

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety intends to adopt the rules cited as 14B NCAC 03 .0501-.0509.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdps.gov

Proposed Effective Date: *January 1, 2024*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A request for public hearing must be made within 15 days of notice. Email Rulemaking Coordinator Will Polk at will.polk@ncdps.gov to request a public hearing.*

Reason for Proposed Action: *The Department of Public Safety, Division of Emergency Management is promulgating permanent rules as required under N.C. Sess. Law 1993-769. The necessity of a State 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. Rules are required to ensure an equitable implementation of the NC Regional Response Team Program. 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. The rules of this section only apply to those entities who elect to participate in the program and establish the standards and requirements of program participation as well as the expectations on the NC Division of Emergency Management in administration of this program.*

Comments may be submitted to: *Will Polk, NC Department of Public Safety, 4201 Mail Service Center, Raleigh, NC 27699-4201; phone (919) 825-2706; email will.polk@ncdps.gov*

Comment period ends: *November 1, 2023*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.*

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected**
- Local funds affected**
- Substantial economic impact (\geq \$1,000,000)**
- Approved by OSBM**
- No fiscal note required**

CHAPTER 03 – EMERGENCY MANAGEMENT

SECTION .0500 - NORTH CAROLINA HAZARDOUS MATERIAL REGIONAL RESPONSE PROGRAM

14B NCAC 03 .0501 PURPOSE

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

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

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

14B NCAC 03 .0502 ABBREVIATIONS AND DEFINITIONS

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

- (1) "Activation" means the status of a program resource placed at the direction, control, and funding of NCEM as part of the NC RRT Program.
- (2) "All-hazards Disaster Response Model" means a response methodology where program resources provide all applicable capability to respond to any threat or hazard that is impacting the state or is forecasted to impact the State as determined by the NCEM Director.

- (3) "Authority Having Jurisdiction" (AHJ) means those local, State, tribal or federal entities having a duty to act over a specific aspect of hazardous materials in a specific geographic area.
- (4) "County to County Mutual Aid" means public safety resource sharing under the conditions of the NC Statewide Mutual Aid Agreement or another similar agreement between political subdivisions.
- (5) "Federal Emergency Management Agency" (FEMA) means is an agency of the United States Department of Homeland Security with the responsibility to coordinate the federal response to a Presidentially-declared disaster that has occurred in the United States and that overwhelms the resources of local and State authorities.
- (6) "FEMA Public Assistance Program" means a federal reimbursement grant program that provides federal funding to help communities respond to and recover from disasters.
- (7) "Functionally equivalent" means an item or group of items that can be used in the same basic manner as another item or items to perform a task to the same standard.
- (8) "Incident Commander" (IC) means the individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources. The IC has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site.
- (9) "Local Emergency Management Coordinator" (LEMC) means the County Emergency Management Coordinator as defined in G.S. 166A-19.15 who is responsible for all local disaster preparedness, response, and recovery activities in a specific geographic area. county.
- (10) "North Carolina Hazardous Materials Regional Response Team Technical Advisory Committee" (NC RRT TAC) means an advisory committee established in Article 2 of Chapter 166A of the North Carolina General Statutes to advise the Secretary of the North Carolina Department of Public Safety and the North Carolina Division of Emergency Management on the management of hazardous materials emergencies.
- (11) "North Carolina Division of Emergency Management" (NCEM) means a division of the North Carolina Department of Public Safety established in G.S. 143B-1000 with the responsibility to coordinate the mitigation, planning, preparedness, response, and recovery to a disaster or emergency that has or is forecasted to occur in the State as determined by the NCEM Director.
- (12) "North Carolina Emergency Management Operations Chief" (NCEM OSC) means the Assistant Director of Operations for the North Carolina Division of Emergency Management.
- (13) "North Carolina Emergency Management Director" (NCEM Director) means the Director of the North Carolina Division of Emergency Management.
- (14) "National Incident Management System" (NIMS) means a federal policy that provides a systematic, proactive approach guiding government agencies at all levels, nongovernmental organizations, and the private sector to work to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity, to reduce the loss of life or property and harm to the environment.
- (15) "On-duty" means when a person is acting functioning, paid or unpaid, as an agent of their Sponsoring Agency or of the NC Division of Emergency Management as part of the NC RRT Program.
- (16) "Program agreements" means contracts, memoranda of agreements, or memoranda of understanding between NCEM and regional response teams for the purposes of establishing and maintaining the NC RRT Program.
- (17) "Program costs" means training, equipment, personnel, or administrative expenses incurred by a Sponsoring Agency during activities of the NC RRT Program.
- (18) "Program personnel" means human resources from a regional response team with an active program agreement with the Division of Emergency Management for hazardous materials response or human resources employed on a full-time or part-time basis by the Division of Emergency Management with a responsibility for hazardous materials response.
- (19) "Program resource" means personnel or equipment from a regional response team that is participating in the NC RRT Program with an active program agreement with the North Carolina Division of Emergency Management for hazardous materials response.
- (20) "Qualified personnel" means an individual that meets the training and medical monitoring requirements established by 29 CFR 1910.120(a)(3) which are adopted and are incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.120>; National Fire Protection Association Standard 470 as it relates to Hazardous Materials Technicians which are adopted and are incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found for ninety dollars (\$90.00) at: <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 reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at: <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>.
- (21) "Resource typing" means a document defining and categorizing, by capability, the program resources requested, deployed, and used in incidents.
- (22) "Responsible Party" means the entity whose actions or inactions caused an event as determined by the authority having jurisdiction requiring program resources to respond and incur costs.
- (23) "Sensitive information" means any information, to include but not limited to audio recordings, images, and video recordings obtained during an activation that has not been released to the public by the AHJ.
- (24) "Sponsoring Agency" means a local or tribal unit of government or a corporation with an active response agreement with a local unit of government that organizes and coordinates a regional response team in the NC RRT Program.

- (25) "State Emergency Operations Plan" (SEOP) means a document maintained under the authority of G.S. 166A-19.12(2) that details how the State of North Carolina will respond to a disaster or emergency requiring State assistance utilizing an established comprehensive, all-hazards approach All-Hazards Disaster Response Model.
- (26) "State Mission Assignment" (State Mission) means a NCEM approved request for assistance to deploy program resources at the request of a local unit of government.

History Note: Authority G.S. 166A-22; 166A-23; 166A-25; 166A-26; 166A-27;
Eff. [Date].

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

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

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

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

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

- (1) FEMA NIMS standards which are adopted and are incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 and can be found at no cost at:
https://www.fema.gov/sites/default/files/2020-07/fema_nims_doctrine-2017.pdf;
- (2) following all direction from NCEM personnel acting pursuant to G.S. 166A-19.12(1) when deploying as a program resource;
- (3) when responding in support of law enforcement operations, program resources shall coordinate activities with the law enforcement authorities to ensure their actions support any potential criminal investigation; and
- (4) program resources shall not release any sensitive information to the public or media during operations without the consent of the local, State, or federal authority having jurisdiction consistent with Chapter 132 of the North Carolina General Statutes.

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

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

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

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

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

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

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

- (2) NCEM shall bill responsible parties' response costs to include personnel and equipment costs payable to NCEM for reimbursement consistent with FEMA Public Assistance Program and Policy Guide.
- (3) Responsible parties shall remit payment to NCEM within 30 days of receipt of the invoice via certified mail.

History Note: Authority G.S. 166A-22; 166A-27;
Eff. [Date].

14B NCAC 03 .0507 PROCEDURES FOR BIDDING AND CONTRACTING FOR REGIONAL RESPONSE TEAM.

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

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

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

- (1) Regional response teams shall be limited to seven regionally based teams. Each team will be assigned a primary response region in the state.
- (2) The bidding agency agencies shall be in that specified response region.
- (3) The NCEM Director or designee shall establish a review committee. This committee will open all completed sealed bid packages and evaluate them based on an agreed-upon criteria as outlined in Rule .0508 of this Section at a date to be set by the NCEM Director or designee.
- (4) The committee shall develop a bid package review summary that includes their recommendations for selections that will be sent to the NCEM Operations Chief for concurrence before being reviewed and approved by the NCEM Director.
- (5) Agencies that are successful in the bid process will be notified and program agreements shall be drafted and executed.
- (6) NCEM shall draft, execute, and maintain a program agreement with the Sponsoring Agency for the program resource to maintain participation in the program.
 - (A) NCEM shall execute and maintain a program agreement with the Sponsoring Agency that outlines the scope of work that the team shall follow to enable reimbursement of eligible training, equipment, administrative, and personnel costs associated with maintaining and deploying a regional response team. The program agreement shall be limited to the four-year contract period with an optional one-year extension.
 - (B) Funds reimbursed through this agreement shall go directly to cover program costs and be utilized by the Sponsoring Agency for the purposes of this program.
 - (C) The Sponsoring Agency shall maintain all records of any program spending and shall not comingle funds or use program funding for any other purpose other than for the purposes of this program.

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

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

(a) Bidding agency shall:

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

(b) Bids shall be evaluated on:

- (1) geographic location of team base;
- (2) ability to maintain the required number of trained personnel to ensure response readiness
- (3) ability to maintain and care for any program-provided equipment;
- (4) availability of local equipment to support response activities;
- (5) availability to maintain dedicated administrative staff to ensure management of administrative duties, training, and logistical requirements;
- (6) experience responding to hazardous materials incidents as a technician-level entry capability;
- (7) consistent with federal procurement rules as outlined in 2 CFR Part 200 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to 150B-21.6 and can be found at no cost at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and
- (8) consistent with State procurement rules as outlined in 01 NCAC 05 which is adopted and incorporated by reference with subsequent changes or amendments pursuant to G.S. 150B-21.6 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>

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

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

(a) Requirements for all system personnel

- (1) Qualified personnel shall be no less than 18 years of age;
- (2) Qualified personnel shall be an employee of a Sponsoring Agency or an employee of the North Carolina Division of Emergency Management. By participating in this program, program personnel remain employees of their Sponsoring Agency and at no time become State employees entitled to State benefits unless they are an employee of NCEM;
- (3) Qualified personnel shall maintain no less than 48 hours of hazardous material training annually;
- (4) while participating in any program activity personnel shall be considered emergency management workers as defined in G.S. 166A-19.60; and
- (5) Qualified personnel shall possess the qualifications of character and general fitness requisite for a public servant and be of good moral character and entitled to the high regard and confidence of the public as evidenced by not having been convicted by a local, state, federal, or military court of:
 - (A) a felony;
 - (B) a crime or unlawful act defined as a Class 1A, Class 1, or Class 2 misdemeanor within the five-years prior or four or more crimes or unlawful acts as defined as a Class 1A, Class 1, or Class 2 misdemeanor regardless of the date of conviction;
 - (C) not having been convicted of an offense that would prohibit the possession of a firearm or ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with subsequent amendments and editions under G.S. 150B-21.6 can be found at no cost <https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf>;
 - (D) being truthful in providing information to the appointing agency;
 - (E) not having pending or outstanding charges that, if convicted, would exclude eligibility under this Rule.
- (6) make the following notifications:
 - (A) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all criminal or traffic offenses for which the individual is charged or arrested;
 - (B) within seven days of the qualifying event, notify the Sponsoring Agency in writing of all criminal offenses for which the individual pleads no contest, pleads guilty, or convicted;
 - (C) within seven days of service, shall notify the Sponsoring Agency that he or she has been served by a judicial official;
 - (D) within seven days of the date the case was disposed of in court, the Sponsoring Agency, provided they have knowledge of program personnel's arrests or criminal charges and final dispositions, shall also notify the NCEM of arrests or criminal charges and final disposition of the criminal charges against program personnel; and
 - (E) within seven days of the issuance of all Domestic Violence Protective Orders pursuant to G.S. 50B and Civil No Contact Orders pursuant to G.S. 50C, the Sponsoring Agency, provided they have the knowledge of the order, shall also notify NCEM of these orders.

(b) Requirements for all system equipment:

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

(c) Regional Response Team Personnel and Training Requirements:

- (1) Regional Response Teams shall maintain at all times a minimum of 28 qualified personnel;
- (2) Regional Response Teams shall maintain any additional support personnel as required for a technician-level entry team. These personnel must additionally meet the requirements of 29 CFR 1910.120 to operate on a hazardous materials incident scene but are not required to be qualified to make entry into a hazardous or potentially hazardous environments;
- (3) NCEM shall be responsible to provide any additional technical specialists required to support Regional Response Team operations;
- (4) Regional Response Teams shall respond with qualified personnel who are capable of providing a regional response to hazardous materials incidents requiring technician-level entry capability as that term is and as defined in G.S. 166A-21; and
- (5) Regional Response Teams shall limit its hazardous materials response team activity to that within the safety and training levels specified by 29 CFR 1910.120.

(d) Regional Response Team Equipment Requirements:

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

History Note: Authority G.S. 166A-21; 166A- 22; 166A-23;
Eff. [Date].