

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0101

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Generally, do you incorporate by reference 40 CFR 70.2 or other federal rules that contain definitions? Are any of the definitions in this Rule copied verbatim from federal regulations? If so, consider citing the CFR definition rather than copying them in your rules.*

*Line 10 – revise as follows:*

- (1) "Act" means Article 21, G.S. 143, entitled "Water and Air Resources."

*Line 13 – replace the comma with a semicolon*

*Line 14 – add a comma after "Agency" and "approval"*

*Line 14 – replace "its" with "a"*

*Line 16 – replace "its" with "such a"*

*Line 18 – add "or" before "radioactive"*

*Line 21 – delete the semicolon*

*Line 21 – add a comma after "animal" and delete the comma after "life"*

*Line 23 – replace "... equipment (including hoods, ducts, fans, etc.) used ..." with "... equipment, including hoods, ducts, and fans, used ..."*

*Line 29 – the "compliance status" of what – a "facility"? Please specify.*

*Lines 30-31 – replace "... equipment (fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, electrostatic precipitator, or the like) used ..." with "... equipment, including fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, and electrostatic precipitator, used ..."*

Jason Thomas  
Commission Counsel

Date submitted to agency: November 22, 2017

*Line 31 – replace “air pollutant(s)” with “an air pollutant”*

*Lines 36-37 – revise as follows, if this is what is meant: ““Dustfall” means particulate matter that settles out of the air. Dustfall shall be expressed in units of grams per square meter per 30-day period.”*

*Page 2, lines 6-7 – “Fugitive emission” is also defined in 40 CFR 70.2. Delete it from this rule.*

*Page 2, line 9 – replace “includes” with “include”*

*Page 2, line 10 – add “a” before “warm”*

*Page 2, lines 12-13 – replace “and” with “or” (twice) if that is what is meant.*

*Page 2, line 30 – the comma after “entity” suggests that the phrase “or its legal representative, agent, or assigns” relates to each of the entities listed after “includes” in Item (28). If you intend for the phrase to relate only to “any other legal entity,” delete that comma.*

*Page 3, lines 11-12 – what does “or any combination” mean – any combination of what?*

*Page 3, lines 11-12 – delete the three semicolons*

*Page 3, lines 14-15 – why is this sentence in the definition – “The concentration of sulfur dioxide shall be measured by the methods specified in this Subchapter.”? How does it define “sulfur oxides”?*

*Page 3, lines 17-18 – what does “water in uncombined form” mean – is the phrase understood by the regulated public?*

*Page 3, line 21 – delete “, but not limited to,”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0101 is readopted as published in 31:24 NCR 2465-2466 as follows:  
2

3 **SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**  
4

5 **SECTION .0100 - DEFINITIONS AND REFERENCES**  
6

7 **15A NCAC 02D .0101 DEFINITIONS**

8 The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as  
9 amended. The following words and phrases, which are not defined in the article, have the following meaning:

- 10 (1) "Act" means The North Carolina Water and Air Resources of Article 21.  
11 (2) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by  
12 reference in this Subchapter, the Director of the Division of Air Quality unless:  
13 (a) a specific rule in this Subchapter specifies otherwise, or  
14 (b) the U.S. Environmental Protection Agency in its delegation or approval states that a  
15 specific authority of the Administrator of the Environmental Protection Agency is not  
16 included in its delegation or approval.  
17 (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical,  
18 chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient  
19 air.  
20 (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures,  
21 stacks, or ducts; and that surrounds human, animal or plant life, or property.  
22 (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.  
23 (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture,  
24 or transport a pollutant to a control device.  
25 (7) "CFR" means the Code of Federal Regulations.  
26 (8) "Combustible material" means any substance that, when ignited, will burn in air.  
27 (9) "Construction" means change in method of operation or any physical change, including on-site  
28 fabrication, erection, installation, replacement, demolition, or modification of a source, that results  
29 in a change in emissions or affects the compliance status.  
30 (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter media,  
31 cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before  
32 discharge to the ambient air.  
33 (11) "Day" means a 24-hour period beginning at midnight.  
34 (12) "Director" means the Director of the Division of Air Quality, unless otherwise specified.  
35 (13) "Division" means Division of Air Quality.  
36 (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per  
37 square meter per 30-day period.

- 1 (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into  
2 the ambient air from any source.
- 3 (16) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are  
4 located on one or more adjacent properties under common control.
- 5 (17) "FR" means the Federal Register.
- 6 (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney,  
7 vent, or other functionally-equivalent opening.
- 8 (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or  
9 power from the combustion of any fuel. Uses of the equipment includes heating water, generating  
10 or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring  
11 energy by fluids or through process vessel walls.
- 12 (20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking,  
13 and serving of food.
- 14 (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- 15 (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent  
16 obscuration.
- 17 (23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor  
18 atmosphere without passing through a stack or chimney, approved incinerator, or other similar  
19 device.
- 20 (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility,  
21 source, or air pollution control equipment.
- 22 (25) "Particulate matter" means any material except uncombined water that exists in a finely divided  
23 form as a liquid or solid at standard conditions.
- 24 (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than  
25 uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- 26 (27) "Permitted" means any source subject to a permit under this Subchapter or ~~Subchapter~~ 15A NCAC  
27 02Q.
- 28 (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm,  
29 company, corporation, association, joint stock company, trust, estate, political subdivision, or any  
30 other legal entity, or its legal representative, agent, or assigns.
- 31 (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10  
32 micrometers as measured by methods specified in this Subchapter.
- 33 (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less  
34 than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods  
35 specified in this Subchapter.
- 36 (31) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5  
37 micrometers as measured by methods specified in this Subchapter.

- 1 (32) "Refuse" means any garbage, rubbish, or trade waste.
- 2 (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- 3 (34) "Rural area" means an area that is devoted to the following uses: agriculture, recreation, wildlife
- 4 management, state park, or any area of natural cover.
- 5 (35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging
- 6 or reclaiming any product or material, including metal, chemicals, motor vehicles, shipping
- 7 containers, or drums.
- 8 (36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting
- 9 predominantly of carbon, ash, and other burned or unburned residue of combustible materials that
- 10 form a visible plume.
- 11 (37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any
- 12 combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or
- 13 are emitted, either directly or indirectly.
- 14 (38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids, and the salts of their acids. The
- 15 concentration of sulfur dioxide shall be measured by the methods specified in this Subchapter.
- 16 (39) "Transportation facility" means a complex source as defined in G.S. 143-213(22).
- 17 (40) "Total suspended particulate" means any finely divided solid or liquid material, except water in
- 18 uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- 19 (41) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from
- 20 combustion, salvage operations, building operations, or the operation of any business, trade, or
- 21 industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil
- 22 and other petroleum products, chemicals, and ashes.
- 23 (42) "ug" or "µg" means micrograms.

24

25 *History Note: Authority G.S. 143-213; 143-215.3(a)(1);*

26 *Eff. June 1, 1976;*

27 *Amended Eff. December 1, 1989; July 1, 1988; July 1, 1984;*

28 *Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule*

29 *becomes effective, whichever is sooner;*

30 *Amended Eff. January 1, 2015; December 1, 2005; June 1, 2004; July 1, 1998; July 1, 1996; July*

31 *1, ~~1994, 1994~~;*

32 *Readopted Eff. January 1, 2018.*

33

34

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0103

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 15 – add “and” at the end of this line*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0103 is amended as published in 31:24 NCR 2466-2467 as follows:

2

3 **15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS**

4 (a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter are available for public  
5 inspection at Department of ~~Environment and Natural Resources~~Environmental Quality regional offices. They are:

- 6 (1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;
- 7 (2) Winston-Salem Regional Office, ~~585 Waughtown Street, Winston-Salem, North Carolina 27107;~~  
8 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;
- 9 (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina  
10 28115;
- 11 (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina  
12 ~~27614;~~27609;
- 13 (5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North  
14 Carolina 28301;
- 15 (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;
- 16 (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

17 (b) Copies of such rules ~~can be made at these regional offices for ten cents (\$0.10) per page or may be obtained free~~  
18 of charge online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

19

20 *History Note: Authority G.S. 143-215.3; 150B-21.6;*  
21 *Eff. December 1, 1976;*  
22 *Amended Eff. January 1, 2018; December 1, 2005; December 1, 1992; August 1, 1991; July 1, 1988;*  
23 *July 1, 1987;*  
24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*  
25 *2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0104

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Lines 4-6 – consider revising as follows:*

(a) If referred to in this Subchapter, the following materials shall be incorporated in this Subchapter by reference:

- (1) a regulation codified in the Code of Federal Regulations (CFR); and
- (2) a method established by the American Society for Testing and Materials (ASTM).

*Line 8 – replace “automatically include any later amendments thereto” with “include subsequent amendments and editions”*

*Line 8 – delete “specific”*

*Line 25 – replace “is dependent on” with “varies according to.”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



1 15A NCAC 02D .0104 is amended as published in 31:24 NCR 2467 as follows:

2  
3 **15A NCAC 02D .0104 INCORPORATION BY REFERENCE**

4 (a) Anywhere there is a reference to rules contained in the Code of Federal Regulations (CFR) or to an American  
5 Society for Testing and Materials method (ASTM) in this Subchapter, those rules and methods are incorporated by  
6 reference.

7 (b) The Code of Federal Regulations and American Society for Testing and Materials methods incorporated by  
8 reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies  
9 otherwise.

10 (c) The Code of Federal Regulations is available in electronic form free of charge at  
11 <https://www.gpo.gov/fdsys/search/home.action> ~~may be purchased from the Superintendent of Documents, PO Box~~  
12 ~~371954, Pittsburgh, PA 15250. The cost of the referenced documents is as follows:~~

- 13 (1) ~~40 CFR Parts 1 to 51: fifty dollars (\$50.00).~~  
14 (2) ~~40 CFR Part 52: thirty nine dollars (\$39.00).~~  
15 (3) ~~40 CFR Parts 53 to 59: eleven dollars (\$11.00).~~  
16 (4) ~~40 CFR Part 60: thirty six dollars (\$36.00).~~  
17 (5) ~~40 CFR Parts 61 to 71: thirty six dollars (\$36.00).~~  
18 (6) ~~40 CFR Parts 72 to 85: forty one dollars (\$41.00).~~  
19 (7) ~~40 CFR Part 86: forty dollars (\$40.00).~~  
20 (8) ~~40 CFR Parts 87 to 135: five dollars (\$5.00).~~  
21 (9) ~~40 CFR Parts 260 to 299: forty dollars (\$40.00).~~

22 ~~These prices are October 15, 1996 prices.~~

23 (d) The American Society for Testing and Materials methods may be purchased from <https://www.astm.org/> ~~the Air~~  
24 ~~Quality Division, PO Box 29580, Raleigh, North Carolina 27626 0580 at a price of twenty cents (\$0.20) per~~  
25 ~~page~~ Purchase price is dependent on the particular method and format chosen.

26  
27 *History Note: Authority G.S. 150B-21.6;*  
28 *Eff. July 1, 1988;*  
29 *Amended Eff. January 1, 2018; July 1, 1998; May 1, 1995; December 1, 1992; October 1, 1989;*  
30 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*  
31 *2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0105

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 13 – how is a person to contact Division staff? In writing, by e-mail, what contact information will you provide?*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0105 is amended as published in 31:24 NCR 2467 as follows:

2

3 **15A NCAC 02D .0105 MAILING LIST**

4 (a) The Division shall develop and maintain a mailing list of persons who have requested notification of rule-making  
5 as required by G.S. 150B 21.2(d). Such persons shall receive a copy of the complete notice as filed with the Office  
6 of Administrative Hearings.

7 (b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written  
8 request to the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina, ~~27699~~27699-1641.

9 Payment of fees required under this ~~Section~~Rule may be by check or money order for thirty dollars (\$30.00) made  
10 payable to the Department of ~~Environment and Natural Resources~~Environmental Quality. Payment shall be submitted  
11 with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year.

12 A person requesting to be on the list for notification of rule-making may opt to receive notification via email free of  
13 charge by contacting Division staff.

14

15 *History Note: Authority G.S. 143-215.3(a)(1); 150B 21.2(d);*

16 *Eff. April 1, 1995;*

17 *Amended Eff. January 1, 2018; April 1, 2003; July 1, 1998; May 1, 1998;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*  
19 *2016.*

20

21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0201

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

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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 call our office to inquire concerning the staff recommendation.

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

*Line 6 – the first sentence of this Paragraph is unnecessary. Please consider repealing it.*

*Lines 6-8 – consider revising as follows:*

(a) Purpose. This Regulation establishes a system for classifying air pollution sources. The Commission shall use the system for classifying air pollution sources set forth in this Rule to classify air pollution sources governed by this Subchapter.

*Lines 11, 13, 15, and 20 – replace “fuel burning” with “fuel-burning”*

*Line 16 – add a comma after “commercial” and add “at” before “apartment”*

*Line 18 – replace “burning” with “that burn”*

*Line 25 – add a comma after “compounds”*

*Line 26 – add a comma after “fibers”*

*Line 30 – add a comma after “clay”*

*Line 36 – add a comma after “dyeing”*

*Page 2, line 2 – add a comma after “ginning”*

*Page 2, line 12 – delete this line.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0201 is readopted as published in 31:24 NCR 2467-2468 as follows:  
2

3 **SECTION .0200 - AIR POLLUTION SOURCES**  
4

5 **15A NCAC 02D .0201 CLASSIFICATION OF AIR POLLUTION SOURCES**

6 (a) Purpose. This Regulation establishes a system for classifying air pollution sources. The Commission shall use  
7 this classification system to classify air pollution sources which the Commission believes to be of sufficient  
8 importance to justify classification or control.

9 (b) Scope. This Regulation shall apply to all air pollution sources, both combustion and non-combustion. The  
10 following system for classifying air pollution sources shall be used:

- 11 (1) "Class I-C" includes all sources of air pollution using fuel burning equipment for the production of  
12 heat to generate electricity for public use.
- 13 (2) "Class II-C" includes all sources of air pollution using fuel burning equipment for the production of  
14 steam, and for other process uses at commercial and industrial establishments.
- 15 (3) "Class III-C" includes all sources of air pollution using fuel burning equipment for comfort heating  
16 at institutional, commercial or industrial establishments, or apartment houses having a central  
17 heating system serving more than four apartments.
- 18 (4) "Class IV-C" includes all sources of air pollution burning trash, rubbish, refuse, or similar materials  
19 in incinerators, teepee burners, or similar devices.
- 20 (5) "Class V-C" includes all sources of air pollution using fuel burning equipment for comfort heating  
21 that are not included in Class III-C.
- 22 (6) "Class VI-C" includes all sources of air pollution using internal combustion engines.
- 23 (7) "Class I-I" includes all sources of air pollution resulting from industrial plants engaged in the  
24 manufacture of chemicals or allied products whose processes depend on the chemical reaction of  
25 two or more elements or compounds and includes plants producing acids, fertilizer materials,  
26 dyestuff, synthetic fibers and industrial gases.
- 27 (8) "Class II-I" includes all sources of air pollution resulting from industrial plants engaged in the  
28 production of pulp and paper.
- 29 (9) "Class III-I" includes all sources of air pollution resulting from the mining and processing of  
30 minerals, stone, clay and cement products, and includes phosphate ore, mica and feldspar operations,  
31 stone quarries and crushers, cement plants, concrete mixing plants, and masonry block plants.
- 32 (10) "Class IV-I" includes all sources of air pollution resulting from industrial operations using petroleum  
33 products, and includes asphalt mix plants, roofing felt plants, and petroleum products storage areas.
- 34 (11) "Class V-I" includes all sources of air pollution resulting from furniture, lumber, or wood product  
35 plants.
- 36 (12) "Class VI-I" includes all sources of air pollution resulting from textile manufacturing, textile dyeing  
37 or finishing plants.

1           (13) "Class VII-I" includes all sources of air pollution resulting from the shelling, drying, storage,  
2           ginning and processing of tobacco, corn, soybeans, peanuts, cotton, fruits, vegetables, or other  
3           agricultural products.

4           (14) "Class VIII-I" includes all sources of air pollution resulting from industries engaged in the  
5           processing of metals, and includes smelting, casting foundries, metal working, and other similar  
6           operations.

7           (15) "Class IX-I" includes all sources of air pollution resulting from slaughtering and processing of meat,  
8           poultry, fish, and similar products and from rendering or the recovering of by-products of these  
9           operations.

10          (16) "Class X-I" includes all sources of air pollution resulting from industries which do not fall within  
11          the classifications described in Subparagraphs (b)(7) through (b)(15) of this Regulation.

12          These sources shall be controlled pursuant to the requirements of regulations and other provisions of law.

13  
14          *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4);*

15                   *Eff. February 1, 1976;*

16                   *Amended Eff. July 1, 1984; December 1, 1976;*

17                   *Readopted Eff. January 1, 2018.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0202

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – when “may” the Director require registration? Do you mean “shall”? If you mean “may,” what factors, standards, or circumstances will the Director consider in deciding whether to require registration? Are such factors, standards, or circumstances set forth in a statute or another rule?*

*Line 5 – a form is required. Are the substantive requirements of the form listed in (b)(1) – (b)(10)?*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0202 is readopted as published in 31:24 NCR 2468 as follows:

2  
3 **15A NCAC 02D .0202 REGISTRATION OF AIR POLLUTION SOURCES**

4 (a) The Director may require the owner or operator of a source of air pollution to register that source.

5 (b) Any person required to register a source of air pollution with the Division shall register the source on forms  
6 provided by the Division and shall provide the following information:

7 (1) the name of the person, company, or corporation operating the sources;

8 (2) the address, location, and county;

9 (3) principal officer of the company;

10 (4) quantities and kinds of raw materials used;

11 (5) process flow sheets;

12 (6) operating schedules;

13 (7) total weights and kinds of air pollution released;

14 (8) types and quantities of fuels used;

15 (9) stack heights; and

16 (10) other information considered essential in evaluating the potential of the source to cause air pollution.

17 The forms shall be completed and returned to the Division within 60 days following their receipt.

18  
19 History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4);

20 Eff. February 1, 1976;

21 Amended Eff. July 1, 1998; June 1, 1985; July 1, 1984;

22 Readopted Eff. January 1, 2018.



REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0301

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

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

*This Rule does not impose any requirement or confer any benefit on a person outside the agency. Consider deleting it.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0301 is readopted as published in 31:24 NCR 2468 as follows:

2

3

**SECTION .0300 - AIR POLLUTION EMERGENCIES**

4

**15A NCAC 02D .0301 PURPOSE**

6 Notwithstanding any other provisions of air pollution control regulations or standards, this Section is designed to  
7 prevent the excessive buildup of air contaminants during air pollution episodes thereby preventing the occurrence of  
8 an emergency due to the effects of these contaminants on the public health.

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10 History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);

11 Eff. February 1, 1976;

12 Readopted Eff. January 1, 2018.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0302

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

**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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – delete this empty line*

*Lines 5-8 – consider revising as follows:*

The Director may issue a proclamation of an air pollution alert, air pollution warning, or air pollution emergency if the Director determines that the accumulation of air contaminants in any place is attaining or has attained levels that could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In deciding whether to issue such a proclamation, the Director shall be guided by the following criteria:

*Line 9 – what does “internal watch” mean – is the term understood by the Division and by local air pollution agencies? Is it defined by a statute, regulation, or another rule?*

*Line 10 – add “the issuance of” after “by”*

*Line 11 – delete the comma and add “by” after “or”*

*Lines 12-13 – delete “The alert level is that concentration of pollutants at which first stage control actions are to begin.” as it does not appear to be necessary.*

*Line 15 – add the following after “site”:*

and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed the following levels for twelve (12) or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:

*Line 23 – add “or” to the end of this line*

*Line 24 – replace the semicolon and “and” with a period.*

*Line 35 – add the following after “site”:*

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed the following levels for twelve (12) or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:

*Page 2, line 6 – add “or” to the end of this line*

*Page 2, line 7 – replace the semicolon and “and” with a period.*

*Page 2, line 16 – define “should never be reached”*

*Page 2, line 19 – add the following after “site”:*

and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed the following levels for twelve (12) or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:

*Page 2, line 27 – add “or” to the end of this line*

*Page 2, line 28 – replace the semicolon and “and” with a period.*

*Page 2, lines 34-35 – consider revising as follows:*

(5) Termination. After a proclamation has been issued, any level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time the next lower level shall remain in effect until the criteria for that level are no longer met.

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0302 is readopted as published in 31:24 NCR 2468-2469 as follows:

2  
3 **15A NCAC 02D .0302 EPISODE CRITERIA**

4  
5 Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall  
6 be deemed to exist whenever the ~~director~~Director determines that the accumulation of air contaminants in any place  
7 is attaining or has attained levels that could, if such levels are sustained or exceeded, lead to a threat to the health of  
8 the public. In making this determination, the ~~director~~Director shall be guided by the following criteria:

- 9 (1) Air Pollution Forecast. An internal watch by the Division and local air pollution control agencies  
10 shall be activated by a National Weather Service advisory that an atmospheric stagnation advisory  
11 is in effect, or the equivalent local forecast of stagnant atmospheric conditions.
- 12 (2) Alert. The alert level is that concentration of pollutants at which first stage control actions are to  
13 begin. The ~~director~~Secretary of the Department of Environmental Quality with the concurrence of  
14 the Governor shall proclaim an alert when any of the following levels is reached at any monitoring  
15 site:
- 16 (a) sulfur dioxide -- 800 ~~ug/m3~~ ug/m<sup>3</sup> (0.3 ~~p.p.m.~~)ppm), 24-hour average;
  - 17 ~~(b) particulate 375 ug/m3, 24 hour average;~~
  - 18 ~~(c) sulfur dioxide and particulate combined product of sulfur dioxide ug/m3, 24 hour~~  
19 ~~average, and particulate ug/m3, 24 hour average, equal to 65,000;~~
  - 20 ~~(d)~~(b) carbon monoxide -- 17 ~~ug/m3~~ ug/m<sup>3</sup> (15 ~~p.p.m.~~)ppm), eight-hour average;
  - 21 ~~(e)~~(c) ozone -- 400 ~~ug/m3~~ ug/m<sup>3</sup> (0.2 ~~p.p.m.~~)ppm), one-hour average;
  - 22 ~~(f)~~(d) nitrogen dioxide -- 1130 ~~ug/m3~~ ug/m<sup>3</sup> (0.6 ~~p.p.m.~~)ppm), one-hour average; 282 ~~ug/m3~~  
23 ug/m<sup>3</sup> (0.15 ~~p.p.m.~~)ppm), 24-hour average;
  - 24 ~~(g)~~(e) PM10--350 ~~ug/m;~~ ug/m<sup>3</sup> 24-hour average;~~and average; and meteorological conditions are~~  
25 ~~such that pollutant concentrations can be expected to remain at these levels for 12 or more~~  
26 ~~hours or increase or, for ozone, the situation is likely to recur within the next 24 hours~~  
27 ~~unless control actions are taken.~~
  - 28 (f) in addition to the levels listed for the above pollutants, meteorological conditions are such  
29 that pollutant concentrations can be expected to remain at the above levels for twelve (12)  
30 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within  
31 the next 24-hours unless control actions are taken.
- 32 (3) Warning. The warning level indicates that air quality is continuing to degrade and that additional  
33 abatement actions are necessary. The Secretary of the Department of Environmental Quality with  
34 the concurrence of the Governor ~~Director~~ shall proclaim a warning when any one of the following  
35 levels is reached at any monitoring site:
- 36 (a) sulfur dioxide -- 1600 ~~ug/m3~~ ug/m<sup>3</sup> (0.6 ~~p.p.m.~~)ppm),24-hour average
  - 37 ~~(b) particulate 625 ug/m3, 24 hour average;~~

- ~~(e)~~ sulfur dioxide and particulate combined — product of sulfur dioxide  $\mu\text{g}/\text{m}^3$ , 24 hour average, and particulate  $\mu\text{g}/\text{m}^3$ , 24 hour average, equal to 261,000;
- ~~(d)~~(b) carbon monoxide -- 34  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (30 p.p.m.),ppm), eight-hour average;
- ~~(e)~~(c) ozone -- 800  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.4 p.p.m.),ppm), one-hour average;
- ~~(f)~~(d) nitrogen dioxide -- 2260  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (1.2 p.p.m.),ppm), one-hour average; 565  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.3 p.p.m.),ppm), 24-hour average;
- ~~(g)~~(e) PM10 -- 420  $\mu\text{g}/\text{m}^3$ ;  $\mu\text{g}/\text{m}^3$  24-hour average; and ~~average; and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, for ozone, the situation is likely to recur within the next 24 hours unless control actions are taken.~~
- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

(4) Emergency. The emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. The Secretary of the ~~Department of Environment and Natural Resources~~Department of Environmental Quality with the concurrence of the Governor shall declare an emergency when any one of the following levels is reached at any monitoring site:

- (a) sulfur dioxide -- 2100  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.8 p.p.m.),ppm) 24-hour average;
- (b) ~~particulate~~ 875  $\mu\text{g}/\text{m}^3$ , 24 hour average;
- ~~(e)~~ sulfur dioxide and particulate combined — product of sulfur dioxide  $\mu\text{g}/\text{m}^3$ , 24 hour average, and particulate  $\mu\text{g}/\text{m}^3$ , 24 hour average, equal to 393,000;
- ~~(d)~~(b) carbon monoxide -- 46  $\text{mg}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (40 p.p.m.),ppm), eight-hour average;
- ~~(e)~~(c) ozone -- 1000  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.5 p.p.m.),ppm), one-hour average;
- ~~(f)~~(d) nitrogen dioxide -- 3000  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (1.6 p.p.m.),ppm), one-hour average; 750  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.4 p.p.m.), 24-hour average;
- ~~(g)~~(e) PM10--500  $\mu\text{g}/\text{m}^3$ ;  $\mu\text{g}/\text{m}^3$  24-hour average; and
- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken. Same clarification applies to Warning and Emergency Levels.

(5) Termination. Once declared any level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time the next lower level shall be assumed.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*

1                   *Eff. February 1, 1976;*  
2                   *Amended Eff. July 1, 1998; July 1, 1988; July 1, 1984; June 1, 1980; December 1, ~~1976-1976~~;*  
3                   *Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0303, .0304, .0305, .0306, and .0307

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*In rules .0303, .0304, .0305, .0306, and .0307, various terms are used to mean a pre-planned abatement plan, including "emission reduction plan," "preplanned program," "preplanned abatement program," "plan to reduce the emissions of air pollutants into the outdoor atmosphere," "plan," "preplanned abatement plan," "plan of action to be taken if an emergency develops" and so on. Please choose a single, descriptive term and use it consistently throughout these rules.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0303

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Please see general comments regarding the consistent use of a single term referring to the preplanned abatement plan.*

*Lines 5, 8, and 11 – delete the commas*

*Lines 6, 9, and 12 – what does “preplanned program” mean? Consider adding “that is required by 15A NCAC 02D .0304” at the end of these lines.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0303 is readopted as published in 31:24 NCR 2469 as follows:

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3 **15A NCAC 02D .0303 EMISSION REDUCTION PLANS**

4 (a) Air Pollution Alert. Any person responsible for the operation of a source of air pollution described in ~~Regulation~~  
5 ~~15A NCAC 02D .0305, .0305 of this Section,~~ shall take all air pollution alert actions required for that source and shall  
6 put into effect the preplanned program for an air pollution alert.

7 (b) Air Pollution Warning. Any person responsible for the operation of a source of air pollution described in  
8 ~~Regulation .0306 of this Section,~~ 15A NCAC 02D .0306, shall take all air pollution warning actions required for that  
9 source and shall put into effect the preplanned program for an air pollution warning.

10 (c) Air Pollution Emergency. Any person responsible for the operation of a source of air pollution described in  
11 ~~Regulation .0307 of this Section,~~ 15A NCAC 02D .0307, shall take all air pollution emergency actions required for  
12 that source and shall put into effect the preplanned program for an air pollution emergency.

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14 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*

15 *Eff. February 1, 1976;*

16 *Amended Eff. July 1, ~~1984.~~1984;*

17 *Readopted Eff. January 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0304

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Please see general comments regarding the consistent use of a single term referring to the preplanned abatement plan.*

*Lines 5 and 11 – delete the commas after “.0307”*

*Line 7 – add “as described in 15A NCAC 02D .0303” after “episode”*

*Lines 7 and 13 – what does this mean: “The plan shall be consistent with good industrial practices and safe operating procedures”? Are there standards, guidelines, or factors that can be cited here?*

*Line 13 – add “, as described in 15A NCAC 02D .0303” after “emergency”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0304 is readopted as published in 31:24 NCR 2470 as follows:

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3 **15A NCAC 02D .0304 PREPLANNED ABATEMENT PROGRAM**

4 (a) Any person who is responsible for the operation of a source of air pollution that is described in 15A NCAC 02D  
5 ~~Regulations .0305, .0306, or .0307, .0307 of this Section,~~ or that emits 100 tons per year or more of any one pollutant  
6 shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of an air  
7 pollution episode. The plan shall be consistent with good industrial practices and safe operating procedures. When  
8 the Director requests that the plan be submitted for ~~his~~ review, the owner or operator of the source shall submit the  
9 plan within 30 days of the Director's request.

10 (b) When requested by the Commission in writing, any person responsible for the operation of a source not described  
11 in ~~Regulations~~15A NCAC 02D .0305, .0306, or .0307,~~0307 of this Section,~~ shall prepare a plan to reduce the  
12 emissions of air pollutants into the outdoor atmosphere during periods of air pollution alert, air pollution warning, and  
13 air pollution emergency. The plan shall be consistent with good industrial practices and safe operating procedures.

14

15 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*

16 *Eff. February 1, 1976;*

17 *Amended Eff. July 1, 1988; July 1, ~~1984, 1984;~~*

18 *Readopted Eff. January 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0305

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Please see general comments regarding the consistent use of a single term referring to the preplanned abatement plan.*

*Lines 8, 10, 16, 20, and 30 – replace “12:00 p.m.” with “noon”*

*Line 9 – replace “fuel burning” with “fuel-burning”*

*Line 11 – replace “should” with “shall”*

*Line 11 – define or describe “unnecessary”*

*Lines 15 and 19 – what does “low” mean? Define or describe, or is this a term of art?*

*Line 17 – add “the” before “alert”*

*Line 25 – add a comma after “postponing”*

*Lines 25-26 – why does this differ from .0306(b)(3)(A) and .0307(b)(3)(C)?*

*Line 27 – replace “which” with “that”*

*Line 29 – why does this differ from .0306(b)(3)(C)?*

*Line 29 – replace “heat load” with “heat-load”*

*Line 29 – delete “and”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0305 is readopted as published in 31:24 NCR 2470 as follows:

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3 **15A NCAC 02D .0305 EMISSION REDUCTION PLAN: ALERT LEVEL**

4 (a) ~~General~~General.

- 5 (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any~~  
6 ~~form, any material otherwise allowed under 15A NCAC 02D .1900.~~
- 7 (2) The use of incinerators for the disposal of any form of solid waste shall be limited to the hours  
8 between ~~12 noon~~12:00 p.m. and 4:00 p.m.
- 9 (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall  
10 perform such operations only between the hours of ~~12 noon~~12:00 p.m. and 4:00 p.m.
- 11 (4) Persons operating motor vehicles should eliminate all unnecessary operations.

12 (b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required  
13 control actions for the alert level that are listed below:

- 14 (1) Operators of coal or oil fired electric power generating facilities shall:
- 15 (A) use fuels having low ash and sulfur content,
- 16 (B) perform boiler lancing and soot blowing between ~~12 noon~~12:00 p.m. and 4:00 p.m., and
- 17 (C) divert electric power generation to facilities outside of alert area;
- 18 (2) Operators of coal or oil fired process steam generating facilities shall:
- 19 (A) use fuels having low ash and sulfur content,
- 20 (B) perform boiler lancing and soot blowing between ~~12 noon~~12:00 p.m. and 4:00 p.m., and
- 21 (C) reduce steam load demands consistent with continuing plant operation;
- 22 (3) Operators of manufacturing industries of the following classifications: primary metals industry;  
23 petroleum refining and related industries; chemical and allied products industries; paper and allied  
24 products industries; glass, clay, and concrete products industries shall:
- 25 (A) reduce air pollutants from manufacturing operations by curtailing, postponing or deferring  
26 production and related operations;
- 27 (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous  
28 substances;
- 29 (C) reduce heat load demands for processing; and
- 30 (D) perform boiler lancing or soot blowing between ~~12 noon~~12:00 p.m. to 4:00 ~~p.m.; p.m.;~~ and
- 31 ~~(4) Municipal and commercial refuse disposal operations shall limit burning of refuse in incinerators to~~  
32 ~~hours between 12 noon to 4:00 p.m.;~~
- 33 ~~(5)~~(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all  
34 required control actions for the alert level contained in their plan.

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36 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*  
37 *Eff. February 1, 1976;*

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*Amended Eff. July 1, 1984; December 1, ~~1976~~1976;*  
*Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0306

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Please see general comments regarding the consistent use of a single term referring to the preplanned abatement plan.*

*Line 8 – replace “fuel burning” with “fuel-burning”*

*Lines 9, 16, 20, and 32 – replace “12:00 p.m.” with “noon”*

*Line 10 – replace “should” with “shall”*

*Lines 15 and 20 – what does “lowest” mean? Define or describe, or is this a term of art? Do you intend to set a different standard than in .0305, lines 15 and 19?*

*Line 18 – add “the” before “warning”*

*Line 26 – add a comma after “clay”*

*Lines 27-28 – why does this differ from .0305(b)(3)(A) and .0307(b)(3)(A)?*

*Line 29 – replace “which” with “that”*

*Line 27 – when would it be necessary to assume economic hardship? What does “reasonable” mean?*

*Line 31 – replace “heat load” with “heat-load”*

*Line 31 – why does this differ from .0305(b)(3)(C) and .0307(b)(3)(C)?*

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0306 is readopted as published in 31:24 NCR 2470-2471 as follows:

3 **15A NCAC 02D .0306 EMISSION REDUCTION PLAN: WARNING LEVEL**

4 (a) General

- 5 (1) There shall be no open burning ~~by any person of trade waste, refuse, vegetation, or debris in any~~  
6 ~~form any material otherwise allowed under 15A NCAC 02D .1900.~~
- 7 (2) The use of incinerators for the disposal of solid waste or liquid waste shall be prohibited.
- 8 (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall  
9 perform such operations only between ~~12 noon~~12:00 p.m. and 4:00 ~~p.m.~~p.m.
- 10 (4) Persons operating motor vehicles should minimize their use through car pools and increased use of  
11 public transportation.

12 (b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required  
13 control actions for the warning level that are listed below:

- 14 (1) Operators of coal or oil fired electric power generating facilities shall:
- 15 (A) use fuels having the lowest ash and sulfur ~~content,~~content;
- 16 (B) perform boiler lancing and soot blowing between ~~12 noon~~12:00 p.m. to 4:00 ~~p.m.,~~p.m.;  
17 and
- 18 (C) divert electric power generating to facilities outside of warning area;
- 19 (2) Operators of coal or oil fired process steam generating facilities shall:
- 20 (A) use fuels having the lowest ash and sulfur ~~content,~~content;
- 21 (B) perform boiler lancing and soot blowing between ~~12 noon~~12:00 p.m. to 4:00 ~~p.m.,~~p.m.;
- 22 (C) reduce steam load demands consistent with continuing plant ~~operations,~~operations; and
- 23 (D) prepare to use the plan of action to be taken if an emergency develops;
- 24 (3) Operators of manufacturing industries of the following classifications: primary metal industries;  
25 petroleum refining and related industries; chemical and allied products industries; paper and allied  
26 products industries; glass, clay and concrete products industries shall:
- 27 (A) reduce air pollutants from manufacturing operations by, if necessary, assuming reasonable  
28 economic hardship by postponing production and related operations;
- 29 (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous  
30 substances;
- 31 (C) reduce heat load demands for processing consistent with continuing plant operations; and
- 32 (D) perform boiler lancing or soot blowing between ~~12 noon~~12:00 p.m. to 4:00 ~~p.m.,~~p.m.; and
- 33 ~~(4) Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- 34 ~~(5)~~(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all  
35 required control actions for the warning level contained in their plan.

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37 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*

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*Eff. February 1, 1976;*  
*Amended Eff. July 1, 1984; December 1, ~~1976~~1976;*  
*Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0307

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Please see general comments regarding the consistent use of a single term referring to the preplanned abatement plan.*

*Line 8 – define or delete “immediately”*

*Line 12 – replace “which” with “that”*

*Line 16 – add a comma after “shops”*

*Line 17 – add a comma after “universities”*

*Lines 22 and 26 – replace “coal or oil fired” with “coal- or oil-fired”*

*Line 23– what does “lowest” mean? Define or describe, or is this a term of art?*

*Lines 23 and 27 – the final punctuation should be a semicolon*

*Lines 24 and 28 and page 2, line 4 – replace “12:00 p.m.” with “noon”*

*Line 25 – do you mean “generating” or “generation”?*

*Line 27 – define or delete “absolutely”*

*Line 33 – add a comma after “clay”*

*Line 34 – add a comma after “postponing”*

*Lines 34-36 – why does this differ from .0305(b)(3)(A) and .0306(b)(3)(A)?*

*Line 35 – replace “of” with “to”*

Jason Thomas  
Commission Counsel

Date submitted to agency: November 22, 2017

*Page 2, line 3 – why does this differ from .0306(b)(3)(C)?*

*Page 2, line 3 – replace “heat load” with “heat-load”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0307 is readopted as published in 31:24 NCR 2471-2472 as follows:

2  
3 **15A NCAC 02D .0307 EMISSION REDUCTION PLAN: EMERGENCY LEVEL**

4 (a) General

- 5 (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any~~  
6 ~~form any material otherwise allowed under 15A NCAC 02D .1900.~~
- 7 (2) The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.
- 8 (3) All places of employment described below shall immediately cease operations:
- 9 (A) mining and quarrying of nonmetallic minerals;
- 10 (B) all manufacturing establishments except those required to have in force an air pollution  
11 emergency plan;
- 12 (C) all construction work involving grading or other operations which generate dust;
- 13 (D) all wholesale and retail establishments except pharmacies and stores primarily engaged in  
14 the sale of food;
- 15 (E) all commercial and manufacturing establishments, automobile repair services and garages,  
16 laundries, barbershops, beauty shops and motion picture theaters; and
- 17 (F) elementary and secondary schools, colleges, universities and professional schools.
- 18 (4) The use of motor vehicles ~~is~~shall be prohibited except in emergencies with the approval of local or  
19 state police.

20 (b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required  
21 control actions for the emergency level that are listed below:

- 22 (1) Operators of coal or oil fired electric power generating facilities shall:
- 23 (A) use fuels having lowest ash and sulfur content,
- 24 (B) perform boiler lancing or soot blowing between ~~12 noon~~12:00 p.m. to 4:00 ~~p.m.,p.m.;~~
- 25 (C) divert electric power generating to facilities outside of emergency area;
- 26 (2) Operators of coal or oil fired process steam generating facilities shall:
- 27 (A) reduce heat and steam demands to that absolutely necessary to prevent equipment damage,
- 28 (B) perform boiler lancing and soot blowing between ~~12 noon~~12:00 p.m. and 4:00 ~~p.m.,p.m.;~~
- 29 (C) take the action called for in the abatement plan;
- 30 (3) Operators of manufacturing industries of the following classifications: primary metals industries;  
31 petroleum refining and related industries; chemical and allied products industries; paper and allied  
32 products industries; glass, clay and concrete products industries shall:
- 33 (A) eliminate air pollutants from manufacturing operations by ceasing, curtailing, postponing  
34 or deferring production and related operations of the extent possible without causing injury  
35 to persons or damage to equipment;
- 36 (B) eliminate air pollution from trade waste disposal processes which emit particles, gases,  
37 vapors, or malodorous substances;

- 1 (C) reduce heat load demands for processing to the minimum;
- 2 (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 p.m.; and
- 3 ~~(4) Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- 4 ~~(5)~~(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all
- 5 required control actions for the emergency level contained in their plan.

6

7 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12);*  
8 *Eff. February 1, 1976;*  
9 *Amended Eff. July 1, 1984; December 1, ~~1976, 1976;~~*  
10 *Readopted Eff. January 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0401

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Consider revising Paragraph (a) as follows:*

- (a) The ambient air quality standards set out in this Section shall be implemented in a manner that prevents significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards.

*Paragraph (a) may be unnecessary, even as revised above. If Paragraph (a) is retained, define or delete "substantial" and define "standards" or refer to the rules that establish those standards.*

*Line 12 – replace "Ground level" with "Ground-level"*

*Line 12 – replace "will" with "shall"*

*Line 13 – replace "are" with "shall be"*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



1 15A NCAC 02D .0401 is readopted as published in 31:24 NCR 2472 as follows:

2  
3 **SECTION .0400 - AMBIENT AIR QUALITY STANDARDS**

4  
5 **15A NCAC 02D .0401 PURPOSE**

6 (a) The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on  
7 parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air  
8 resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control  
9 Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the state where  
10 existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should  
11 provide for the protection of the public health, plant and animal life, and property.

12 (b) Ground level concentrations of pollutants will be determined by sampling at fixed locations in areas beyond the  
13 premises on which a source is located. The standards are applicable at each such sampling location in the state.

14 (c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or  
15 contribute to a violation of any ambient air quality standard in this Section except as allowed by ~~Rules~~15A NCAC  
16 02D .0531 or .0532 of this Subchapter.0532.

17  
18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*  
19 *Eff. February 1, 1976;*  
20 *Amended Eff. December 1, 1992; October 1, 1989; July 1, ~~1984.1984;~~*  
21 *Readopted Eff. January 1, 2018.*  
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0402

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – replace “are” with “shall be”*

*Lines 5 and 7 – the final punctuation should be a semicolon*

*Paragraph (c) – in light of the timing set out in this paragraph, are Paragraphs (a) and (c) still needed?*

*Line 15 – replace “is” with “shall be”*

*Lines 15-16 – is it necessary to explain what parts per billion means? If not, reduce the parenthetical to “(ppb).” If it is, replace “(ppb, which is 1 part in 1,000,000,000)” with “(1 ppb means 1 part in 1,000,000,000)”*

*Lines 17-18 – please explain what “the three-year average of the annual (99th percentile) of the daily maximum one-hour average concentrations” means.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0402 is readopted as published in 31:24 NCR 2472 as follows:

2

3 **15A NCAC 02D .0402 SULFUR OXIDES**

4 (a) The ambient air quality standards for sulfur oxides measured as sulfur dioxide are:

5 (1) 80 micrograms per cubic meter (0.03 ppm) annual arithmetic mean,

6 (2) 365 micrograms per cubic meter (0.14 ppm) maximum 24-hour concentration not to be exceeded  
7 more than once per year, and

8 (3) 1300 micrograms per cubic meter (0.5 ppm) maximum three-hour concentration not to be exceeded  
9 more than once per year.

10 (b) Sampling and analysis shall be in accordance with procedures in Appendix A or A-1 of 40 CFR Part 50 or by a  
11 Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

12 (c) Applicability of the standards listed in Subparagraph (a)(1) and (2) of this Rule ~~is~~ shall be in effect until one year  
13 after the effective date of initial designations under Section 107(d) of the Clean Air Act for the sulfur dioxide standard  
14 in Paragraph (d) of this Rule.

15 (d) The primary one-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which  
16 is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide.

17 (e) The one-hour primary standard ~~is~~ shall be met at an ambient air quality monitoring site when the three-year average  
18 of the annual (99th percentile) of the daily maximum one-hour average concentrations is less than or equal to 75 ppb,  
19 as determined in accordance with Appendix T of 40 CFR Part 50.

20

21 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

22 *Eff. February 1, 1976;*

23 *Amended Eff. September 1, 2011; July 1, 1984; December 1, ~~1976-1976~~;*

24 *Readopted Eff. January 1, 2018.*

25

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0404

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – replace “are” with “shall be”*

*Line 6 – the final punctuation should be a semicolon*

*Lines 12-13 – the second sentence of Paragraph (c) seems unclear. What percent of hourly averages must be available for a 6- or 7-hour hourly average to be valid? Does this rule mean that, in any event, at least 6 hourly averages must be available? What if only 5 hourly averages are available?*

*Line 15 – consider deleting “the levels of”*

*Line 16 – replace “rounding” with “rounded”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0404 is readopted as published in 31:24 NCR 2472 as follows:

2

3 **15A NCAC 02D .0404 CARBON MONOXIDE**

4 (a) The ambient air quality standards for carbon monoxide are:

5 (1) 9 parts per million (10 milligrams per cubic meter) maximum eight-hour average concentration not  
6 to be exceeded more than once per year, and

7 (2) 35 parts per million (40 milligrams per cubic meter) maximum one-hour average concentration not  
8 to be exceeded more than once per year.

9 (b) Sampling and analysis shall be in accordance with procedures in Appendix C of 40 CFR Part 50 or equivalent  
10 methods established under 40 CFR Part 53.

11 (c) An eight-hour average shall be considered valid if at least 75 percent of the hourly averages for the eight-hour  
12 period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be  
13 computed on the basis of the hours available using six or seven as the divisor.

14 (d) When summarizing data for comparison with the standards, averages shall be stated to one decimal place.  
15 Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with  
16 fractional parts of 0.5 or greater rounding up.

17

18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

19 *Eff. February 1, 1976;*

20 *Amended Eff. October 1, 1989; July 1, 1984; December 1, ~~1976~~1976;*

21 *Readopted Eff. January 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0405

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 5 – replace “is” with “shall be”*

*Line 6 – replace “is” with “shall be deemed”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0405 is readopted as published in 31:24 NCR 2472 as follows:

2

3 **15A NCAC 02D .0405 OZONE**

4 The ambient air quality standard for ozone measured by a reference method based on Appendix D of 40 CFR Part 50  
5 and designated according to 40 CFR Part 53 is ~~0.075~~ 0.070 parts per million (ppm), daily maximum 8-hour average.

6 The standard is attained at an ambient air quality monitoring site when the average of the annual fourth-highest daily  
7 maximum 8-hour average ozone concentration is less than or equal to ~~0.075~~ 0.070 parts per million (ppm) as  
8 determined by ~~Appendix P~~ Appendix U of 40 CFR Part 50, or equivalent methods established under 40 CFR Part 53.

9

10 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

11 *Eff. February 1, 1976;*

12 *Amended Eff. January 1, 2010; April 1, 1999; July 1, 1984; July 1, 1979; December 1, ~~1976~~; 1976;*

13 *Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0407

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Lines 4, 6, and 8 – replace “is” with “shall be”*

*Lines 6 and 18 – replace “one hour” with “one-hour”*

*Lines 13, 16, and 19 – add “deemed” after “shall be”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



1 15A NCAC 02D .0407 is readopted as published in 31:24 NCR 2472-2473 as follows:

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**15A NCAC 02D .0407 NITROGEN DIOXIDE**

- (a) The primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion annual average concentration measured in the ambient air as nitrogen dioxide.
- (b) The primary one hour ambient air quality standard for oxides of nitrogen is 100 parts per billion one hour annual average concentration measured in the ambient air as nitrogen dioxide.
- (c) The secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.
- (d) Sampling and analysis shall be in accordance with:
  - (1) procedures in Appendix F of 40 CFR Part 50; or
  - (2) by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.
- (e) The annual primary standard ~~is~~shall be attained when the annual average concentration in a calendar year is less than or equal to 53 parts per billion, as determined in accordance with Appendix S of 40 CFR Part 50 for the annual standard.
- (f) The one hour primary standard ~~is~~shall be attained when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR Part 50 for one hour standard.
- (g) The secondary standard ~~is~~shall be attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 parts per million are rounded up). To demonstrate attainment, an annual mean ~~must~~shall be based on hourly data that are at least 75 percent complete or on data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);  
Eff. February 1, 1976;  
Amended Eff. September 1, 2011; October 1, 1989; July 1, 1984; December 1, ~~1976.~~1976;  
Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0408

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 5 – replace “is” with “shall be”*

*Line 6 – add “deemed” after “shall be”*

*Line 6 – replace “three month” with “three-month”*

*Line 7 – replace “three year” with “three-year”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0408 is readopted as published in 31:24 NCR 2473 as follows:

2

3 **15A NCAC 02D .0408 LEAD**

4 The ambient air quality standard for lead and its compounds, measured as elemental lead by a reference method based  
5 on Appendix G of 40 CFR Part 50 or by an equivalent method established under 40 CFR Part 53, is 0.15 micrograms  
6 per cubic meter. The standard ~~is~~shall be met when the maximum arithmetic three month mean concentration for a  
7 three year period, as determined in accordance with Appendix R of 40 CFR Part 50, is less than or equal to 0.15  
8 micrograms per cubic meter.

9

10 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

11 *Eff. June 1, 1980;*

12 *Amended Eff. January 1, 2010; July 1, ~~1984~~.1984;*

13 *Readopted Eff. January 1, 2018.*

14

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0409

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – replace “is” with “shall be”*

*Line 5 – add “deemed” after “shall be”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0409 is readopted as published in 31:24 NCR 2473 as follows:

2

3 **15A NCAC 02D .0409 PM10 PARTICULATE MATTER**

4 (a) The ambient air quality standard for PM10 particulate matter is 150 micrograms per cubic meter (~~ug/m<sup>3</sup>~~), (µg/m<sup>3</sup>),  
5 24-hour average concentration. This standard ~~is~~shall be attained when 150 (~~ug/m<sup>3</sup>~~), (µg/m<sup>3</sup>), as determined according  
6 to Appendix N of 40 CFR Part 50, is not exceeded more than once per year on average over a three-year period.

7 (b) For the purpose of determining attainment of the standards in Paragraph (a) of this Rule, particulate matter shall  
8 be measured in the ambient air as PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10  
9 micrometers) by either:

10 (1) a reference method based on Appendix M of 40 CFR Part 50 and designated according to 40 CFR  
11 Part 53; or

12 (2) an equivalent method designated according to 40 CFR Part 53.

13

14 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

15 *Eff. July 1, 1988;*

16 *Amended Eff. January 1, 2010; April 1, ~~1999, 1999~~;*

17 *Readopted Eff. January 1, 2018.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0410

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Paragraph (a) refers to a "national" standard. Are the standards referred to in earlier rules not "national"? If these are national standards, are you establishing any standard in these rules or merely stating the national standard as a matter of fact? If the latter, why not just incorporate the national standard by reference?*

*Line 4 – replace "are" with "shall be" if you are establishing a standard.*

*Lines 10 and 12 – add "deemed" after "shall be"*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .0410 is readopted as published in 31:24 NCR 2473 as follows:

2

3 **15A NCAC 02D .0410 PM2.5 PARTICULATE MATTER**

4 (a) The national primary ambient air quality standards for PM2.5 are 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual  
5 arithmetic mean concentration and 35  $\mu\text{g}/\text{m}^3$  24-hour average Concentration measured in the ambient air as PM2.5  
6 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

7 (1) A reference method based on appendix L to 40 ~~C.F.R.~~CFR Part 50 and designated in accordance  
8 with 40 ~~C.F.R.~~CFR Part 53; or

9 (2) An equivalent method designated in accordance with 40 ~~C.F.R.~~CFR Part 53.

10 (b) The primary annual PM2.5 standard ~~is~~shall be met when the annual arithmetic mean concentration, as determined  
11 in accordance with ~~appendix~~Appendix N of 40 ~~C.F.R.~~CFR Part 50, is less than or equal to 12.0  $\mu\text{g}/\text{m}^3$ .

12 (c) The primary 24-hour PM2.5 standard ~~is~~shall be met when the 98<sup>th</sup> percentile 24-hour concentration, as determined  
13 in accordance with ~~appendix~~Appendix N of 40 ~~C.F.R.~~CFR Part 50, is less than or equal to 35  $\mu\text{g}/\text{m}^3$ .

14

15 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

16 *Eff. April 1, 1999;*

17 *Amended Eff. September 1, 2015; January 1, ~~2010~~2010;*

18 *Readopted Eff. January 1, 2018.*

19

20

1 15A NCAC 02D .1301 - .1305 are repealed through readoption as published in 31:24 NCR 2473-2474 as follows:

2

3 **15A NCAC 02D .1301 PURPOSE**

4 **15A NCAC 02D .1302 APPLICABILITY**

5 **15A NCAC 02D .1303 DEFINITIONS**

6 **15A NCAC 02D .1304 OXYGEN CONTENT STANDARD**

7 **15A NCAC 02D .1305 MEASUREMENT AND ENFORCEMENT**

8

9 *History Note: Filed as a Temporary Amendment Eff. October 23, 1995 for a period of 180 days or until the*  
10 *permanent rule becomes effective, whichever is sooner;*

11 *Authority G.S. 119-26; 143-213; 143-215.3(a)(1); 143-215.107(a)(3),(7); 143-215.108(c)(7);*  
12 *150B-21.6;*

13 *Eff. September 1, 1992;*

14 *Amended Eff. July 1, 1998; September 1, 1996; November 1, ~~1994, 1994~~;*

15 *Repealed Eff. January 1, 2018.*



REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2001

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Paragraph (a) is merely explanatory and does not establish any requirements on or rights benefitting any member of the regulated public. Consider deleting it.*

*Line 11 – replace “applies” with “shall apply”*

*Line 29 – add “and” at the end of this line.*

*Line 36 – replace “applies” with “shall apply”*

*Page 2, lines 2 and 4 – replace “current maintenance” with either “currently maintenance” or “current-maintenance”*

*Page 2, line 2 – replace the comma with a semicolon*

*Page 2, line 6 – is “FHWA/FTA” defined in another rule?*

*Page 2, lines 6, 7, and 17 – replace “regionally significant” with “regionally-significant”*

*Page 2, line 8 – replace “applies” with “shall apply”*

*Page 2, lines 6-8 – consider revising as follows:*

(d) For FHWA/FTA projects or regionally-significant State or local projects that meet the standards set forth in Paragraphs (b) and (c) of this Rule, this Section shall apply to:

*Page 2, line 8 – replace “applies” with “shall apply”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2001 is readopted as published in 31:24 NCR 2474-2475 as follows:

2  
3 **SECTION .2000 - TRANSPORTATION CONFORMITY**  
4

5 **15A NCAC 02D .2001 PURPOSE, SCOPE AND APPLICABILITY**

6 (a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are  
7 developed, funded, or approved by the United States Department of Transportation and by metropolitan planning  
8 organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or  
9 State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance  
10 under 40 CFR 81.334 for the pollutants specified therein or listed in Paragraph ~~(b), (c), or (d)~~ (c) of this Rule.

11 (b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

12 ~~(1) — Davidson County,~~

13 ~~(2) — Durham County,~~

14 ~~(3) — Forsyth County,~~

15 ~~(4) — Gaston County,~~

16 ~~(5) — Guilford County,~~

17 ~~(6) — Mecklenburg County,~~

18 ~~(7) — Wake County,~~

19 ~~(8) — Dutchville Township in Granville County, and~~

20 ~~(9) — that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway~~  
21 ~~801, Fulton Creek, and back to the Yadkin River.~~

22 (1) townships of Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland, Mount  
23 Pleasant, New Gilead, Odell, Poplar Tent, and Rimertown in Cabarrus County;

24 (2) townships of Crowders Mountain, Dallas, Gastonia, Riverbend, and South Point in Gaston County;

25 (3) townships of Davidson and Coddle Creek in Iredell County;

26 (4) townships of Catawba Springs, Lincolnton, and Ironton in Lincoln County;

27 (5) all townships in Mecklenburg County;

28 (6) townships of Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury,  
29 Steele, and Unity in Rowan County;

30 (7) townships of Goose Creek, Marshville, Monroe, Sandy Ridge, and Vance in Union County.

31 ~~(c) This Section applies to the emissions of carbon monoxide in the following areas:~~

32 ~~(1) — Durham County,~~

33 ~~(2) — Forsyth County,~~

34 ~~(3) — Mecklenburg County, and~~

35 ~~(4) — Wake County.~~

36 ~~(d)(c)~~ This Section applies to the emissions of:

- 1 (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment or that have been  
2 redesignated attainment and are current maintenance areas for fine particulate (PM2.5), or  
3 (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as  
4 nonattainment or that have been redesignated attainment and are current maintenance areas for  
5 ozone.

6 ~~(e)~~(d) This Section applies to FHWA/FTA projects or regionally significant State or local projects. For FHWA/FTA  
7 projects or regionally significant State or local projects in the areas identified in Paragraph ~~(b)~~, ~~(c)~~, or ~~(d)~~(b) of this  
8 Rule and for the pollutants identified in Paragraph ~~(b)~~, ~~(c)~~, or ~~(d)~~(c) of this Rule, this Section applies to:

- 9 (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan  
10 amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning  
11 organization or the United States Department of Transportation;  
12 (2) the adoption, acceptance, approval, or support of transportation improvement programs or  
13 amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part  
14 613 by a metropolitan planning organization or the United States Department of Transportation; or  
15 (3) the approval, funding, or implementation of FHWA/FTA projects.

16 Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA  
17 projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

18 ~~(f)~~(c) This Section applies to maintenance areas for 20 years from the date the ~~Environment~~Environmental Protection  
19 Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to  
20 ~~attainment~~attainment or until the effective date of revocation of the conformity requirements for the NAAQS by EPA.

21  
22 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);*  
23 *Eff. April 1, 1999;*  
24 *Amended Eff. December 1, 2005-2005;*  
25 *Readopted Eff. January 1, 2018.*  
26  
27

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2002

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Lines 5-7 – this is a peculiar definition. Under this definition, in a consultation: (1) only two parties are involved, one of which must be “identified,” whatever that means; (2) the “identified party” receives information “needed for meaningful input,” whatever that means; (3) the “identified party’s” views are considered and responded to, whatever that means, by the not-necessarily-identified party; (4) the response must be “timely,” whatever that means; (5) the response must be substantive (I might understand that in a particular context); (6) the response must be in writing (I understand that); and (7) the response must be prior to “any final decision” (I might understand that in a particular context). Is this definition worth the trouble of cleaning up all this ambiguity? If the restrictions on “consultation” are important, is this definition the best place to state them?*

*Lines 8 and 15 – replace “Regionally significant” with “Regionally-significant”*

*Lines 9-12 – consider revising the parenthetical as follows, if that is what is meant:*

*(such as access to and from an area outside of the region; major activity centers in the region; transportation terminals; and major planned developments such as new retail malls, sports complexes, or transportation terminals)*

*Line 12 – define or delete “normally”*

*Line 13 – delete “at a minimum” – rules state minimal requirements.*

*Line 13 – replace “guide way” with “guideway”*

*Lines 16-17 – delete “(receives no federal assistance)” and add “and receives no federal assistance” after “program.”*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2002 is readopted as published in 31:24 NCR 2475 as follows:

2  
3 **15A NCAC 02D .2002 DEFINITIONS**

4 For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

5 (1) "Consultation" means that one party confers with another identified party, provides all information  
6 necessary to that party needed for meaningful input, and considers and responds to the views of that  
7 party in a timely, substantive written manner prior to any final decision.

8 (2) "Regionally significant project" means a transportation project (other than an exempt project under  
9 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and  
10 from the area outside of the region, major activity centers in the region, major planned developments  
11 such as new retail malls and sports complexes, or transportation terminals as well as most terminals  
12 themselves) and would normally be included in the modeling of a metropolitan area's transportation  
13 network, including at a minimum all principal arterial highways and all fixed guide way transit  
14 facilities that offer an alternative to regional highway travel.

15 (3) "Regionally significant State or local project" means any highway or transit project that is a  
16 regionally significant project and that is proposed to receive only funding assistance (receives no  
17 federal funding) or approval through the State or any local program.

18  
19 History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);  
20 Eff. April 1, 1999;  
21 Readopted Eff. January 1, 2018.  
22  
23  
24  
25

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2003

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Lines 5, 7, 10, – replace “regionally significant” with “regionally-significant”*

*Line 13 – what does “significant portion” mean? Is the term defined in another rule or standard?*

*Line 13 – replace all commas with semicolons*

*Line 14 – replace the first comma with a semicolon*

*Line 15 – replace “are also” with “shall also be”*

*Line 18 – delete “the” before “Division”*

*Lines 19 and 20 – “consult” and “consultation” do not appear to meet the definition in .2002, as more than two parties are involved.*

*Line 24 – add a comma after “Quality”*

*Line 24 – who is “the approving agency”?*

*Lines 25, 30, 31 – is the “agency making the conformity determination” the same as the “metropolitan planning organization” that enacts a “resolution that determines conformity” and the “agency that performs the conformity analysis”? Can one phrase that describes this organization be used, instead of using more than one phrase to refer to the same entity?*

*Line 28 – replace “resolution of” with “responses to”*

*Line 32 and 34 – delete “any”*

*Line 32 – delete the brackets and add a comma after “assumptions”*

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

*Lines 35-36 – delete the parentheses and add a comma after “analysis”*

*Page 2, line 1 – is “agency” the “agency making the conformity determination”? Can you consistently and exclusively use a single term to refer to a particular entity?*

*Page 2, line 6 – do you mean “and” or “or”?*

*Page 2, lines 7-8 – do you mean “shall be obtained before a conformity determination, and these commitments shall be fulfilled” or “shall be obtained and fulfilled before a conformity determination is [sought or obtained or some other benchmark]”?*

*Page 2, line 11 – replace “regionally significant” with “regionally-significant”*

*Page 2, line 12 – replace “fully complied with” with “met”*

*Page 2, line 16 – what does “air quality-related consequence” mean? Is it defined in another rule or a term of art?*

*Page 2, line 18 – replace “prepared to” with “that”*

*Page 2, line 19 – add a comma after “standards”*

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

1 15A NCAC 02D .2003 is readopted as published in 31:24 NCR 2475-2476 as follows:

2  
3 **15A NCAC 02D .2003 TRANSPORTATION CONFORMITY DETERMINATION**

4 (a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement  
5 programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the  
6 requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124,  
7 93.125, and 93.126. For the purposes of this Rule, regionally significant State or local projects shall be subject to the  
8 same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act  
9 procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements.  
10 Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act  
11 process and a conformity determination have been completed may proceed toward implementation without further  
12 conformity determination unless more than three years have elapsed since the most recent major step (State  
13 Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-  
14 way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the  
15 conformity determination are also included if these phases were for the purpose of funding final design, right-of-way  
16 acquisition, construction, or any combination of these phases.

17 (b) Before making a conformity determination, the metropolitan planning organizations, local transportation  
18 departments, North Carolina Department of Transportation, United States Department of Transportation, the Division  
19 of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult  
20 with each other on matters described in 15A NCAC ~~2D02D~~ .2005. Consultation shall begin as early as possible in  
21 the development of the emissions analysis used to support a conformity determination. The agency that performs the  
22 emissions analysis shall make the analysis available to the Division of Air Quality and at least 21 days shall be allowed  
23 for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis  
24 by the Director of the Division of Air Quality. After review by the Division of Air Quality the approving agency shall  
25 seek public comments in accordance with its public participation policy. The agency making the conformity  
26 determination shall address all written comments received prior to close of the public comment period, and these  
27 comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with  
28 the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in  
29 accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of the Division  
30 of Air Quality of the metropolitan planning organization's resolution that determines conformity.

31 (c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

- 32 (1) any changes in planning or analysis assumptions [including land use and vehicle miles traveled  
33 (VMT) forecasts], and  
34 (2) any revisions to transportation plans or transportation improvement plans that add, delete, or change  
35 projects that require a new emissions analysis (including design scope and dates that change the  
36 transportation network existing in a horizon year).



1 Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the  
2 final planning document.

3 (d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation  
4 improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs,  
5 and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through ~~93.118~~93.119.

6 (e) Written commitments to implement control measures that are not included in the transportation plan and  
7 transportation improvement program (TIP) shall be obtained before a conformity determination and these  
8 commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a  
9 positive conformity determination, and project sponsors shall comply with these commitments.

10 (f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve  
11 a regionally significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR  
12 Part 93 are fully complied with.

13 (g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality  
14 modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969  
15 process, in accordance with 40 CFR 93.107.

16 (h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration  
17 and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation  
18 of those transportation portions of an applicable implementation plan prepared to attain and maintain the national  
19 ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory  
20 requirements for allocation of funds among states or other jurisdictions.

21

22 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);*

23 *Eff. April 1, ~~1999~~1999;*

24 *Readopted Eff. January 1, 2018.*

25

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2004

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Lines 4 and 5 – are you incorporating these two regulations by reference?*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2004 is readopted as published in 31:24 NCR 2476 as follows:

2

3 **15A NCAC 02D .2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS**

4 (a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.

5 (b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot  
6 analysis).

7

8 History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);

9 Eff. April 1, 1999;

10 Readopted Eff. January 1, 2018.

11

12

13

14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2005

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 5 – add a comma after “02D”*

*Lines 9-10 – is NCDOT authorized to represent areas “for which there is no metropolitan planning organization” “for the purposes of the memorandum of agreement”?*

*Line 11 – replace “under” with “in”*

*Lines 16, 21, 22, 25 (twice), and 28 (twice) – do not capitalize “memorandum of agreement”*

*Line 19 – delete the parentheses, add a comma after “funds” and “93.101,” and replace “at” with “in”*

*Line 20 – replace “regionally significant” with “regionally-significant”*

*Lines 27-28 – Replace “Each federal agency that participates in determinations of conformity to state and federal implementation plans shall sign...” with “No memorandum of agreement shall meet the requirements of this Rule unless each federal agency signs...”? Accepting the sentence as written, what authority do you have to require federal agencies to sign the memorandum?*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2005 is readopted as published in 31:24 NCR 2476-2477 as follows:

2  
3 **15A NCAC 02D .2005 MEMORANDUM OF AGREEMENT**

4 (a) The Division of Air Quality shall develop and maintain a memorandum of agreement with the North Carolina  
5 Department of Transportation, the metropolitan planning organizations of the areas identified in 15A NCAC 02D Rule  
6 .2001(b), (c), or (d) of this Section, and the United States Department of Transportation to describe the participation  
7 and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93.  
8 For those areas identified in Rule 15A NCAC 02D .2001(b), (c), or (d) of this Section for which there is no  
9 metropolitan planning organization, the North Carolina Department of Transportation shall represent those areas for  
10 the purposes of the memorandum of agreement. The memorandum of agreement shall include:

- 11 (1) consultation procedures described under 40 CFR 93.105;
- 12 (2) the projected time allotted for each agency to review and comment on or to respond to comments  
13 on transportation improvement programs, transportation plans, and transportation projects; and
- 14 (3) consultation procedures for the development of State Implementation Plans that relate to  
15 transportation.

16 The contents of the Memorandum of Agreement shall comply with the criteria and procedures in the federal Clean  
17 Air Act Section 176(c) [42 U.S.C. 7401-7671q] and 40 CFR Part 51, Subpart T, 40 CFR Part 93, Subpart A, and  
18 Rules 15A NCAC 02D .2001 through .2004 of this Section. 2004.

19 (b) No recipient of federal funds (as defined at 40 CFR 93.101) designated under Title 23 U.S.C. or the Federal Transit  
20 Act shall adopt or approve or take any action to develop or implement a regionally significant highway or transit  
21 project unless such recipient has signed the Memorandum of Agreement established under this Rule. This  
22 Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

23 (c) No agency shall adopt or approve or take any action to implement or develop any transportation plan,  
24 transportation improvement program, or federally funded or approved FHWA/FTA highway or transit project unless  
25 the agency has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement  
26 shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

27 (d) Each federal agency that participates in determinations of conformity to state and federal implementation plans  
28 shall sign the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind  
29 the recipient to adhere to the conformity criteria and procedures of this Section.

30  
31 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);*

32 *Eff. April 1, 1999-1999;*

33 *Readopted Eff. January 1, 2018.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2201

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*This Rule does not impose any requirement or confer any benefit on a person outside the agency. Consider deleting it.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2201 is readopted as published in 31:24 NCR 2477 as follows:

2

3

**SECTION .2200 – SPECIAL ORDERS**

4

**15A NCAC 02D .2201 PURPOSE**

6 The purpose of this Section is to implement the provisions of G.S. 143-215.110 pertaining to the issuance of air quality  
7 Special Orders by the Environmental Management Commission.

8

9 History Note: Authority G.S. 143-215.3(a)(1); 143-215.110;

10

Eff. April 1, 2004;

11

Readopted Eff. January 1, 2018.

12

13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2202

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 6 – consider replacing “pollution of the air of” with “air pollution in” if this is more consistent with the use of the term “air pollution” throughout your rules.*

*Line 10 – why define one term to mean the same thing as another? Consider deleting this line and revising your rules to consistently use a single term.*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017



1 15A NCAC 02D .2202 is readopted as published in 31:24 NCR 2477 as follows:

2

3 **15A NCAC 02D .2202 DEFINITIONS**

4 For the purposes of this Section, the following definitions apply:

5 (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for  
6 causing or contributing to any pollution of the air of the State. The term includes all orders or  
7 instruments issued by the Commission pursuant to G.S. 143-215.110.

8 (2) "Consent Order" means a Special Order into which the Commission enters with the consent of the  
9 person who is subject to the order.

10 (3) "Special Order by Consent" means "Consent Order."

11

12 History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110;

13 Eff. April 1, 2004;

14 Readopted Eff. January 1, 2018.

15

16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2203

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*Line 4 – add “shall” before “apply”*

*Line 5 – what does “other conditions” mean?*

*Line 5 – delete “it finds”*

*Line 9 – delete “at least”*

*Lines 9, 11, and 14 – correct the formatting and spacing of the beginning of these lines*

*Line 17 – add a comma after “order”*

*Line 17 – replace “in” with “during” if that is what you mean*

*Line 18 – replace “shall” with “must”*

*Line 29 – delete “he determines”*

*Lines 29-30 – on what basis will the Director determine whether “significant public interest” exists?*

*Line 30 - add “or she” after “he”*

*Line 37 – replace “along with” with “and the”*

*Page 2, lines 11-12 – delete Paragraph (e) because it is unnecessary.*

*Page 2, lines 14-15 – delete “in a consent order”*

*Page 2, lines 13-16 – what statute authorizes the Director to modify a Consent Order without the agreement of the parties to the order? What statute authorizes the Director to modify a Consent Order without public notice?*

Jason Thomas  
Commission Counsel

Date submitted to agency: November 22, 2017

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2203 is readopted as published in 31:24 NCR 2477-2478 as follows:

2  
3 **15A NCAC 02D .2203 PUBLIC NOTICE**

4 (a) The requirements of this Rule for public notice and public hearing apply to Consent Orders. The Commission may  
5 specify other conditions for Special Orders issued without consent if it finds such conditions are necessary to achieve  
6 or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.

7 (b) Notice of proposed Consent Order:

8 (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).

9 ~~(2) The Director shall give notice of a proposed Consent Order at least 30 days prior to any final action~~  
10 ~~regarding the Consent Order.~~

11 ~~(3) The notice shall be posted on the North Carolina Division of Air Quality web site at~~  
12 ~~<http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent>~~  
13 ~~and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.~~

14 ~~(2)(4)~~ The notice shall include at least the following:

15 (A) name, address, and telephone number of the Division;

16 (B) name and address of the person to whom the proposed order is directed;

17 (C) a brief summary of the conditions of the proposed order including the period of time in  
18 which action shall be taken to achieve compliance and the major permit conditions or  
19 emission standards that the source will be allowed to exceed during the pendency of the  
20 order;

21 (D) a brief description of the procedures to be followed by the Commission or Director in  
22 reaching a final decision on the proposed order, which shall include descriptions of the  
23 process for submitting comments and requesting a public hearing. The description shall  
24 specify that comments and requests for a public hearing are to be received by the Division  
25 within 30 days following the date of public notice; and

26 (E) a description of the information available for public review, where it can be found, and  
27 procedures for obtaining copies of pertinent documents.

28 (c) Notice of public hearing for proposed Consent Order:

29 (1) The Director shall consider all requests for a public hearing, and if he determines significant public  
30 interest for a public hearing exists, then he shall hold a public hearing.

31 (2) The Director shall give notice of the public hearing at least 30 days before the hearing.

32 (3) The notice shall be ~~advertised in a local newspaper~~ posted on the North Carolina Division of Air  
33 Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special->  
34 orders-by-consent and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality  
35 special orders.

36 (4) The notice shall include the information specified in Subparagraph ~~(b)(2)(b)(4)~~ of this Rule. It shall  
37 also state the time and location for the hearing along with procedures for providing comment.

1 (5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to  
2 preside over the public hearing and to receive written and oral comments. The hearing officer shall  
3 provide the Commission a written report of the hearing, which shall include:

4 (A) a copy of the public ~~notice published in the newspaper;~~ notice;

5 (B) a copy of all the written comments and supporting documentation received;

6 (C) a summary of all the oral comments received;

7 (D) recommendations of the hearing officer to the Commission; and

8 (E) a proposed Consent Order for the Commission's consideration.

9 (d) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies  
10 of notices to those who have submitted a request.

11 (e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies  
12 with both Paragraphs.

13 (f) Any Consent Order may be amended by the Director to incorporate minor modifications, such as modification of  
14 standard conditions to reflect updated versions, correction of typographical errors, or interim date extensions, in a  
15 consent order without public notice provided that the modifications do not extend the final compliance date by more  
16 than four months.

17  
18 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110;*

19 *Eff. April 1, 2004-2004;*

20 *Readopted Eff. January 1, 2018.*

21  
22

1 15A NCAC 02D .2204 is readopted as published in 31:24 NCR 2478 as follows:

2

3 **15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS**

4 (a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not  
5 been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order  
6 shall be taken no later than 60 days following publication of the notice.

7 (b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided  
8 in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later  
9 than 90 days following the hearing.

10

11 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;*

12 *Eff. April 1, 2004-2004;*

13 *Readopted Eff. January 1, 2018.*

14

15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2205

**DEADLINE FOR RECEIPT: Friday, December 8, 2017**

***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 call our office to inquire concerning the staff recommendation.

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

*How will the Commission provide the notice required by this rule?*

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

Jason Thomas  
Commission Counsel  
Date submitted to agency: November 22, 2017

1 15A NCAC 02D .2205 is readopted as published in 31:24 NCR 2478 as follows:

2

3 **15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED**

4 **WITHOUT CONSENT**

5 For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the  
6 procedure set out in G.S. 150B-23 to contest the Special Order.

7

8 History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);

9 Eff. April 1, 2004;

10 Readopted Eff. January 1, 2018.

11

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