

## Agenda Item 4

### RULE SUMMARY

**Subject: Amendments to NOx Rules to Correct Cross-References (486)**

| Rule Citation                     | What is the Change  | Purpose of Change   | Who Is Affected & How                           | Impacts  |
|-----------------------------------|---|---|---|--|
| 15A NCAC 02D .1402, Applicability | 02D .1402(a) is proposed for amendment to:<br><br>Clarify applicability language in .1402 to clarify that the Clean Air Interstate Rules (CAIR) rules in Section .2400 will apply to large combustion sources instead of the NOx SIP Call rules in Section .1400. | The purpose of this rule amendment is to clarify that sources subject to North Carolina's Clean Air Interstate Rule (CAIR) found in section 02D .2400 | No facilities are affected by these amendments. | There are no impacts as this simply clarifies that CAIR remains applicable for sources that were previously listed and are no longer subject to those portions of the NOx SIP rules. |
| 15A NCAC 02D .1402, Applicability | 02D .1402(c) is proposed for amendment to:<br>Change cross-reference from .1409(b) to .1409(c)  | Corrects a cross-reference error that occurred during a previous rule revision.   | None  | No impacts   |
| 15A NCAC 02D .1402, Applicability | 02D .1402(d) is proposed for amendment to:<br>Change cross-reference from .1409 to .1409(b)   | This corrects a cross-reference error that occurred during previous rule revision that unintentionally drop the "(b)" that previously existed.        | None  | No impacts   |

1 15A NCAC 02D .1402 is proposed for amendment as follows:

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3 **15A NCAC 02D .1402 APPLICABILITY**

4 **(a) The rules in this Section do not apply except as specifically set out in this Rule.** ~~In the event that the U.S. Circuit Court does not mandate vacatur of the Clean Air Interstate Rule consistent with its July 11, 2008 Order, North Carolina v. EPA, 531 F.3d 896 (D.C. Cir 2008), Section .2400 of this Subchapter shall apply rather than the nitrogen oxide (NOx) state implementation plan (SIP) call (40 CFR 51.121) provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter, that would be in conflict therewith. To the extent that the Court mandates vacatur of the Clean Air Interstate Rule, the provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter shall apply.~~

12 (b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

13 (c) Rules .1409(b)(c) and .1416 through .1423 of this Section apply statewide.

14 (d) The Rules .1407 through .1409(b) and .1413 of this Section apply to facilities with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

- 16 (1) Cabarrus County
- 17 (2) Gaston County
- 18 (3) Lincoln County
- 19 (4) Mecklenburg County
- 20 (5) Rowan County
- 21 (6) Union County
- 22 (7) Davidson Township and Coddle Creek Township in Iredell County

23 (e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

40 (f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

53 (g) If EPA notifies the State that its nonattainment plan for ozone has failed to attain the ambient air quality standard for ozone in the Charlotte-Gastonia-Rock Hill ozone nonattainment area, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of

57 nitrogen oxides per year. Within 60 days of receipt of the notification from EPA, the Director shall notice the  
58 applicability of these rules to these sources in the North Carolina Register and shall send written notification to all  
59 permitted facilities within the counties in which the rules are being implemented that are or may be subject to the  
60 requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For  
61 Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the  
62 Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule  
63 .1403 of this Section.

64 (h) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- 65 (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant  
66 activity as defined at 15A NCAC 02Q .0103(19);
- 67 (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- 68 (3) emergency generator;
- 69 (4) emergency use internal combustion engine;
- 70 (5) source that is not covered under Rules .1416, .1417, or .1418 of this Section,-and that is at a  
71 facility with a federally enforceable potential to emit nitrogen oxides of:
  - 72 (A) less than 100 tons per year; and
  - 73 (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any  
74 year.
- 75 (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than  
76 the following hours between May 1 and September 30:
  - 77 (A) for diesel engines:  
78  $t = 833,333 / ES$
  - 79 (B) for natural gas-fired engines:  
80  $t = 700,280 / ES$
- 81 where  $t$  equals time in hours and ES equals engine size in horsepower.

82 (i) The exemption in Subparagraph (h)(6) of this rule does not apply to any of the sources listed in Rule .1417(a)(1)  
83 or (2), or (b), of this Section except as it applies to a stationary combustion turbine constructed before January 1,  
84 1979, that has a federally enforceable permit that restricts:

- 85 (1) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September  
86 30;
- 87 (2) it to burning only natural gas or oil; and  
88 its hours of operation as described in 40 CFR 96.4(b)(1)(ii) and (iii).

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90 *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);*

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**ECONOMIC ANALYSIS: Amendments to NOx Rules to Correct Cross-References (486)**

**Contact Information**

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|---|--|
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| 6. Title of the Amended Rule              | NOx SIP Management Rule  |
| 7. Rule Citation                          | 15A NCAC 2D .1400  |
| 8. Brief Description of the Proposed Rule | Applicability clarification and correction to cross-reference error  |
| 9. Rule Category                          | Division 1 – Regulatory Behavior   |

**Screening Analysis**

| <b>Rule Actions</b>   | <b>General Statute</b>                 | <b>Yes or No</b> |
|---|--|------------------|
| <b>10. Federal Law Certification Required</b> - Does the proposed rule purport to implement a federal law requiring a certification statement by the rule-making coordinator under? | NCGS 150B-21(f)(1)                     | No               |
| <b>11. Temporary Rules</b> - Does this rule meet the criteria listed relating to temporary rules?   | NCGS 150B-21.1                         | No               |
| <b>12. Emergency Rules</b> - Does this rule meet the criteria relating to emergency rules?  | NCGS 150B-21.1(a)                      | No               |
| <b>13. Establishes or Increases Fees</b> - Is the agency required to complied with the requirements of G.S. 12-3.1?   | NCGS 150B-12-3.1<br>NCGS 150B-21.3(c1) | No               |
| <b>14. State Funds</b> - Does the proposed rule require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143?                     | NCGS 150B-21.4(a)                      | No               |
| <b>15. NC DOT Analysis</b> - Does the proposed rule affect NC DOT environmental permitting that will result in an increased cost?   | NCGS 150B-21.4(a1)                     | No               |
| <b>16. Local Government Unit Funds</b> - Does the proposed rule affect the expenditures or revenues of a unit of local government?  | NCGS 150B-21.4(b)                      | No               |
| <b>17. Substantial Economic Impact Analysis - Federal Rule Exemption</b> - Does this rule meet the criterion of Federal Exemption found in?   | NCGS 150B-21.4(b1)                     | No               |
| <b>18. Technical Change</b> - Are <u>only</u> technical changes being incorporated such that public notice and rule-making hearings are not required?                               | NCGS 150B-21.5                         | No               |
| <b>19. Repeal of Regulatory Deadwood</b> - Is the Rule Obsolete?  | NCGS 150B-21.5(b)                      | No               |

**ECONOMIC ANALYSIS:**

Amendments to NOx Rules to Correct Cross-References (486)

**I. Executive Summary**

The purpose of this document is to conduct an evaluation of the costs and benefits associated with amendments to rule 15A NCAC 02D .1402, *Applicability*. The amendments adjust the applicability language in .1402 to clarify that the Clean Air Interstate Rules (CAIR) rules in Section .2400 will apply to large combustion sources instead of the NOx SIP Call rules in Section .1400. This clarification is necessary due to the December 22, 2008 DC Circuit Court decision to remand the CAIR rules without vacatur to the United States Environmental Protection Agency (USEPA). Additionally, two cross-reference errors are being corrected by this amendment. As proposed these amendments will not have any economic impacts.

The baseline for this economic analysis is based on the CAIR adopted by North Carolina and the previous NOx SIP rules. All of the temporary NOx rule amendments will revert to their previous codified version, with the exception of 02D .1402, *Applicability*. The CAIR rules remain in effect during the “remand” to US Environmental Protection Agency (EPA) to fix the flaws identified by the Court.

The only change from the baseline associated with the proposed NOx rule amendment to 02D .1402 is the statement to clarify that CAIR is applicable. These permanent NOx rule amendments represent no change from the baseline and will have zero economic impacts. The CAIR rules will apply. Adding this clarifying applicability statement and a cross-reference correction do not represent any change from the baseline.

Over the period of this analysis, these permanent amendments to 02D .1402 do not impose any cost to the State of North Carolina, unit of local government, or cause additional private sector expenditures. Therefore, these rule amendments do not cause substantial economic impacts as defined in the Administrative Procedures Act in NC § 150B-21.4. *Fiscal notes on rules*. In addition, these impacts are not considered significant based on policy guidance from the Office of State Budget and Management (OSBM) regarding review and approval of the economic analysis of rules.

**Public Benefit:** The proposed rule amendments to correct two cross-reference errors and clarify the applicability of CAIR causes no change in these estimated public benefits relative to the baseline.

**II. Background**

The purpose of this rule amendment is to correct a cross-reference error and clarify rule applicability.

**III. Description of Amended Rules**

*15A NCAC 02D .1402, Applicability*, describes the sources covered by the Section. It adds the following language in (a) to specify which parts of this section apply to sources covered under CAIR and corrects cross-reference errors in (c) and (d) that occurred during earlier revision that was consistent with the repeal that would have occurred.

15A NCAC 02D .1402 is proposed for amendment as follows:

15A NCAC 02D .1402 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule. ~~In the event that the U.S. Circuit Court does not mandate vacatur of the Clean Air Interstate Rule consistent with its July 11, 2008 Order, North Carolina v. EPA, 531 F.3d 896 (D.C. Cir 2008), Section .2400 of this Subchapter shall apply rather than the nitrogen oxide (NOx) state implementation plan (SIP) call (40 CFR 51.121) provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter, that would be in conflict therewith. To the extent that the Court mandates vacatur of the Clean Air Interstate Rule, the provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter shall apply.~~

(b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

(c) Rules .1409(b)(c) and .1416 through .1423 of this Section apply statewide.

(d) The Rules .1407 through .1409(b) and .1413 of this Section apply to facilities with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

- (1) Cabarrus County
- (2) Gaston County
- (3) Lincoln County
- (4) Mecklenburg County
- (5) Rowan County
- (6) Union County
- (7) Davidson Township and Coddle Creek Township in Iredell County

[There are no other proposed changes to .1402 beyond (d)]

**IV. Motivation for the Proposed Rules**

This rule amendment to .1402 is required to clarify the applicability of CAIR to sources that were previously NOx SIP sources. The amendments also correct two cross-reference errors in .1402(c) and (d) that occurred during earlier revision.

**V. Identification of the Affected Sources**

Existing CAIR rules are the determinant of NOx emission allocations. The amendment to .1402 simply makes this clear, and the economic impact of such an amendment would be zero.

**VI. Establishment of the Baseline**

The baseline for this economic analysis is based on the CAIR adopted by North Carolina and the previous NOx SIP rules. All of the temporary NOx rule amendments will revert to their previous codified version, with the exception of 02D .1402, Applicability. The CAIR rules remain in effect during the “remand” to US Environmental Protection Agency (EPA) to fix the flaws identified by the Court.

**VII. Changes from the Baseline**

The only change from the baseline associated with the proposed rule amendment to 02D .1402 is the statement to clarify that CAIR is applicable. These permanent rule amendments represent no change from the baseline and will have zero economic impacts. The CAIR rules will apply. Adding this clarifying applicability statement and a cross-reference correction do not result in any change from the baseline.

**A. Summary of Costs Incurred by the Affected Private Sector Sources:**

There are no affected private sector sources or small businesses affected by the amendment.

**B. Costs to Local Governments:** No local government sources or facilities are among the affected community. Therefore, the proposals will not generate any costs to local governments.

**C. Costs to the State Government or Implementing Agency:** The Division of Air Quality is the primary implementing agency for the proposal. There are no additional costs of the proposed permanent NOx rule amendment to DAQ. Also, there are no economic impacts related to the permitting of the NC Department of Transportation projects.

**D. Public Benefit:** No changes are expected in public benefits resulting from this proposed rule amendment. Without doubt, managing NOx emissions as a precursor to ozone, is one of DAQ’s top priorities. NOx is a precursor to the formation of low-level ozone and the reduction of NOx from the ambient air is the primary means available to DAQ to reduce ozone levels within North Carolina. Ozone is a major component of smog and has been demonstrated to be harmful to both human health and the environment. High levels of ozone have been linked to increased hospital admissions for respiratory ailments and the young, aged, and infirm are particularly susceptible to ozone’s negative health impacts. In addition, individuals that are active outdoors in the summer months can experience a reduction in lung function and increased respiratory symptoms, such as chest pain and cough, when exposed to relatively low ozone levels during periods of moderate exertion. Furthermore, ozone has been shown to negatively impact vegetation and crops, and NOx emissions contribute directly to the formation of fine particulate matter. Airborne particulate matter has been linked to a wide range of negative health effects.

**VIII. Conclusion**

The proposed amendments clarify the applicability of Section .2400 to previous NOx SIP Call sources. There are two cross-reference errors that are being corrected, and those changes have zero economic impact.

There are no private sector sources or small businesses affected by the amendment. There are no units of local government among the affected community. Local governments will incur zero additional costs as a result of the rule amendments. Implementation costs by DAQ are not expected to change. The Division of Air Quality is the primary implementing agency for the proposal. There are no additional costs of the proposed rule amendment to DAQ. There are no economic impacts related to the permitting of the NC Department of Transportation projects.

Over the period of this analysis, these amendments do not impose any cost to the State of North Carolina, unit of local government, or cause additional private sector expenditures. Therefore, these rule amendments do not cause substantial economic impacts as defined in the Administrative Procedures Act in NC § 150B-21.4. *Fiscal notes on rules*. In addition, these impacts are not considered significant based on policy guidance from the Office of State Budget and Management (OSBM) regarding review and approval of the economic analysis of rules.