

Agenda Item: 21-11 Request For Approval of 30-day Waiver and to Proceed to Public Notice and Public Hearing for Proposed Temporary Rules 15A NCAC 02H .1301 (Revision) and 15A NCAC 02H .1400 (.1401 through .1405)

Explanation:

On April 21, 2020, the U.S. Environmental Protection Agency (EPA) and the Department of the Army published the Navigable Waters Protection Rule in the *Federal Register* to finalize a revised definition of “waters of the United States” under the Clean Water Act (“Federal Rule”). The new Federal Rule became effective on June 22, 2020. As a result of the new Federal Rule, a subset of wetlands classified under State law are no longer subject to federal Clean Water Act jurisdiction. These classified wetlands remain protected by 15A NCAC 02B .0231 - Wetland Standards, but, as a result of the new Federal Rule, there is no permitting mechanism available to authorize impacts. To provide a regulatory mechanism to authorize impacts to wetlands that are no longer federally jurisdictional and to provide regulatory certainty, the Division is proposing temporary rulemaking.

Recommendation:

The Division is requesting the EMC approve a waiver of its 30-day rule. The Division is also requesting approval from the EMC to initiate temporary rulemaking by proceeding to public notice and public hearing.