

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502 and Rule 507

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, January 30, 2024 2:28 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0502 and Rule 507

That is correct. Two chiefs have requested to speak however the RRC would need to waive another rule to allow them to speak as their requests were tardy. See you tomorrow.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

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(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Tuesday, January 30, 2024 2:25 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: 14B NCAC 03 .0502 and Rule 507

Thank you, Bill. I appreciate you working with us on these rules and getting them across the finish line.

I understand from Brian that there maybe some fire chiefs that may want to speak in support of the rules tomorrow.

Best,

Will

Sent from my Verizon, Samsung Galaxy smartphone

Get [Outlook for Android](#)

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, January 30, 2024 12:44:07 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0502 and Rule 507

Good afternoon Will.

At tomorrow's RRC meeting I will recommend the RRC waiver its rule 26 NCAC 05 .0107 and allow the consideration of 14B NCAC 03 .0502 and .0507 revised January 21, 2024 to which I will recommend approval. This I believe should resolve any interconnectivity issues.

Please call me at 919-395-2455 if you have any questions or concerns.

Thank you.

William W. Peaslee
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502 and Rule 507

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Tuesday, January 30, 2024 12:44 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0502 and Rule 507

Good afternoon Will.

At tomorrow's RRC meeting I will recommend the RRC waiver its rule 26 NCAC 05 .0107 and allow the consideration of 14B NCAC 03 .0502 and .0507 revised January 21, 2024 to which I will recommend approval. This I believe should resolve any interconnectivity issues.

Please call me at 919-395-2455 if you have any questions or concerns.

Thank you.

William W. Peaslee

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Sent: Tuesday, January 30, 2024 12:44 PM

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Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0502 and Rule 507

Good afternoon Will.

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Please call me at 919-395-2455 if you have any questions or concerns.

Thank you.

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0501 and .0504

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Thursday, January 25, 2024 2:11 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0501 and .0504

Thank you. Yes, I also mean to add G.S. 150B-21.9(a)(1). I will see you next week.

Best,
Will

Will Polk
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919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0501 and .0504

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, January 25, 2024 11:15 AM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Cc: Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0501 and .0504

That is essentially correct although the opinions are pursuant to the either GS 150B-21.9(a)(1) or (4) as stated in the opinions.

William W. Peaslee

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0501 and .0504

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Thursday, January 25, 2024 10:27 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0501 and .0504

Thank you! Just to confirm you are recommending approval of the following rules:

.0501
.0503
.0504
.0505
.0506
.0508
.0509

You are recommending objection of the following rules and changes cannot be submitted due to a staff opinion has been issued pursuant to G.S. 150B-21.9(a)(4), additional revisions to the above captioned rule cannot be submitted prior to the RRC meeting pursuant to 26 NCAC 05 .0107.

.502
.507

Best,
Will

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919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0501 and .0504
Attachments: 14B NCAC 03 .0501 Purpose.docx; 14B NCAC 03 .0504 Onsite Operations of a Program Resource.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 25, 2024 10:09 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 14B NCAC 03 .0501 and .0504

It is my intention to recommend approval of the above captioned rules as revised.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: DPS Rules

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Wednesday, January 24, 2024 5:09 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Rules

Yes. The objections to .0502 which is the Abbreviations and Definitions is problematic as it defines many of the terms and abbreviations for all the rules from sections .0502 to .0509.

Best,
Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

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919-219-4534 (mobile)

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 24, 2024 5:06 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: DPS Rules

Good afternoon Will,

Should the RRC agree with my recommendations, are there any interconnectivity issues with some being approved and other being objected to?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0503
Attachments: 14B NCAC 03 .0503 Dispatch of a regional response team.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 24, 2024 5:01 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: 14B NCAC 03 .0503

It is my intention to recommend approval of the attached revised rule at the January RRC meeting.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0503
Attachments: 14B NCAC 03 .0503 Dispatch of a regional response team.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Wednesday, January 24, 2024 4:59 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0503

Good afternoon,

Attached is the updated rule to remove the ambiguity in the prior draft.

Best,
Will

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919-219-4534 (mobile)
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1 14B NCAC 03 .0503 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3

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

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

17

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

19 *Eff. ~~Date~~ March 1, 2024*

20

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0503

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 24, 2024 4:06 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 14B NCAC 03 .0503

Good afternoon,

On line 9 of the above captioned rule, please strike "when not deployed by NCEM". If my understanding of the agency's intention is correct, this will make clear that the local governments maintain the ability to use local resources, notwithstanding any RRT deployment, should a local government determine that it needs the local resources.

Absent this deletion or another revision which resolves the ambiguity, I will recommend objection for ambiguity to my client.

Please respond no later than COB January 25.

As always if you have any questions please feel free to contact me.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502 second opinion

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 24, 2024 11:31 AM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0502 second opinion

Good morning,

As a staff opinion has been issued recommending objection pursuant to G.S. 150B-21.9(a)(4), additional revisions to the above captioned rule cannot be submitted prior to the RRC meeting pursuant to 26 NCAC 05 .0107.

If the RRC objects to the rule, then this version can be submitted in response to the objection pursuant to G.S. 150B-21.12.

William W. Peaslee

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0507

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 24, 2024 10:01 AM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0507

Good morning,

As a staff opinion has been issued recommending objection pursuant to G.S. 150B-21.9(a)(1), additional revisions to the above captioned rule cannot be submitted prior to the RRC meeting pursuant to 26 NCAC 05 .0107.

If the RRC objects to the rule, then this version can be submitted in response to the objection pursuant to G.S. 150B-21.12.

William W. Peaslee

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0509
Attachments: 14B NCAC 03 .0509 Personnel, Training, and Equipment Standards for Regional Response Team Requirements for All Program Personnel.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 24, 2024 9:50 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Subject: FW: 14B NCAC 03 .0509

Good morning,

It is my intention to recommend approval of the above captioned rule as revised.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0506
Attachments: 14B NCAC 03 .0506 Recovering the Costs of a Regional Response Teams.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 24, 2024 9:37 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Subject: FW: 14B NCAC 03 .0506

Good morning,

It is my intention to recommend approval of the above captioned rule as revised.

William W. Peaslee
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0505
Attachments: 14B NCAC 03 .0505 Standards For Administration of a Regional Response Team.docx

From: Peaslee, William W bill.peaslee@oah.nc.gov
Sent: Wednesday, January 24, 2024 9:24 AM
To: Rules, Oah oah.rules@oah.nc.gov
Cc: Burgos, Alexander N alexander.burgos@oah.nc.gov; Polk, Will (CCPS) Will.Polk@ncdps.gov
Subject: FW: 14B NCAC 03 .0508

Good morning,

It is my intention to recommend approval of the above captioned rule as revised.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 24, 2024 9:22 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Subject: FW: 14B NCAC 03 .0505

Good morning,

It is my intention to recommend approval of the above captioned rule as revised.

William W. Peaslee
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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0509
Attachments: 14B NCAC 03 .0509 Personnel, Training, and Equipment Standards for Regional Response Team Requirements for All Program Personnel.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:55 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0509

Updated. Added the relevant section from 29 CFR 1910.120(e) for training standards.

Will Polk
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NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
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1 14B NCAC 03 .0509 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

6 (a) Requirements for all system personnel

7 (1) Qualified personnel shall be no less than 18 years of age;

8 (2) Qualified personnel shall be an employee of a Sponsoring Agency or an employee of the North
9 Carolina Division of Emergency Management. By participating in this program, program personnel
10 remain employees of their Sponsoring Agency and at no time become State employees entitled to State
11 benefits unless they are an employee of NCEM;

12 (3) Qualified personnel shall maintain no less than 48 hours of hazardous material training annually

13 **consistent with 29 CFR 1910.120(e);**

14 **while participating in any program activity personnel shall be considered emergency management workers**
15 **as defined in G.S. 166A-19.60; and (4)–**

16 **(4) (5)** Qualified personnel shall possess the qualifications of character and general fitness requisite for a
17 public servant and be of good moral character and entitled to the high regard and confidence of the
18 **public public,** as evidenced by not having been convicted by a local, state, federal, or military court of:

19 (A) a felony;

20 (B) a crime or unlawful act defined as a Class 1A, Class 1, or Class 2 misdemeanor within the
21 five-years prior or four or more crimes or unlawful acts as defined as a Class 1A, Class 1,
22 or Class 2 misdemeanor regardless of the date of conviction;

23 (C) not having been convicted of an offense that would prohibit the possession of a firearm or
24 ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with
25 subsequent amendments and editions under G.S. 150B-21.6 can be found at no cost
26 [https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)
27 [partI-chap44.pdf](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf);

28 (D) being truthful in providing information to the appointing agency;

29 (E) not having pending or outstanding charges that, if convicted, would exclude eligibility
30 under this Rule.

31 **(5) (6)** make the following notifications:

32 (A) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
33 criminal or traffic offenses for which the individual is charged or arrested;

34 (B) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
35 criminal offenses for which the individual pleads no contest, pleads guilty, or convicted;

1 (C) within seven days of criminal service summons pursuant to the provisions of Article 17 of
2 Chapter 15A of the G.S., shall notify the Sponsoring Agency that he or she has been served
3 by a judicial official;

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

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

12 (b) Requirements for all system equipment:

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

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

16 (3) upon separation, all program resources parties to a program agreement shall return all state property
17 within 30 days to NCEM.

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

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

20 (2) Regional Response Teams shall maintain any additional support personnel as required for a technician-
21 level entry team. These personnel must additionally meet the requirements of 29 CFR 1910.120
22 1910.120, which is adopted and incorporated by reference with subsequent changes or amendments
23 under G.S. 150B-21.6 as outlined in the latest published standard by the EPA and can be found at:
24 <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XVII/part-1910/subpart-H/section-1910.120> at
25 no cost, to operate on a hazardous materials incident scene but are not required to be qualified to make

26 entry into a hazardous or potentially hazardous environments;

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

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

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

34 (d) Regional Response Team Equipment Requirements:

35 (1) Regional response teams shall maintain a functionally equivalent cache of equipment required in the
36 FEMA Resource Typing Document for a Type II Hazardous Materials Response Team, which is adopted
37 and incorporated by reference with subsequent changes or amendments under G.S. 150B-21.6. as

1 outlined in the latest published standard by FEMA and can be found at:
2 <https://rtlt.preptoolkit.fema.gov/Public/Resource/View/4-508-1248?q=hazardous%20materials> at no
3 cost.

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

6
7 *History Note: Authority G.S. 166A-21; 166A- 22; 166A-23*

8 *Eff. ~~Date~~ March 1, 2024*

9

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0508
Attachments: 14B NCAC 03 .0508 Criteria for Evaluating Bids For Contract Response Team.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:54 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0508

Updated.

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

5 (a) Bidding agency shall:

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

14 (b) Bids shall be evaluated on:

- 15 (1) geographic location of team base;
- 16 (2) ability to maintain the required number of trained personnel to ensure response ~~readiness~~ **readiness**;
- 17 (3) ability to maintain and care for any program-provided equipment;
- 18 **(4)** availability of local equipment to support response activities;
- 19 **(4) (5)** availability to maintain dedicated administrative staff to ensure management of administrative
20 duties, training, and logistical requirements;
- 21 **(5) (6)** experience responding to hazardous materials incidents as a technician-level entry capability;
- 22 **(6) (7)** consistent with federal procurement rules as outlined in 2 CFR Part 200 which is adopted and
23 incorporated by reference with subsequent changes or amendments pursuant to 150B-21.6 and can be
24 found at no cost at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and
- 25 **(7) (8)** consistent with State procurement rules as outlined in Title 01 NCAC Chapter 05 which is adopted
26 and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6
27 and can be found at no cost at: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract>

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

31 *Eff. ~~Date~~ **March 1, 2024***

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0508
Attachments: 14B NCAC 03 .0508 Criteria for Evaluating Bids For Contract Response Team.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:26 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0508

Updated by changing to “submit an offer”

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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9 government;
- 10 (2) provide a plan for the bidding entity to deploy the required personnel;
- 11 (3) provide a plan for the bidding entity to maintain the required number of personnel trained per Rule .0509
12 of this Section; and
- 13 (4) ensure all participating members possess the qualifications outlined in Rule 0509 of this Section.

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- 15 (1) geographic location of team base;
- 16 (2) ability to maintain the required number of trained personnel to ensure response ~~readiness~~ **readiness**;
- 17 (3) ability to maintain and care for any program-provided equipment;
- 18 ~~(4)~~ **(4)** availability of local equipment to support response activities;
- 19 ~~(4)~~ **(5)** availability to maintain dedicated administrative staff to ensure management of administrative
20 duties, training, and logistical requirements;
- 21 ~~(5)~~ **(6)** experience responding to hazardous materials incidents as a technician-level entry capability;
- 22 ~~(6)~~ **(7)** consistent with federal procurement rules as outlined in 2 CFR Part 200 which is adopted and
23 incorporated by reference with subsequent changes or amendments pursuant to 150B-21.6 and can be
24 found at no cost at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and
- 25 ~~(7)~~ **(8)** consistent with State procurement rules as outlined in Title 01 NCAC Chapter 05 which is adopted
26 and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6
27 and can be found at no cost at: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract>

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

31 *Eff. ~~1/1/2024~~ **March 1, 2024***

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0506
Attachments: 14B NCAC 03 .0506 Recovering the Costs of a Regional Response Teams.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:20 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0506

Updated.

Will Polk
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EMAIL ADDRESS: Will.Polk@ncdps.gov
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1 14B NCAC 03 .0506 is proposed for adoption as follows:

2 **CHAPTER 03 - EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0506 RECOVERING THE COSTS OF A REGIONAL RESPONSE TEAM**

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

- 6 (1) ~~NCEM~~ The authority having jurisdiction shall determine who the responsible party is for all State Missions,
7 ~~in coordination with the authority having jurisdiction~~. Determination as the responsible party shall not be a
8 determination of contributory negligence or other potential liabilities of any third parties for some aspect of
9 the incident.
- 10 (2) NCEM shall bill responsible parties' response costs to include personnel and equipment costs payable to
11 NCEM for reimbursement consistent with FEMA Public Assistance Program and Policy Guide. Guide which
12 is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-
13 21.6 and is available at no cost at: [16
17 *History Note: Authority G.S. 166A-22; 166A-27;*](https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-</u>
14 <u>updated-links_policy_6-1-2020.pdf.</u></p><p>15 (3) Responsible parties shall remit payment to NCEM within 30 days of receipt of the invoice via certified mail.</p></div><div data-bbox=)

18 *Eff. ~~Date~~ March 1, 2024*

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502
Attachments: 01.2024 DPS Staff Opinion 14B NCAC 03 .0502Agencyresponse1.21.2024.doc; 14B NCAC 03 .0502 Abbreviations and Definitions..docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:14 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0502

Attached is the agency response to the Staff Opinion.

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

1 (13) “North Carolina Emergency Management Director” (NCEM Director) means the Director of the North
2 Carolina Division of Emergency Management.

3 (14) “National Incident Management System” (NIMS) means a federal policy that provides a systematic, proactive
4 approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to
5 work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of
6 cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.

7 (15) “On-duty” means when a person is **acting** functioning, paid or unpaid, as an agent of their Sponsoring Agency
8 or of the NC Division of Emergency Management as part of the NC RRT Program.

9 (16) “Program agreements” means contracts, memoranda of agreements, or memoranda of understanding between
10 NCEM and regional response teams for the purposes of establishing and maintaining the NC RRT Program.

11 (17) “Program costs” means training, equipment, personnel, or administrative expenses incurred by a Sponsoring
12 Agency during activities of the NC RRT Program.

13 (18) “Program personnel” means human resources from a regional response team with an active program
14 agreement with the Division of Emergency Management for hazardous materials response or human resources
15 employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility
16 for hazardous materials response.

17 (19) “Program resource” means personnel or equipment from a regional response team that is participating in the
18 NC RRT Program with an active program agreement with the North Carolina Division of Emergency
19 Management for hazardous materials response.

20 **(20) “Qualifying event” means an incident that system personnel have been charged, arrested, pleads no contest,**
21 **pleads guilty, or is convicted of a crime that would require notification to the Sponsoring Agency.**

22 **(20)(21)** “Qualified personnel” means an individual that meets the training and medical monitoring requirements
23 established by 29 CFR 1910.120(a)(3) which are adopted and are incorporated by reference with subsequent
24 changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
25 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120>; National Fire Protection
26 Association Standard 470 as it relates to Hazardous Materials Technicians which are adopted and are
27 incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be
28 found for ninety dollars \$90 at: [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470)
29 [codes-and-standards/detail?code=470](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470); and 29 CFR 1910.134 which are adopted and are incorporated by
30 reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
31 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>

32 **(21) (22)** “Resource typing” means a document defining and categorizing, by capability, the program resources
33 requested, deployed, and used in incidents.

34 **(22) (23)** “Responsible Party” means the entity whose actions or inactions caused **an event a hazardous materials**
35 **incident** as determined by the authority having jurisdiction requiring program resources to respond and incur
36 costs.

1 ~~(23)~~ (24) “Sensitive information” means any information, to include but not limited to audio recordings, images,
2 and video ~~recordings~~ recordings, obtained during an activation that has not been released to the public by the
3 AHJ.

4 (24) (25) “Sponsoring Agency” means a local or tribal unit of government or a corporation with an active response
5 agreement with a local unit of ~~government~~ government, that organizes and coordinates a regional response
6 team in the NC RRT Program.

7 (25) (26) “State Emergency Operations Plan” (SEOP) means a document maintained under the authority of G.S.
8 166A-19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring
9 State assistance utilizing an established comprehensive, all-hazards approach All-Hazards Disaster Response
10 Model.

11 (26) (27) “State Mission Assignment” (State Mission) means a NCEM approved request for assistance to deploy
12 program resources at the request of a local unit of government.

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16 *History Note:* Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;
17 Eff. ~~{Date}~~ March 1, 2024

18

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Department of Public Safety

RULE CITATION: 14B NCAC 03 .0502

RECOMMENDATION DATE:

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
- Failure to comply with the APA
- Extend the period of review

COMMENT:

In the published Rule, the "Responsible Party" was defined as "the entity whose actions or inactions caused and event as determined by the authority having jurisdiction..."

In response to a question posed in a Request for Changes regarding 14B NCAC 03 .0506 the agency amended the definition.

As revised the "Responsible Party" is determined "by [the North Carolina Division of Emergency Management in coordination with the authority having jurisdiction...]

Pursuant to G.S. 1510B-21.2(g), the revised rule produces an effect that could not have been reasonably expected based upon the proposed text of the rule and is therefore differs substantially from the proposed text.

Accordingly, staff recommends the Rules Review Commission object to the rule pursuant to G.S. 150B-21.9(a)(4) as it was not adopted in accordance with Part 2 of Article 2A of Chapter 150B.

AGENCY RESPONSE:

William W. Peaslee
Commission Counsel

The agency is going back to the original text of the rule with just a clarification from the word “event” to “a hazardous materials incident” to remove any potential ambiguity and unclarity and have made modifications to 14B NCAC 03 .0506 to be consistent with .0502.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) **It was adopted in accordance with Part 2 of this Article.**

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. - A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule.
- (2a) A link to the agency's website containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The (i) period of time during which and (ii) person within the agency to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) Repealed by Session Laws 2013-143, s. 1, effective June 19, 2013.

(d) Mailing List. - An agency must maintain a mailing list of persons that have requested notice of rulemaking. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice of text to each person on the mailing list that has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. - An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been

published in the North Carolina Register and that public hearing has been cancelled, the agency must publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. - An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency must review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons that, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. - An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. - An agency must keep a record of a rulemaking proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5; 2013-143, s. 1; 2013-413, s. 3(a); 2021-88, s. 17.)

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502 second opinion
Attachments: 14B NCAC 03 .0502 Abbreviations and Definitions..docx; 01.2024 DPS Staff Opinion 14B NCAC 03 .0502 II (002)agencyresponse1.21.2024.doc

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Sunday, January 21, 2024 12:05 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0502 second opinion

Good afternoon,

Attached is the agency response.

Best,
Will

Will Polk
Deputy General Counsel
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1 14B NCAC 03 .0502 is proposed for adoption as follows:

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

1 (13) “North Carolina Emergency Management Director” (NCEM Director) means the Director of the North
2 Carolina Division of Emergency Management.

3 (14) “National Incident Management System” (NIMS) means a federal policy that provides a systematic, proactive
4 approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to
5 work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of
6 cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.

7 (15) “On-duty” means when a person is **acting** functioning, paid or unpaid, as an agent of their Sponsoring Agency
8 or of the NC Division of Emergency Management as part of the NC RRT Program.

9 (16) “Program agreements” means contracts, memoranda of agreements, or memoranda of understanding between
10 NCEM and regional response teams for the purposes of establishing and maintaining the NC RRT Program.

11 (17) “Program costs” means training, equipment, personnel, or administrative expenses incurred by a Sponsoring
12 Agency during activities of the NC RRT Program.

13 (18) “Program personnel” means human resources from a regional response team with an active program
14 agreement with the Division of Emergency Management for hazardous materials response or human resources
15 employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility
16 for hazardous materials response.

17 (19) “Program resource” means personnel or equipment from a regional response team that is participating in the
18 NC RRT Program with an active program agreement with the North Carolina Division of Emergency
19 Management for hazardous materials response.

20 **(20) “Qualifying event” means an incident that system personnel have been charged, arrested, pleads no contest,**
21 **pleads guilty, or is convicted of a crime that would require notification to the Sponsoring Agency.**

22 **(20)(21)** “Qualified personnel” means an individual that meets the training and medical monitoring requirements
23 established by 29 CFR 1910.120(a)(3) which are adopted and are incorporated by reference with subsequent
24 changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
25 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120>; National Fire Protection
26 Association Standard 470 as it relates to Hazardous Materials Technicians which are adopted and are
27 incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be
28 found for ninety dollars \$90 at: [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470)
29 [codes-and-standards/detail?code=470](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470); and 29 CFR 1910.134 which are adopted and are incorporated by
30 reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
31 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>

32 **(21) (22)** “Resource typing” means a document defining and categorizing, by capability, the program resources
33 requested, deployed, and used in incidents.

34 **(22) (23)** “Responsible Party” means the entity whose actions or inactions caused **an event a hazardous materials**
35 **incident** as determined by the authority having jurisdiction requiring program resources to respond and incur
36 costs.

1 ~~(23)~~ (24) “Sensitive information” means any information, to include but not limited to audio recordings, images,
2 and video ~~recordings~~ recordings, obtained during an activation that has not been released to the public by the
3 AHJ.

4 (24) (25) “Sponsoring Agency” means a local or tribal unit of government or a corporation with an active response
5 agreement with a local unit of ~~government~~ government, that organizes and coordinates a regional response
6 team in the NC RRT Program.

7 (25) (26) “State Emergency Operations Plan” (SEOP) means a document maintained under the authority of G.S.
8 166A-19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring
9 State assistance utilizing an established comprehensive, all-hazards approach All-Hazards Disaster Response
10 Model.

11 (26) (27) “State Mission Assignment” (State Mission) means a NCEM approved request for assistance to deploy
12 program resources at the request of a local unit of government.

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16 *History Note:* Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;
17 Eff. ~~{Date}~~ March 1, 2024

18

RRC STAFF OPINION II

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Department of Public Safety

RULE CITATION: 14B NCAC 03 .0502

RECOMMENDATION DATE:

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

In the published Rule, the "State Mission Assignment" was defined as "a [North Carolina Emergency Management division] approved request for assistance to deploy program resources at the request of a local unit of government."

Staff counsel inquired by what procedure the NCEM would accept and approve requests. NCEM revised the rule to include "approved pursuant to internal agency policy".

Incorporating or referring to a policy rather than stating the contents in the Rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. Additionally, the language makes it unclear the process and criteria used in making the determination to approve a request.

Accordingly, staff recommends the Rules Review Commission object to the rule pursuant to G.S. 150B-21.9(a)(2) and (4).

AGENCY RESPONSE:

The agency has reverted the draft rule back to the published text. By doing so removes and unclarity or ambiguity as the clause "NCEM approved request for assistance" means just what it says under the plain meaning rule when reading the sentence in the whole context. If a local

William W. Peaslee
Commission Counsel

government request to deploy resources, then NCEM will approve the request to deploy assets. Adding a statement of the criteria used or agency uses would not be a rule as defined in G.S. 150B-2(8a)c. as it would be a non-binding interpretive statement within the delegative authority that merely define, interpret, or explains the meaning of a statute or rule.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0507
Attachments: 14B NCAC 03 .0507 Procedures for Bidding and Contracting for Regional Response Team.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Saturday, January 20, 2024 2:22 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0507

Updated to remove reference to cooperation.

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

- 7 (1) be a local unit of government, tribal government, ~~or a corporation~~ with an active response agreement
8 with a local or tribal unit of government;
9 (2) maintain participation in the statewide mutual aid agreement; and
10 (3) ensure all personnel possess the qualifications as outlined in Rule .0509 of this Section.

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

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

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

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

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

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

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

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

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

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

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History Note: Authority G.S. 166A-22, 166A-23;
Eff. ~~Date~~ March 1, 2024

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0505
Attachments: 14B NCAC 03 .0505 Standards For Administration of a Regional Response Team.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Thursday, January 18, 2024 4:14 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: 14B NCAC 03 .0505

Updated.

Best,
Will

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 17, 2024 2:03 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 14B NCAC 03 .0505

Good afternoon,

In the above captioned rule, line 17: "Programs Rules" is not a defined term. One solution is to add a citation to one or more, or a set of rules adopted pursuant to the APA.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

22
23 *History Note: Authority G.S. 166A-22; 166A-23; 166A-19.60; 42 U.S.C.5121 et seq; 44 CFR Part 206;*
24 *Eff. ~~Date~~ **March 1, 2024***

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0507
Attachments: 01.2024 DPS Staff Opinion 14B NCAC 03 .0507.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 18, 2024 4:01 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 14B NCAC 03 .0507

Good afternoon,

Attached please find the staff opinion on the above captioned rule which will be considered at the next meeting for the RRC.

As always if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502 second opinion
Attachments: 01.2024 DPS Staff Opinion 14B NCAC 03 .0502 II.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, January 18, 2024 12:20 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 14B NCAC 03 .0502 second opinion

Good afternoon,

Attached please find a second opinion concerning the above captioned rule which will be considered at the January RRC meeting.

As always, if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0506

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, January 18, 2024 10:44 AM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 14B NCAC 03 .0506

Good morning,

Line 6 in the above captioned rule remains in conflict with the definition of “responsible party” in Rule .0502 assuming the RRC agrees with the recommendation for objection in .0502.

Please submit any revisions to this rule by COB January 23.

Thank you.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0508

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 17, 2024 2:21 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 14B NCAC 03 .0508

I'm sorry that I did not catch this sooner but In the above captioned rule, Lines 5-8: As written, "Bidding agency shall (1) be submitted..." The agency is being submitted?

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

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Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Tuesday, January 16, 2024 12:48 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

Good afternoon Bill,

Attached are NCEM/DPS responses to your questions. I will be traveling this afternoon, but happy to talk tomorrow or later this week with [@Barnes, Brian \(NCEM\)](#) if you have any questions or have follow ups.

Best,

Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

919-825-2706 (Office)

919-219-4534 (mobile)

EMAIL ADDRESS: Will.Polk@ncdps.gov

www.ncdps.gov

Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0509

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 17, 2024 3:00 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 14B NCAC 03 .0509

Page 1, Line 12: If the intent of the rule is to require 48-hours of training consistent with certain standards, then state so. Otherwise it could be a 48 hours of training on Youtube produced by the Government of North Korea. Is that acceptable?

Page 1, Line 13: Delete

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0505

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Wednesday, January 17, 2024 2:49 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: 14B NCAC 03 .0505

Thank you.

Best,
Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

919-825-2706 (Office)

919-219-4534 (mobile)

EMAIL ADDRESS: Will.Polk@ncdps.gov

www.ncdps.gov



Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0502
Attachments: 01.2024 DPS Staff Opinion 14B NCAC 03 .0502.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, January 17, 2024 2:05 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 14B NCAC 03 .0502

Good afternoon,

Attached please find a staff opinion on the above captioned rule.

If you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 14B NCAC 03 .0505

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, January 17, 2024 2:03 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 14B NCAC 03 .0505

Good afternoon,

In the above captioned rule, line 17: "Programs Rules" is not a defined term. One solution is to add a citation to one or more, or a set of rules adopted pursuant to the APA.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0501

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

This page was intentionally left blank.

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

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

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

10

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

12 *Eff: [Date]*

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0502

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

Page 2, Line 32: Define “event”.

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 – EMERGENY MANAGEMENT**

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

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

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

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

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

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

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

10

11

12

13 *History Note: Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;*

14 *Eff. [Date]*

15

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0503

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

19 *Eff. [Date]*

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0504

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

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

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

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

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

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

18 Eff. [Date]

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0505

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Page 1, Line 6: Audit by whom?

Page 1, Line 15: Compliance with what?

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

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

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0506

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 - EMERGENCY MANAGEMENT**

3

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

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

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

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

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

12

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

14 *Eff. [Date]*

15

16

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0507

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2
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4

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

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0508

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

5 (a) Bidding agency shall:

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

13 (b) Bids shall be evaluated on:

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

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

30 *Eff. [Date]*

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0509

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

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

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

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

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

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

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

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

6 (a) Requirements for all system personnel

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

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

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

9 (b) Requirements for all system equipment:

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

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

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

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

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

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

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

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

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

27(d) Regional Response Team Equipment Requirements:

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

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

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

1
2

Eff. [Date]

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

6 (a) Requirements for all system personnel

- 7 (1) Qualified personnel shall be no less than 18 years of age;
- 8 (2) Qualified personnel shall be an employee of a Sponsoring Agency or an employee of the North
9 Carolina Division of Emergency Management. By participating in this program, program personnel
10 remain employees of their Sponsoring Agency and at no time become State employees entitled to State
11 benefits unless they are an employee of NCEM;
- 12 (3) Qualified personnel shall maintain no less than 48 hours of hazardous material training annually;
- 13 (4) while participating in any program activity personnel shall be considered emergency management
14 workers as defined in G.S. 166A-19.60; and
- 15 (5) Qualified personnel shall possess the qualifications of character and general fitness requisite for a
16 public servant and be of good moral character and entitled to the high regard and confidence of the
17 **public public**, as evidenced by not having been convicted by a local, state, federal, or military court of:
- 18 (A) a felony;
- 19 (B) a crime or unlawful act defined as a Class 1A, Class1, or Class 2 misdemeanor within the
20 five-years prior or four or more crimes or unlawful acts as defined as a Class 1A, Class 1,
21 or Class 2 misdemeanor regardless of the date of conviction;
- 22 (C) not having been convicted of an offense that would prohibit the possession of a firearm or
23 ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with
24 subsequent amendments and editions under G.S. 150B-21.6 can be found at no cost
25 [https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)
26 [partI-chap44.pdf](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf);
- 27 (D) being truthful in providing information to the appointing agency;
- 28 (E) not having pending or outstanding charges that, if convicted, would exclude eligibility
29 under this Rule.
- 30 (6) make the following notifications:
- 31 (A) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
32 criminal or traffic offenses for which the individual is charged or arrested;
- 33 (B) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all
34 criminal offenses for which the individual pleads no contest, pleads guilty, or convicted;
- 35 (C) within seven days of **criminal service-summons pursuant to the provisions of Article 17 of**
36 **Chapter 15A of the G.S.**, shall notify the Sponsoring Agency that he or she has been served
37 by a judicial official;

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

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

9 (b) Requirements for all system equipment:

- 10 (1) equipment shall be made available for inspections and inventory by NCEM personnel;
11 (2) program resources shall maintain any state-owned equipment per manufacturer's recommendations
12 and immediately notify NCEM of any damage to state owned and issued equipment; and
13 (3) upon separation, all **program resources parties to a program agreement** shall return all state property
14 within 30 days to NCEM.

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

- 16 (1) Regional Response Teams shall maintain at all times a minimum of 28 qualified personnel;
17 (2) Regional Response Teams shall maintain any additional support personnel as required for a technician-
18 level entry team. These personnel must additionally meet the requirements of 29 CFR **1910.120**
19 **1910.120, which is adopted and incorporated by reference with subsequent changes or amendments**
20 **under G.S. 150B-21.6 as outlined in the latest published standard by the EPA and can be found at:**
21 **<https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XVII/part-1910/subpart-H/section-1910.120>** at
22 **no cost**, to operate on a hazardous materials incident scene but are not required to be qualified to make
23 entry into a hazardous or potentially hazardous environments;
24 (3) NCEM shall be responsible to provide any additional technical specialists required to support Regional
25 Response Team operations;
26 (4) Regional Response Teams shall respond with qualified personnel who are capable of providing a
27 regional response to hazardous materials incidents requiring technician-level entry capability as that term
28 is and as defined in G.S. 166A-21; and
29 (5) Regional Response Teams shall limit its hazardous materials response team activity to that within the
30 safety and training levels specified by 29 CFR 1910.120.

31 (d) Regional Response Team Equipment Requirements:

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

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

3

4 *History Note: Authority G.S. 166A-21; 166A- 22; 166A-23*

5 *Eff. ~~Date~~ March 1, 2024*

6

Burgos, Alexander N

Subject: FW: DPS Extension Letter
Attachments: 01.2024 DPS RFCBB+wmpresponse1.15.2024.docx; 14B NCAC 03 .0501 Purpose.docx; 14B NCAC 03 .0502 Abbreviations and Definitions..docx; 14B NCAC 03 .0503 Dispatch of a regional response team.docx; 14B NCAC 03 .0504 Onsite Operations of a Program Resource.docx; 14B NCAC 03 .0505 Standards For Administration of a Regional Response Team.docx; 14B NCAC 03 .0506 Recovering the Costs of a Regional Response Teams.docx; 14B NCAC 03 .0507 Procedures for Bidding and Contracting for Regional Response Team.docx; 14B NCAC 03 .0508 Criteria for Evaluating Bids For Contract Response Team.docx; 14B NCAC 03 .0509 Personnel, Training, and Equipement Standards for Regional Response Team Requirements for All Program Personnel.docx

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Tuesday, January 16, 2024 12:48 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DPS Extension Letter

Good afternoon Bill,

Attached are NCEM/DPS responses to your questions. I will be traveling this afternoon, but happy to talk tomorrow or later this week with [@Barnes, Brian \(NCEM\)](#) if you have any questions or have follow ups.

Best,
Will

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

To properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov and copy RRC Counsel. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "~~a~~Association"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day~~,~~ and"
 - Right: "~~day,~~ day, and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0501

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

This page was intentionally left blank.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0502

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

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

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

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

Page 2, Line 32: Define “event”. Done

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

Page 3, Line 8-9: “Approved” by what procedure? The procedure would be a managerial policy that was developed to run the day to day functions of the agency and not a rule as defined in G.S. 150B. A reference to a rule establishing the procedure would resolve this.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0503

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Page 1, Lines 6-7: Explain the authority to “maintain direction and control” by the NCEM by rule. It appears that the Secretary can contract with local governments for the use of local resources and the authority to direct and control would be a matter of contract, but not by rule. This is delegated from the Governor to the Secretary as the Governor is the head of the state emergency management program and that authority is delegated by statute to NCEM under 166A-19.12(1) in activating and managing emergency management programs. This rule is providing clarity that we reserve the sole right to activate and manage the RRT asset even after deployment of a resource.

Page 1, Line 7: Who determines when the program resource is “needed” by the sponsoring agency? What criteria will be employed in making this determination? If the sponsoring agency can make this determination, there appears to be a conflict within the Paragraph. The intent of this "needed" relates to the sponsoring agency having priority to ensure local response needs are met prior to making the RRT available for a State deployment outside of their jurisdiction. It would be up to the Sponsoring agency to establish a local program administrator who at the direction of their chief executive or their designee would notify NCEM that the resource was out of service reference local response needs.

Page 1, Line 9: At what time or instance is a local resource “deployed by NCEM”? When the resource is requested by entities outlined in e and approved by NCEM per the authority of 166A-19.12(1).

Page 1, Lines 14-16: Why do any of the entities listed need “authority” to “request program resources”? Is there a limitation on who can make the request? If so, where? Yes, NCEM has determined under the authority of 166A-19.12(1) activating and managing emergency management programs that this list of entities are the only persons authorized to request RRT resources. As an example a private citizen would not request

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

RRT resources, but would witness an emergency and call 911 to activate the local emergency response enterprise. Then the local response authorities would arrive on scene and determine if a hazardous materials incident is within their organic response capability. If it is not, then they could request RRT resources to assist the AHJ to respond to the local hazardous materials incident per this program.

Page 1, Lines 15-16: Why is it necessary to state that the IC “may” come from these sources? Is there some limitation? If so, where? Or is the agency requiring that the IC come from those entities exclusively? How is the IC determined? By what procedure? The IC is determined by the AHJ per FEMA and NCEM Policy. That FEMA policy is required for jurisdictions to be eligible for federal preparedness grants and is a standard response policy across the United States. The purpose on expanding on who the IC may come from it is ensure the regulated public understands the IC is dependent on where the incident is, what type of incident it is, and who is on scene. The IC is the first arriving emergency responder until that person passes it to another arriving entity based on policy, training, expertise, or the specific incident requirements.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0504

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Page 1, Lines 9-10: Explain the authority to require compliance with NCEM personnel direction. G.S. 166A-19.12 grants authority to coordinate "all State agencies". G.S. 166A-23 empowers the Secretary to "contract" with local governments for the provision of resources. The Secretary does not appear to be authorized to usurp local assets by administrative rule. This authority delegated from the Governor in the Emergency Management, in addition to the Secretary's authority in GS 166A-19.11 and further sub-delegated to 166A-19.12(1) that provides the Division of Emergency Management ... activating and managing... emergency management programs. This rule provides clarity to the regulated public that NCEM has ultimate authority over the program as an emergency management program per NCGS and does not duplicate those provisions already established in law by rule.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0505

DEADLINE FOR RECEIPT: January 16, 2024

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

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

*Page 1, Line 6: Audit by whom? **Fixed***

*Page 1, Line 15: Compliance with what? **Fixed***

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0506

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Page 1, Line 6: The rule states that the NCEM shall determine the responsible party; however, "responsible party" is defined in Rule .0502 as the entity whose actions caused an event "as determined by the authority having jurisdiction". There seems to be conflict between the rules unless, by this rule, the agency is claiming jurisdiction in all events. Edited the definition. Intent here is that the local AHJ determines who they believe the responsible party is. NCEM works with the AHJ for final determination and bills that entity.

Page 1, Lines 9-10: Why is this item (2) necessary? The NCEM is regulating itself. It is included for completeness of the regulated public as well as provides specifics of what costs can be recovered from the RP. As an example loss of use would not be covered as an eligible expense we could recover from an RP. It also establishes the FEMA Public Assistance and Policy and Program Guide as the governing policy on rates and cost determination

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

Page 1, Line 11: What happens if a responsible party fails to remit payment within 30 days? What is the penalty? This is outlined in § 166A-27(a) in that we can file a lawsuit in superior court of the county in which the release occurred. This establishes the timeline for the regulated public to remit payment prior to initiating action under § 166A-27(a).

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0507

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Generally, to the Rule: The rule seems to mix concepts of procedure, eligibility, requirements, and necessary contract terms. The relationship between Paragraph (b) and its subparagraphs is confusing. Also, the relationship between Subparagraph (6) and its Parts is odd. We can set up a call if you want to discuss.

Page 1, Line 7: What does the agency mean by “eligibility for participation”? G.S. 166A-23 does not allow for contracts with corporations notwithstanding active response agreements. Although the plain language of the statute does not allow for contracts a vast majority of Fire Departments in NC are actually 501c3 organizations that are contracted by the executive body of the county to exclusively provide fire protection for a rural fire district. The rural fire protection district is a special tax district for the purposes of providing fire protection with various checks and balances under the authority of the board of county commissioners. This relationship is explained fully in Article 3A of NCGS Chapter 69. For these Rules, we want to include rural fire protection districts as a "unit or units of local government, in the agency interpretation of a local government.

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

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

spelled out in the language of the agreement. The program agreement / contract in this case is a cooperative agreement between governmental entities conducting governmental functions. If funding is no longer available, the local sponsoring agency is no longer able to support the agreement... there are many examples of what could cause either party to step away from the agreement. Do we need to State this differently for clarity?

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

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

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0508

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

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

Page 1, Line 9: To whom? Is there a particular method of delivery that is required? This is included in the bid announcement... can provide an example if that provides clarity? Does this resolve this or do we need to rework for clarity?

Page 1, Lines 10-11: To whom? Is there a particular method of delivery that is required? This is included in the bid announcement... can provide an example if that provides clarity? Does this resolve this or do we need to rework for clarity?

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

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

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

AGENCY: N.C. Department of Public Safety

RULE CITATION: 14B NCAC 03 .0509

DEADLINE FOR RECEIPT: January 16, 2024

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

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

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

Page 1, Line 12: Who decides whether the personnel have received the training? Are there any requirements concerning the training? Can someone watch 48 hours of training on the YouTube channel of their choice? The only requirement is that they receive 48 hours of specific hazardous materials training. It is up to the sponsoring agency to maintain those training records per the standards of administering a team. This requirement is consistent with 29 CFR on requirements for hazardous materials response personnel.

Page 1, Lines 13-14: The agency lacks authority to extend by rule the provisions of G.S. 166A-19.60 to program activity personnel. Either G.S. 166A-19.60 covers them, or it does not. G.S. 166A-19.60 does cover them, we included it here for completeness and avoidance of doubt. Do we need to delete?

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

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

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

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

Page 1, Lines 30-36, and Page 2, Lines 1-8: Page 2, Lines 1-8 should be in a separate Paragraph as they govern Sponsoring Agencies, not "system personnel" in Page 1, Line 6. Can we discuss. The items are required of system personnel to report these to the Sponsoring Agencies.

William W. Peaslee
Commission Counsel

Date submitted to agency: December 29, 2023

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

Page 2, Lines 16-17: What is a "technician-level entry team"? This is an undefined term. It is defined in the statute at G.S. 166A-21(8)

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

Page 2, Lines 20-21: Subparagraph (3) seems out of place. We can strike if we want? The intent here is if they need structural engineers, or other very specialized personnel that NCEM is responsible to support them / source them and the regional response team is not responsible for any and all specialized personnel they may require in an incident.

Page 2, Line 26: The agency has to incorporate by reference here unless it has already done so in this Rule. Done as part of Page 2 Line 17 comment.

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

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

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

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

10

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

12 Eff: ~~Date~~ **March 2, 2023**

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

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

1 (13) “North Carolina Emergency Management Director” (NCEM Director) means the Director of the North
2 Carolina Division of Emergency Management.

3 (14) “National Incident Management System” (NIMS) means a federal policy that provides a systematic, proactive
4 approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to
5 work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of
6 cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.

7 (15) “On-duty” means when a person is **acting** functioning, paid or unpaid, as an agent of their Sponsoring Agency
8 or of the NC Division of Emergency Management as part of the NC RRT Program.

9 (16) “Program agreements” means contracts, memoranda of agreements, or memoranda of understanding between
10 NCEM and regional response teams for the purposes of establishing and maintaining the NC RRT Program.

11 (17) “Program costs” means training, equipment, personnel, or administrative expenses incurred by a Sponsoring
12 Agency during activities of the NC RRT Program.

13 (18) “Program personnel” means human resources from a regional response team with an active program
14 agreement with the Division of Emergency Management for hazardous materials response or human resources
15 employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility
16 for hazardous materials response.

17 (19) “Program resource” means personnel or equipment from a regional response team that is participating in the
18 NC RRT Program with an active program agreement with the North Carolina Division of Emergency
19 Management for hazardous materials response.

20 **(20) “Qualifying event” means an incident that system personnel have been charged, arrested, pleads no contest,**
21 **pleads guilty, or is convicted of a crime that would require notification to the Sponsoring Agency.**

22 **(20)(21)** “Qualified personnel” means an individual that meets the training and medical monitoring requirements
23 established by 29 CFR 1910.120(a)(3) which are adopted and are incorporated by reference with subsequent
24 changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
25 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120>; National Fire Protection
26 Association Standard 470 as it relates to Hazardous Materials Technicians which are adopted and are
27 incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be
28 found for ninety dollars \$90 at: [https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470)
29 [codes-and-standards/detail?code=470](https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=470); and 29 CFR 1910.134 which are adopted and are incorporated by
30 reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
31 <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>

32 **(24) (22)** “Resource typing” means a document defining and categorizing, by capability, the program resources
33 requested, deployed, and used in incidents.

34 **(22) (23)** “Responsible Party” means the entity whose actions or inactions caused **an event a hazardous materials**
35 **incident** as determined by **NCEM in coordination with** the authority having jurisdiction requiring program
36 resources to respond and incur costs.

1 ~~(23)~~ (24) “Sensitive information” means any information, to include but not limited to audio recordings, images,
2 and video ~~recordings~~ recordings, obtained during an activation that has not been released to the public by the
3 AHJ.

4 (24) (25) “Sponsoring Agency” means a local or tribal unit of government or a corporation with an active response
5 agreement with a local unit of ~~government~~ government, that organizes and coordinates a regional response
6 team in the NC RRT Program.

7 (25) (26) “State Emergency Operations Plan” (SEOP) means a document maintained under the authority of G.S.
8 166A-19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring
9 State assistance utilizing an established comprehensive, all-hazards approach All-Hazards Disaster Response
10 Model.

11 (26) (27) “State Mission Assignment” (State Mission) means a NCEM approved ~~request-~~ request pursuant to
12 ~~internal agency policy~~ for assistance to deploy program resources at the request of a local unit of government.

13
14
15
16 *History Note:* Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;
17 Eff. ~~{Date}~~ March 1, 2024
18

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3

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

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

17

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

19 *Eff. ~~1/1/2024~~ March 1, 2024*

20

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

3

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

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

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

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

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

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

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

16

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

18 *Eff. ~~Date~~ March 1, 2024*

19

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

23
24 *History Note:* Authority G.S. 166A-22; 166A-23; 166A-19.60; 42 U.S.C.5121 et seq; 44 CFR Part 206;
25 Eff. ~~Date~~ **March 1, 2024**

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

2 **CHAPTER 03 - EMERGENCY MANAGEMENT**

3
4 **14B NCAC 03 .0506 RECOVERING THE COSTS OF A REGIONAL RESPONSE TEAM**

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

- 6 (1) NCEM shall determine who the responsible party is for all State Missions in coordination with the authority
7 having jurisdiction. Determination as the responsible party shall not be a determination of contributory
8 negligence or other potential liabilities of any third parties for some aspect of the incident.
- 9 (2) NCEM shall bill responsible parties' response costs to include personnel and equipment costs payable to
10 NCEM for reimbursement consistent with FEMA Public Assistance Program and Policy Guide, Guide which
11 is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-
12 21.6 and is available at no cost at: https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-
13 updated-links_policy_6-1-2020.pdf.
- 14 (3) Responsible parties shall remit payment to NCEM within 30 days of receipt of the invoice via certified mail.

15
16 *History Note: Authority G.S. 166A-22; 166A-27;*

17 *Eff. ~~Date~~ March 1, 2024*

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

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

- 7 (1) be a local unit of government, tribal government, or a corporation with an active response agreement
8 with a local or tribal unit of government;
9 (2) maintain participation in the statewide mutual aid agreement; and
10 (3) ensure all personnel possess the qualifications as outlined in Rule .0509 of this Section.

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

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

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

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

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

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

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

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

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

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

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4

History Note: Authority G.S. 166A-22, 166A-23;
Eff. ~~Date~~ March 1, 2024

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

2 **CHAPTER 03 – EMERGENCY MANAGEMENT**

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

5 (a) Bidding agency shall:

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

13 (b) Bids shall be evaluated on:

- 14 (1) geographic location of team base;
- 15 (2) ability to maintain the required number of trained personnel to ensure response readiness ~~readiness~~ **readiness**;
- 16 (3) ability to maintain and care for any program-provided equipment;
- 17 ~~(4)~~ (4) availability of local equipment to support response activities;
- 18 ~~(4)~~ (5) availability to maintain dedicated administrative staff to ensure management of administrative
19 duties, training, and logistical requirements;
- 20 ~~(5)~~ (6) experience responding to hazardous materials incidents as a technician-level entry capability;
- 21 ~~(6)~~ (7) consistent with federal procurement rules as outlined in 2 CFR Part 200 which is adopted and
22 incorporated by reference with subsequent changes or amendments pursuant to 150B-21.6 and can be
23 found at no cost at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and
- 24 ~~(7)~~ (8) consistent with State procurement rules as outlined in Title 01 NCAC Chapter 05 which is adopted
25 and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6
26 and can be found at no cost at: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2001%20-%20Administration\Chapter%2005%20-%20Purchase%20and%20Contract>

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

30 Eff. ~~Date~~ **March 1, 2024**

Burgos, Alexander N

Subject: FW: DPS Extension Letter

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, December 29, 2023 2:25 PM

To: Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>; Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

I forgot to add the "effective date" for each rule needs to be added to each history note and the introduction statement (line 1 of each rule) is incomplete.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Sent: Friday, December 29, 2023 12:30 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: DPS Extension Letter

Thank you sir, have you had the chance to review the draft rules with any questions or comments? Will Polk is on leave and if you can send them to me if you have them we can begin working through that on our side.

Appreciate the work on these, I know you all are more than short staffed.

V/r,
Brian

Brian Barnes
Deputy Operations Chief
NC Emergency Management
O: [919.825.2255](tel:919.825.2255)

M: 919.815.5596

Sent from a mobile device, please excuse my brevity.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, December 29, 2023 12:16:16 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

Good afternoon:

Attached please find the Request for Changes to the rules filed for review with the Rules Review Commission. The rules will be considered by the RRC at its January 31st meeting.

As always if you have any questions or concerns, please feel free to contact me.

Thank you and have a happy new year.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Polk, Will (CCPS)
Sent: Thursday, December 21, 2023 9:05 AM
To: Peaslee, William W; McDonald, Margaret (CCPS); Barnes, Brian (NCEM)
Cc: Burgos, Alexander N
Subject: RE: DPS Extension Letter

Good morning,

Thank you for the update, Bill.

I hope you have a good holiday!

Best,
Will

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, December 20, 2023 4:41 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DPS Extension Letter

Hi Will,

Thank you for your email.

It is my intention to have the request for changes to you by COB Friday but frankly it all depends on the extent to which the rules comply with G.S. 150B-21.9.

I hope you have a merry Christmas and safe travels.

Bill

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road

Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Sent: Wednesday, December 20, 2023 10:31 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DPS Extension Letter

Good morning Bill,

I hope you are doing well and having a good week. Following up on your comments from the meeting last week, I was wondering when to expect your edits to the rules. I will be out of the country Jan 1-6 without access to my e-mail, so if you send them to me then please copy my co-worker [@Margaret McDonald](#) and also NCEM staff member [@Barnes, Brian \(NCEM\)](#) so NCEM will not have any delays in the review and submission to the Commission for the January 2024 meeting.

Thank you and have a good holiday!

Best,
Will

Will Polk
Deputy General Counsel
NC Department of Public Safety
919-825-2706 (Office)
919-219-4534 (mobile)
EMAIL ADDRESS: Will.Polk@ncdps.gov
www.ncdps.gov



From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, December 14, 2023 3:09 PM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: DPS Extension Letter

Good afternoon,

Attached please find the notice of extension pursuant to G.S. 150B-21.13.

As always, if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: DPS Extension Letter

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Thursday, December 21, 2023 9:05 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>;

Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

Good morning,

Thank you for the update, Bill.

I hope you have a good holiday!

Best,

Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

919-825-2706 (Office)

919-219-4534 (mobile)

EMAIL ADDRESS: Will.Polk@ncdps.gov

www.ncdps.gov



Burgos, Alexander N

Subject: FW: DPS Extension Letter

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, December 20, 2023 4:41 PM

To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

Hi Will,

Thank you for your email.

It is my intention to have the request for changes to you by COB Friday but frankly it all depends on the extent to which the rules comply with G.S. 150B-21.9.

I hope you have a merry Christmas and safe travels.

Bill

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

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(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: DPS Extension Letter

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Wednesday, December 20, 2023 10:31 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Barnes, Brian (NCEM) <Brian.Barnes@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: DPS Extension Letter

Good morning Bill,

I hope you are doing well and having a good week. Following up on your comments from the meeting last week, I was wondering when to expect your edits to the rules. I will be out of the country Jan 1-6 without access to my e-mail, so if you send them to me then please copy my co-worker [@Margaret McDonald](#) and also NCEM staff member [@Barnes, Brian \(NCEM\)](#) so NCEM will not have any delays in the review and submission to the Commission for the January 2024 meeting.

Thank you and have a good holiday!

Best,
Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

919-825-2706 (Office)

919-219-4534 (mobile)

EMAIL ADDRESS: Will.Polk@ncdps.gov

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Burgos, Alexander N

From: Polk, Will (CCPS)
Sent: Thursday, December 7, 2023 4:41 PM
To: Rules, Oah; jeanette.k.doran@gmail.com
Cc: Burgos, Alexander N; Ray, Will (NCEM); Peaslee, William W; McDonald, Margaret (CCPS)
Subject: NCEM/DPS Response to Commission Request to Extend Period of Review
Attachments: NCEMDPSResponsetoExtensionRequest12.7.2023.pdf

Good afternoon,

Attached is NCDPS response to the Commission staff request to extend period of review of proposed rules 14B NCAC 03 .0501 to .0509.

Thank you for your consideration.

Best,
Will Polk

Will Polk
Deputy General Counsel
NC Department of Public Safety
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North Carolina Department of Public Safety

Prevent. Protect. Prepare.

Office of the General Counsel

Roy Cooper, Governor
Eddie M. Buffaloe, Jr., Secretary

Laura Howard, General Counsel

December 7, 2023

Via Electronic Mail (jeanette.k.doran@gmail.com and Bill.Peaslee@oah.nc.gov)

Jeanette K. Doran
Chair, Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

RE: Request from Staff to Extend Period of Review; Adoption of 14B NCAC 03 .0501 to .0509; North Carolina Division of Emergency Management

Dear Chair Doran:

The above referenced Division has adoption of its proposed administrative rules for the North Carolina Hazardous Materials Regional Response Teams on the Commission's agenda for its December 14, 2023 meeting. Staff has requested an extension of time to review the rules due to staff shortages, the high volume of rules filed, and the truncated schedule for review. While we certainly understand and empathize with Commission staff's situation, the Division respectfully requests that the Commission approve the rules on the December 14, 2023 meeting to meet the agency's effective date of January 1, 2024.

The necessity of the Regional Response Team Program has been made apparent through the significant number of hazardous materials incidents that have required coordinated and qualified resources to augment local hazardous materials response capabilities. The NC Regional Response Team Program is a partnership between local and State governments where the State augments local response capabilities to enhance disaster response capabilities through a regional approach. These rules establish standards for eligibility, resource type, and response expectations both administratively as well as operationally when responding under the authorities of the NC Regional Response Team Program.

Rules are required to ensure an equitable implementation of the NC Regional Response Team Program and the Division is concerned that a delay to January or later meeting will impact public safety in North Carolina as the Division needs to execute agreements with its local government partners under the proposed rules without any delay.

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Rule Review Commission
December 7, 2023

By and through this letter I hereby respectfully request you approve these rules at the December 14, 2023 meeting of the Commission.

Sincerely,



William M. Polk
Deputy General Counsel
Rulemaking Coordinator
Office of General Counsel
North Carolina Department of Public Safety

CC: William (Bill) W. Peaslee, Staff Attorney (via e-mail)
William C. Ray, Director/Deputy Homeland Security Advisor, NC Division of Emergency Management (via e-mail)

Burgos, Alexander N

From: Polk, Will (CCPS)
Sent: Thursday, November 30, 2023 10:58 AM
To: Snyder, Ashley B; Peaslee, William W
Cc: McDonald, Margaret (CCPS); Howard, Laura S (NCDPS); Ray, Ashby T; Burgos, Alexander N
Subject: RE: December RRC agenda - CJETS, DPS, Nursing Commission

Good morning Ashley,

Thank you very much for the clarification and I understand and appreciate the difficulties when you are short staffed. I will discuss with my client agency and follow up as you suggested and copy Alex.

Best,
Will

Will Polk
Deputy General Counsel
NC Department of Public Safety
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From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Thursday, November 30, 2023 10:46 AM
To: Polk, Will (CCPS) <Will.Polk@ncdps.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>; Howard, Laura S (NCDPS) <laura.howard@ncdps.gov>; Ray, Ashby T <ashby.ray@ncdps.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: December RRC agenda - CJETS, DPS, Nursing Commission

Mr. Polk,

I am; hope you are as well. Though I'm not a staff attorney, I will respond given that Bill is currently out of the office. To avoid any confusion, these rules are on the December RRC agenda and the Commission will take a vote on the rules. Bill is the staff attorney assigned to these rules and he is recommending the Commission vote to extend the period of review. RRC may vote to extend the period of review when "the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review." G.S. 150B-21.10. Of course, it will be up to the RRC whether to agree with staff's recommendation or not.

RRC had an extremely high number of rules filed for the December meeting and we are down one staff attorney. In addition, the Commission moved its meeting up a week due to the upcoming holidays. At some point, the volume of rules and available staff time dictates that staff recommend extensions for some rules on the agenda. If you disagree with staff's recommendation, you are welcome to provide a written argument in response to staff's recommendation to the Commissioners or ask to be recognized to speak at the meeting. Should you wish to do so, please copy our paralegal, Alex Burgos, on those communications.

Thanks,

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

From: Polk, Will (CCPS) <Will.Polk@ncdps.gov>

Sent: Thursday, November 30, 2023 9:50 AM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; McDonald, Margaret (CCPS) <margaret.mcdonald@ncdps.gov>;

Howard, Laura S (NCDPS) <laura.howard@ncdps.gov>; Ray, Ashby T <ashby.ray@ncdps.gov>

Subject: RE: December RRC agenda - CJETS, DPS, Nursing Commission

Good morning Mr. Peaslee and Ms. Snyder,

I hope you both are well. I received William's auto reply as I was composing this message that he will not be able to respond until 7 December. Thank you for the heads up on the extension request. However, the Division respectfully requests that these items stay on the December agenda as there are several mission critical contracts and programs that the Division would like to have the RRT rules in place by January 1, 2024.

If there is any they can remain on the December agenda for action and hopefully approval, I would greatly appreciate it.

Best,

Will

Will Polk

Deputy General Counsel

NC Department of Public Safety

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, November 29, 2023 5:45 PM

To: Angela Ellis <angela@ncbon.com>; Schilling, Michelle <mschilling@ncdoj.gov>; Polk, Will (CCPS)

<Will.Polk@ncdps.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: December RRC agenda - CJETS, DPS, Nursing Commission

Good afternoon,

Please be advised that I will be requesting an extension of review of the rules from your agency which are currently on the December RRC agenda due to staff shortages, the high volume of rules filed, and the truncated schedule for review. Should the RRC grant the request, these rules should be considered at the January 2024 RRC meeting.

I apologize for any inconvenience which this may cause your agency.

As always if you have any questions please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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