



NORTH CAROLINA  
Environmental Quality

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Governor

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Director

**CRC-18-16**

August 30, 2018

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Periodic Review of Existing Rules - Fiscal Analysis & Re-adoption Schedule

You may recall from last year that the Division has completed the public comment phase of the review for 15A NCAC 7H, 7I, 7J, 7K, 7L and 7M as to their classification as either “necessary with substantive public interest,” “necessary without substantive public interest” or “unnecessary.” This review is in compliance with the General Assembly mandate for the “Periodic Review and Expiration of Existing Rules” section of the APA (G.S. § 150B-21.3A). The Division received six public comments, all supportive of the classification of the rules.

At the July 2017 meeting, the CRC accept the draft report, with no amendments, as final for submission to the Rules Review Commission (RRC). The RRC approved the report on January 25, 2018 and forwarded it to the Joint Legislative Administrative Procedure Oversight Committee (APOC) for consultation. The final determination on an agency’s rules becomes effective when the APOC reviews the report or on the 61<sup>st</sup> day after having received the report from the RRC if the APOC does not meet. The APOC may disagree with the Commission’s determination and recommend to the General Assembly that the agency conduct a review of the rule the following year. As the APOC did not meet, the classification of the rules has become final and your rules are now eligible for re-adoption.

**Effect of Final Determination**

Rules designated as “necessary without substantive public interest” will remain in the NC Administrative Code and rules designated as “unnecessary” will be removed. Rules designated as “necessary with substantive public interest” must be re-adopted as if they were new rules following the usual rulemaking procedures. If the rules are not re-adopted, they will be removed from the Administrative Code.



## Schedule for Review of CRC Rules

With the APOC default approval of the report, the CRC may now publish the rules for public comment and begin the re-adoption process according a schedule negotiated with the RRC. Per the RRC rules, the Division can negotiate the schedule for re-adoption of rules depending on the number of rules and complexity of amendments. Given the frequency of amendments to the Commission's rules as a normal course of business, Staff is proposing a one-year re-adoption schedule with no rule amendments being proposed through this process. With the Commission's approval, Staff will prepare a notice of text and begin the 60-day public comment with the intent of having you re-adopt your rules at one of the first meetings in 2019. This will allow all of the rules to have the same re-adoption date and therefore be on the same schedule to repeat the Periodic Review Process in 10 years per the APA. Should public comment necessitate amendment of individual rules, the one-year schedule should allow adequate time to address any proposed changes.

As a reminder, 19 rules were classified as unnecessary due to the rules being old, no longer applicable, containing only introductory language, reiterating statute or generally superfluous. The majority of the rules (226 of 267) are designated as *Necessary With Substantive Public Interest* as they contain a directive, requirement or impose a standard. The remainder (22) have been designated as *Necessary Without Substantive Public Interest* as they contain management objectives, significance statements, are minor procedures or contact information.

Also attached is the accompanying fiscal analysis of the re-adoption. Since the proposed changes are administrative in nature, DCM does not believe that any regulated party will incur additional costs as a result of this action. The re-adoption does not require any affected party to take any specific action, and does not affect permitting costs nor add any additional regulatory burden.

These re-adoptions of the rules will have no impact on local governments. DCM does not expect any change in permits issued or the cost to secure permits.

Pursuant to G.S. 150B-21.4, the agency reports that the proposed re-adoption will not affect environmental permitting for the NC Department of Transportation (NCDOT).

The proposed re-adoption does not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. There will be no impact on DCM permit receipts, and DCM does not anticipate any fiscal impacts.

DCM anticipates the effective date of these rules to be May 1, 2019.

I will review the details of this process at our upcoming meeting in Wilmington.