.

#### XX. State Authorization

##### *A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out the HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA

enacts federal requirements that are more stringent or broader in scope than the existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 FR 271.1(i)). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations or that narrow the scope of the RCRA program and Subtitle C hazardous waste regulations would continue to apply in those states.

##### *B. Effect on State Authorization of Final Rule*

The regulations finalized in today's notice are not promulgated under the authority of HSWA. Thus, the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program.

The revisions to the definition of solid waste being finalized today are more stringent than those promulgated under the 2008 DSW final rule, so those states which have adopted the 2008 DSW final rule would be required to modify their programs. However, when compared to the federal program that was in place when the 2008 DSW final rule was finalized, many of today's revisions would be considered less stringent (e.g., the revised generator-controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion). Therefore, authorized states that have not adopted the 2008 DSW final rule are not required to modify their programs to adopt these exclusions and the federally authorized state hazardous waste regulations applying the full subtitle C requirements will continue to apply in those states. As noted in footnote 58 of the proposed rule, final decisions regarding whether a state rule is more stringent under 40 CFR 271.1(i)(1) or broader in scope than the federal program under 40 CFR 271.1(i)(2) are made when the Agency authorizes state programs. However, the revisions to the definition of legitimacy and the prohibition of sham recycling, as discussed in section VIII of the preamble, are more stringent than the current federal hazardous waste

program because they codify implicit requirements that have been largely implemented through guidance. Also, the additional recordkeeping requirement in the speculative accumulation provision in 40 CFR 261.1(c)(8), as discussed in section V of the preamble, is also more stringent than the current federal hazardous waste program. Finally, the changes to the standards and criteria for variances from classification as a solid waste discussed in section IX are more stringent than the current federal hazardous waste program. In these cases, all authorized states will be required to modify their programs to adopt equivalent, consistent and no less stringent requirements.

## XXI. Statutory and Executive Order (EO) Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it is likely to “raise novel legal or policy issues” under section 3(f)(4) of Executive Order 12866. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in EPA’s background document for today’s action titled “Regulatory Impact Analysis” (RIA). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. EPA estimates that the 2014 DSW rule will result in a future annual costs savings of \$1.0 to \$2.0 million per year, depending on discount rate used, as compared to a baseline of full implementation of the 2008 DSW rule. This cost savings is based on the assumption that same number of states would adopt the 2014 DSW rule as would adopt the 2008 DSW rule. However, because the 2014 DSW rule addresses many of the concerns states raised about the 2008 DSW rule, there is a potential that more states would adopt it, thus increasing the upper bound of annual cost savings to \$17.5 million to \$59 million per year.

In addition to estimating the cost savings of today’s action, the RIA also

provides qualitative (i.e., non-monetized) descriptions of three categories of expected future benefits for today’s action consisting of: (1) Reduction in future environmental damages associated with industrial recycling of hazardous secondary materials; (2) improved industry environmental compliance; (3) indirect legal & financial benefits to industry consisting of reduced liability, less uncertainty for regulated entities, and lower legal and financial credit costs.

### B. Paperwork Reduction Act (Information Collection Request)

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The information collection request has been updated since the July 22 proposed rule to reflect the final rule requirements and to respond to public comments. The EPA ICR number for this next submission will be 2310.03 and the OMB control number will be 2050–0202.

Several information requirements established for this action are voluntary to the extent that the conditional exclusions being finalized today are voluntary and represent an overall reduction in burden, as compared with the alternative information requirements associated with managing hazardous secondary materials as hazardous waste. The information requirements help ensure that: (1) Entities operating under today’s rule are held accountable to the applicable requirements; and (2) inspectors can verify compliance with the conditions of today’s rule when needed.

EPA estimates the total annual burden to respondents under the new paperwork requirements as a result of the final rule changes to be 34,454 hours and \$68,071 in operations and maintenance costs (\$2,378,111, including labor costs), respectively. Burden and costs continuing from the 2008 ICR No. 2310.02 include 2,034 hours and \$299 in operations and maintenance (\$144,235, including labor costs), respectively. The total annual burden and operations and maintenance costs are estimated at 36,488 hours and \$68,370 in operations and maintenance costs, or 109,464 hours and \$205,110 in operations and maintenance over three years. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business based on small size standards defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201 for 27 NAICS codes with the largest number of affected entities; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this final rule are primarily small businesses in the manufacturing sector (i.e., NAICS codes 32 and 33). We have determined that the average annual impact on small businesses is estimated to be significantly less than 1% of annual business sales for all small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Comments were requested, and the comment period was extended once until October 20, 2011. In September 2011, EPA held two public meetings to accept public comment on the proposal in Philadelphia, PA and in Chicago, IL.

## TEMPORARY RULES

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AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13A .0102

**DEADLINE FOR RECEIPT: Friday, November 13, 2015**

***NOTE WELL: This request when viewed on computer extends 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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*Pursuant to 26 NCAC .0207, a rule cannot have a (1) without a (2). Did you intend for current (c)(1)(D) to actually be (c)(2)? If so, please re-number accordingly. If not, please move (c)(1) to be part of paragraph (c), and re-number (c)(1)(A) through (c)(1)(D) as (c)(1) through (c)(4).*

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

Amber Cronk May  
Commission Counsel  
Date submitted to agency: November 10, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0102 DEFINITIONS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 9/11/2015
- b. Proposed Temporary Rule published on the OAH website: 9/17/2015
- c. Public Hearing date: 10/5/2015
- d. Comment Period: 9/14/15 through 10/9/2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 9/14/2015
- f. Adoption by agency on: 11/5/2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite:  
Effective date:
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☒ A recent federal regulation.  
Cite: Federal Register Vol. 80 No. 8, 1694 "2015 DSW Rule"  
Effective date: 7/13/2015
- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

**Explain:** The NC Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0102 is necessary due to recent changes to applicable federal regulations. On 30 October 2008, EPA promulgated a final rule concerning the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008) ("2008 DSW Rule"), which various entities subsequently challenged through litigation, including claims that the rule contained significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations. On 13 January 2015, the United States Environmental Protection Agency (EPA) promulgated a revised final rule concerning the Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan. 13, 2015) ("2015 DSW Rule") that became effective on 13 July 2015. The 2015 DSW Rule retains certain changes originally made in the 2008 DSW Rule but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material." *Id.* at 1694.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The United States Environmental Protection Agency (EPA) has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program. RCRA § 3006(b), 42 U.S.C. § 6926(b); 40 C.F.R. § 271.4.

The Act instructs the Department to “cooperate . . . with . . . the federal government . . . in the formulation and carrying out of a solid waste management program,” including a program for the management of hazardous waste “designed to protect the public health, safety, and welfare; [and to] preserve the environment.” N.C.G.S. § 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program. N.C.G.S. § 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference.

Because of the new federal change effective 13 July 2015, it is necessary under the temporary rulemaking requirements process to condense the comment period and hearing requirements in order to align 15A NCAC 13A .0102 with federal law pursuant to G.S. 150B-21.1(a)(4).

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

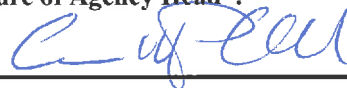
**9. Rule-making Coordinator: Jennifer Everett**  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614

E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Julie Woosley  
Phone: 919 707-8203

E-Mail: julie.woosley@ncdenr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Gerald Carroll  
Title: Chairman of the Environmental Management Commission

E-Mail: gpcemc@gmail.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 13A .0102 is amended under temporary procedure as follows:

2  
3 **15A NCAC 13A .0102 DEFINITIONS**

4 (a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

5 (b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions  
6 except that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person",  
7 "Sludge", "Storage", and "Treatment" are defined by G.S. 130A-290 and are not incorporated by ~~reference~~, reference and  
8 the ~~definitions~~ definition in 260.10 for "Contained" "Facility", "Transfer Facility", "~~Hazardous secondary material~~",  
9 "~~Hazardous secondary material generated and reclaimed under the control of the generator~~", "~~Hazardous secondary~~  
10 ~~material generator~~", "Intermediate facility", and "Land-based unit" are not incorporated by ~~reference~~ is not incorporated  
11 by reference.

12 (c) ~~The following definitions shall be substituted for "Facility" and "Transfer Facility":~~ The following definition shall be  
13 substituted for "Contained":

14 (1) ~~"Facility" means:~~

15 (A) ~~All contiguous land, structures, other appurtenances, and improvements on the land, used for~~  
16 ~~treating, storing, or disposing of hazardous waste. A facility may consist of several~~  
17 ~~treatment, storage, or disposal operational units (e.g., one or more landfills, surface~~  
18 ~~impoundments, or combinations of them).~~

19 (B) ~~For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous~~  
20 ~~property under the control of the owner or operator seeking a permit under Subtitle C of~~  
21 ~~RCRA. This definition also applies to facilities implementing corrective action under RCRA~~  
22 ~~Section 3008(h).~~

23 (C) ~~Notwithstanding Part (B) of this definition, a remediation waste management site is not a~~  
24 ~~facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if~~  
25 ~~the site is located within such a facility.~~

26 (2) ~~"Transfer facility" means any transportation related facility including loading docks, parking areas,~~  
27 ~~storage areas and other similar areas where shipments of hazardous waste are held during the normal~~  
28 ~~course of transportation.~~

29 (1) "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the  
30 following criteria:

31 (A) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted  
32 releases of the hazardous secondary materials or hazardous constituents originating from the  
33 hazardous secondary materials to the environment, and is designed, as appropriate for the  
34 hazardous secondary materials, to prevent releases of hazardous secondary materials to the  
35 environment. Unpermitted releases are releases that are not covered by a permit (such as a  
36 permit to discharge to water or air) and may include, but are not limited to, releases through  
37 surface transport by precipitation



runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;

the hazardous secondary materials in the unit; and

(C) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(D) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of ~~Environment and Natural Resources~~ Environmental Quality.
- (2) The "Department" means the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ).
- (3) "Division" means the Division of Waste Management (DWM).
- (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
- (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

*History Note: Authority G.S. 130A 294(c); 150B-21.6;*  
*Eff. September 1, 1979;*  
*Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;*  
*Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;*  
*Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;*  
*Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;*  
*Amended Eff. August 1, 2000;*  
*Temporary Amendment Eff. January 1, 2009;*  
*Amended Eff. July 1, 2010;*  
*Temporary Amendment Eff. December 1, 2015.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

**OAH USE ONLY**

**VOLUME:**

**ISSUE:**

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0103 PETITIONS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 9/11/2015
- b. Proposed Temporary Rule published on the OAH website: 9/17/2015
- c. Public Hearing date: 10/5/2015
- d. Comment Period: 9/14/15 through 10/9/2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 9/14/2015
- f. Adoption by agency on: 11/5/2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite:  
Effective date:
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☒ A recent federal regulation.  
Cite: Federal Register Vol. 80 No. 8, 1694 "2015 DSW Rule"  
Effective date: 7/13/2015
- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

**Explain:** The NC Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0103 is necessary due to recent changes to applicable federal regulations. On 30 October 2008, EPA promulgated a final rule concerning the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008) ("2008 DSW Rule"), which various entities subsequently challenged through litigation, including claims that the rule contained significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations. On 13 January 2015, the United States Environmental Protection Agency (EPA) promulgated a revised final rule concerning the Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan. 13, 2015) ("2015 DSW Rule") that became effective on 13 July 2015. The 2015 DSW Rule retains certain changes originally made in the 2008 DSW Rule but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material." *Id.* at 1694.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The United States Environmental Protection Agency (EPA) has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program. RCRA § 3006(b), 42 U.S.C. § 6926(b); 40 C.F.R. § 271.4.

The Act instructs the Department to “cooperate . . . with . . . the federal government . . . in the formulation and carrying out of a solid waste management program,” including a program for the management of hazardous waste “designed to protect the public health, safety, and welfare; [and to] preserve the environment.” N.C.G.S. § 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program. N.C.G.S. § 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference.

Because of the new federal change effective 13 July 2015, it is necessary under the temporary rulemaking requirements process to condense the comment period and hearing requirements in order to align 15A NCAC 13A .0103 with federal law pursuant to G.S. 150B-21.1(a)(4).

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

**9. Rule-making Coordinator: Jennifer Everett**  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614

E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Julie Woosley  
Phone: 919 707-8203

E-Mail: julie.woosley@ncdenr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gerald Carroll  
Title: Chairman of the Environmental Management Commission

E-Mail: gpcemc@gmail.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 13A .0103 is amended under temporary procedure as follows:  
2

3 **15A NCAC 13A .0103 PETITIONS PART 260**

4 (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with ~~15A NCAC 24B .0101~~, 15A  
5 NCAC 02I .0501.

6 (b) In applying the federal requirements incorporated by reference in this Rule, "~~15A NCAC 24B .0101~~" 15A NCAC  
7 02I .0501 shall be substituted for references to 40 CFR 260.20.

8 (c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including  
9 subsequent amendments and ~~editions, editions.~~ ~~except that 40 CFR 260.30(d), 260.30(e), 260.33(e), 260.34, 260.42 and~~  
10 ~~260.43 are not incorporated by reference.~~

11  
12 *History Note: Authority G.S. 130A-294(c); 150B-21.6;*

13 *Eff. November 19, 1980;*

14 *Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985;*

15 *Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990;*

16 *Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990;*

17 *Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996;*

18 *Amended Eff. August 1, 2000;*

19 *Temporary Amendment Eff. January 1, 2009;*

20 *Amended Eff. July 1, 2010;*

21 *Temporary Amendment Eff. December 1, 2015.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 9/11/2015
- b. Proposed Temporary Rule published on the OAH website: 9/17/2015
- c. Public Hearing date: 10/5/2015
- d. Comment Period: 9/14/15 through 10/9/2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 9/14/2015
- f. Adoption by agency on: 11/5/2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite:  
Effective date:
- ☐ A recent change in federal or state budgetary policy.  
Effective date of change:
- ☒ A recent federal regulation.  
Cite: Federal Register Vol. 80 No. 8, 1694 "2015 DSW Rule"  
Effective date: 7/13/2015
- ☐ A recent court order.  
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

**Explain:** The NC Environmental Management Commission has determined that temporary rulemaking to amend 15A NCAC 13A .0106 is necessary due to recent changes to applicable federal regulations. On 30 October 2008, EPA promulgated a final rule concerning the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008) ("2008 DSW Rule"), which various entities subsequently challenged through litigation, including claims that the rule contained significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations. On 13 January 2015, the United States Environmental Protection Agency (EPA) promulgated a revised final rule concerning the Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan. 13, 2015) ("2015 DSW Rule") that became effective on 13 July 2015. The 2015 DSW Rule retains certain changes originally made in the 2008 DSW Rule but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material." *Id.* at 1694.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The United States Environmental Protection Agency (EPA) has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program. RCRA § 3006(b), 42 U.S.C. § 6926(b); 40 C.F.R. § 271.4.

The Act instructs the Department to “cooperate . . . with . . . the federal government . . . in the formulation and carrying out of a solid waste management program,” including a program for the management of hazardous waste “designed to protect the public health, safety, and welfare; [and to] preserve the environment.” N.C.G.S. § 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program. N.C.G.S. § 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference.

Because of the new federal change effective 13 July 2015, it is necessary under the temporary rulemaking requirements process to condense the comment period and hearing requirements in order to align 15A NCAC 13A .0106 with federal law pursuant to G.S. 150B-21.1(a)(4).

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

☒ No

**9. Rule-making Coordinator: Jennifer Everett**  
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Raleigh, NC 27699-1601  
Tele: (919)-707-8614

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Agency contact, if any: Julie Woosley  
Phone: 919 707-8203

E-Mail: [julie.woosley@ncdenr.gov](mailto:julie.woosley@ncdenr.gov)

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gerald Carroll  
Title: Chairman of the Environmental Management Commission

E-Mail: [gpcemc@gmail.com](mailto:gpcemc@gmail.com)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 13A .0106 is amended under temporary procedure as follows:

2  
3 **15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

4 (a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent  
5 amendments and ~~editions~~, editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23), 261.4(a)(24), and  
6 ~~261.4(a)(25) are not incorporated by reference.~~

7 (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for  
8 Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

9 (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference  
10 including subsequent amendments and editions.

11 (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including  
12 subsequent amendments and editions.

13 (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including  
14 subsequent amendments and editions.

15 (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous  
16 Secondary Materials" are incorporated by reference including subsequent amendments and editions.

17 (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference  
18 including subsequent amendments and editions.

19 (h) 40 CFR 261.190 through 261.200 (Subpart J) "Tank Systems" are incorporated by reference including subsequent  
20 amendments and editions.

21 (i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded  
22 Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

23 (j) 40 CFR 261.1030 through 261.1049 (Subpart AA) "Air Emission Standards for Process Vents", are incorporated by  
24 reference including subsequent amendments and editions.

25 (k) 40 CFR 261.1050 through 261.1079 (Subpart BB) "Air Emission Standards for Equipment Leaks" are incorporated  
26 by reference including subsequent amendments and editions.

27 (l) 40 CFR 261.1080 through 261.1090 (Subpart CC) "Air Emission Standards for Tanks and Containers" are  
28 incorporated by reference including subsequent amendments and editions.

29 ~~(m)~~ (m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and  
30 editions.

31  
32 *History Note: Authority G.S. 130A-294(c); 150B-21.6;*

33 *Eff. November 19, 1980;*

34 *Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987;*

35 *August 1, 1987;*

36 *Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;*

37 *Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990;*

1                   *Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992;*  
2                   *December 1, 1990;*  
3                   *Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996;*  
4                   *Amended Eff. April 1, 2007; August 1, 2000;*  
5                   *Temporary Amendment Eff. January 1, 2009;*  
6                   *Amended Eff. July 1, 2010;*  
7                   *Temporary Amendment Eff. December 1, 2015.*

8  
9