

# Life Cycle of a (North Carolina) Air Quality Rule

## Carolinas Air Pollution Control Association

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# Acronyms

Abbreviation	Term	Abbreviation	Term
AQC	Air Quality Committee	NC	North Carolina
APA	(NC) Administrative Procedure Act	NCAC	North Carolina Administrative Code
APO	Administrative Procedures Oversight (Committee of the General Assembly)	G.S.	(North Carolina) General Statute
CAA	Clean Air Act	OAH	Office of Administrative Hearings
DAQ	Division of Air Quality	OSBM	Office of State Budget and Management
DEQ	Department of Environmental Quality	REINS Act	Regulations from the Executive In Need of Scrutiny Act
EMC	Environmental Management Commission	RIA	Regulatory Impact Analysis
EPA	(United States) Environmental Protection Agency	RRC	Rules Review Commission
FN	Fiscal Note	S.L.	Session Law
GHGs	Greenhouse Gases	SIP	State Implementation Plan

# Life Cycle of an Air Quality Rule in NC

## Outline

- Administrative Rulemaking Structure and Requirements
- Life Cycle of Adopting (or Amending) an Air Quality Rule
- Periodic Review of Existing Rules Process
- Recent Legislative Changes to the Rulemaking Process



# NC Administrative Rulemaking Structure

- **NC Administrative Procedure Act (APA):**
  - Codified under Chapter 150B of the North Carolina General Statutes (G.S.).
  - Sets forth the minimum requirements and procedures for agencies to adopt, amend, or repeal administrative rules.
- **NC Air Quality Rules:**
  - Codified in Title 15A of the North Carolina Administrative Code (15A NCAC)
    - Subchapter 02D, *Air Pollution Control Requirements*
      - Sections .0100 - .2600 with a total of **225** individual rules
    - Subchapter 02Q, *Air Quality Permit Procedures*
      - Sections .0100 - .0900 with a total of **89** individual rules
  - Authority to adopt, amend, repeal, and readopt these rules is retained by the Environmental Management Commission (EMC).



# NC Administrative Rulemaking Structure

- **Environmental Management Commission (EMC)**  
*(meets every other month)*
  - 15-member commission appointed by the Governor, Senate Pro Tempore, Speaker of the House, and Commissioner of Agriculture.
  - Responsible for adopting rules for the protection, preservation, and enhancement of the state's air and water resources.
- **Air Quality Committee (AQC)**
  - One of eight EMC committees;
  - Composed of seven EMC members;
  - Meets on the day before each regularly-scheduled full EMC meeting (and in between if a special meeting is called).
- **NC Department of Environmental Quality (DEQ)**
  - NC DEQ, Division of Air Quality (DAQ) develops the rule text and performs the analyses required to facilitate the EMC's Air Quality Rules throughout the administrative rulemaking process.
  - The DEQ-DAQ requests approval from the AQC and/or EMC to proceed to each next step of the process.



# Administrative Rulemaking Structure

## Rules Review Commission (RRC)

*(meets once a month)*

- 10-member commission appointed by the NC General Assembly.
- Charged with reviewing and approving rules adopted by state agencies (e.g., the EMC).
- Review is limited to four criteria: authority; clarity, necessity, and conformity with the APA. (more details on slide 17)

## Office of Administrative Hearings (OAH) Rules Division

- Performs legal analysis and administrative and technical work in the review, compilation, production, and publication of the North Carolina Register and the NCAC.
- Provides administrative support and legal counsel to the RRC.



# What prompts the DAQ to adopt (or amend, repeal, etc.) a rule?

- new or changed federal regulations;
  - new or changed State laws;
  - feedback from internal or external stakeholders;
  - rulemaking petitions;  
(G.S. 150B-20 and 15A NCAC 02I .0500)
- or
- Executive Orders.



# Limitations on Environmental Rules

## *What is NOT a rule?*

- Defined and listed in G.S. 150B-2(8a), 150B-19 and 19.1. Examples include:
  - Statements concerning only the internal management of an agency (e.g., policies and budgets).
  - Nonbinding interpretive statements that merely define, interpret, or explain the meaning of a statute or rule.
  - A rule may not repeat the context of a law, rule, or federal regulation.

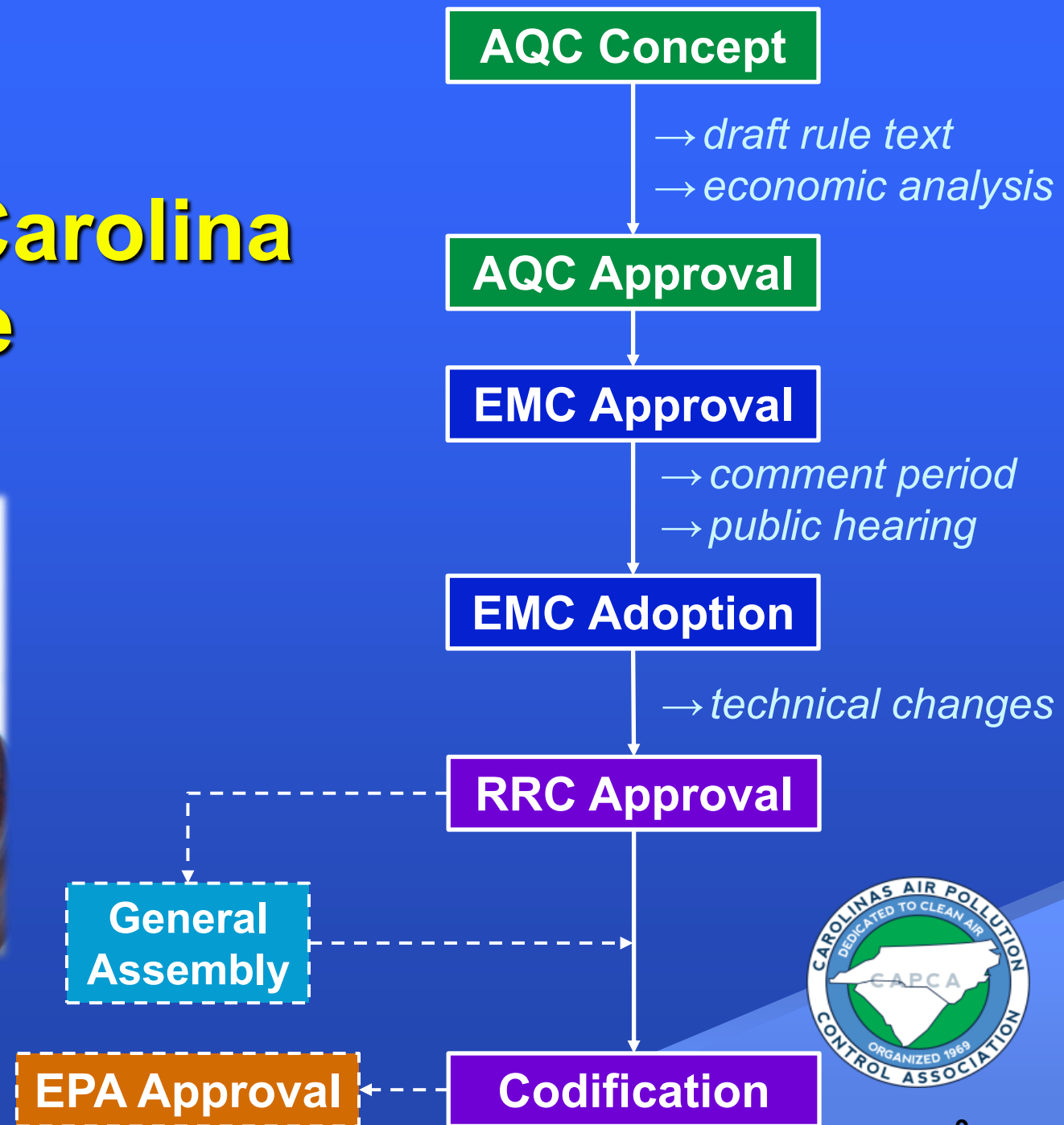
## *“Hardison Amendment” G.S. 150B-19.3:*

- A rule may not be more stringent than a federal rule, if a federal law or rule pertaining to the same subject matter has been adopted.
- Exceptions to this include:
  - A serious and unforeseen threat to the public health, safety, or welfare.
  - An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.
  - A change in federal or State budgetary policy.
  - A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
  - A court order.





# Life Cycle of a North Carolina Air Quality Rule



# 1 ***Present the Rulemaking Concept***

AQC Concept

- Introduce the idea behind a proposed rule action.
- High-level presentation to the AQC to explain the underlying reason for the forthcoming rulemaking proposal.
- Opportunity to receive feedback from the Commission on any questions, concerns, or expectations for the analysis.



## ② *Prepare the Draft Rule Package*

- DAQ drafts the rule text and regulatory impact analysis (RIA)/fiscal note (FN) for presentation to the AQC.
- The RIA/FN is an analysis of the economic impacts expected to result from the rule, including:
  - Costs and savings to the regulated community, local government entities, and the State; and
  - Benefits from emission reductions/improved air quality, such as:
    - Savings in healthcare costs from lower emissions of criteria pollutants; and
    - Societal/social savings from mitigated climate change due to lower emissions of greenhouse gases (GHGs).

### AQC Concept

- *draft rule text*
- *economic analysis*



The RIA/FN must get reviewed and approved by the NC Office of State Budget and Management (OSBM).

**Fiscal Note for Amendment of 15A NCAC 02D .1904 and 15A NCAC 02Q .0810**

**Rule Citation Number** 15A NCAC 02D .1904 and 15A NCAC 02Q .0810

**Rule Topic:** Amendments to Rules for Air Curtain Incinerators

**Commission:** Environmental Management Commission (EMC)

**DEQ Division:** Division of Air Quality

**AQC Concept**

→ *draft rule text*

→ *economic analysis*

**AQC Approval**

### ③ ***Request AQC Approval***

DAQ presents the draft rule(s) and RIA/FN to the AQC, and requests permission to proceed to the full EMC.



## 4 Request EMC Approval

DAQ presents the draft rule(s) and RIA/FN to the full EMC, and requests permission to proceed to public comment and hearing.

AQC Concept

→ draft rule text  
→ economic analysis

AQC Approval

EMC Approval

- Note: per EMC by-laws, there must be at least 30 days in between the AQC Approval and EMC Approval, unless this requirement is waived by the EMC.
- If the EMC approves the draft rule(s) and RIA/FN to proceed to public comment, the DAQ files the rules with the OAH for publication in the North Carolina Register.
- The NC Register publication starts the comment period.

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## ***Hold a Public Comment Period and Public Hearing***

- Notice of the 60-day comment period and public hearing is provided to the public via:
  - North Carolina Register (publications are twice a month)
  - Several DAQ/DEQ/EMC webpages
  - Email notification to the DAQ Rule Development stakeholder list
- DAQ also notifies the EPA of the comment period.
- Accept comments by email, mail, voicemail, or verbally during the hearing.
- DAQ prepares responses to all public comments and makes any necessary changes in response to the public comments received.
- A record of the hearing is prepared for review by the Hearing Officer (usually an AQC/EMC member), who makes a recommendation to the EMC.

AQC Concept

→ draft rule text  
→ economic analysis

AQC Approval

EMC Approval

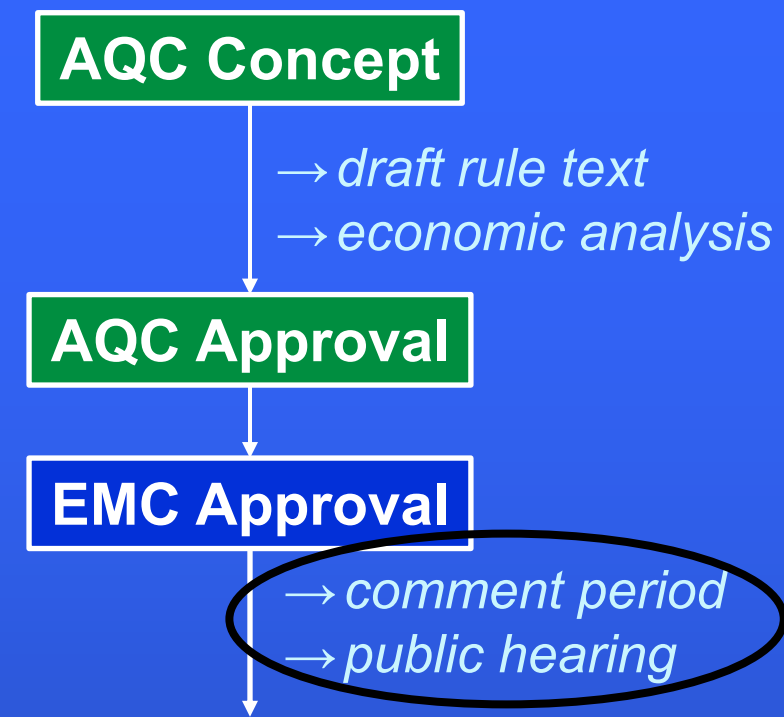
→ comment period  
→ public hearing





## ⑥ *Prepare the Hearing Record*

- The Hearing Record is a compilation of the public comment period and hearing proceedings, including:
  - Copies of the public notice, North Carolina Register publication, and EPA notifications;
  - List of hearing attendees and oral comments;
  - Copies of all comments received and DAQ's responses;
  - Additional materials supporting the rulemaking (e.g., RIA/FN); and
  - Rule(s) proposed for adoption (with any changes resulting from public comment).
- The Hearing Officer reviews the hearing record and makes a recommendation to the EMC.



# 7 Request EMC Adoption

DAQ presents the Hearing Record and requests adoption of the rule(s) by the EMC.

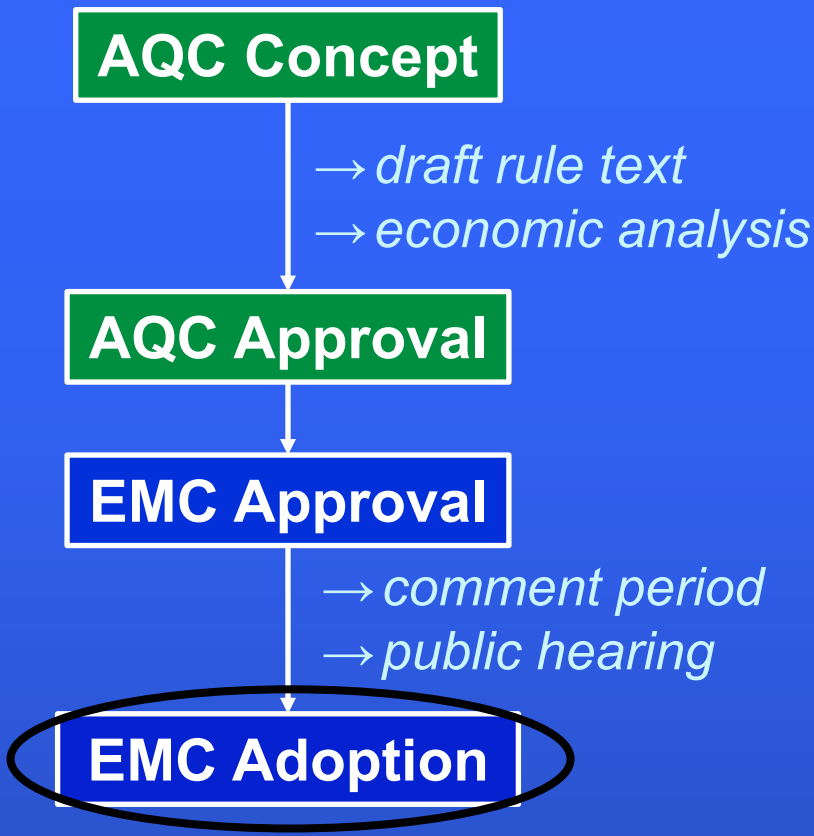
The required vote of the EMC at adoption:

Aggregate Financial Cost: (over any 5-year period)	Required EMC Vote for Adoption:
Less than \$1 million	Majority
At least \$1 million but less than \$10 million	Two-thirds*
At least \$10 million	Unanimous*

“Aggregate financial cost” means the amount of costs to all persons affected identified in a substantial economic impact analysis conducted according to G.S. 150B-21.4(b1), not inclusive of benefits.

- Net present value @ 7% discount rate;
- Includes costs to regulated entities, local governments, and state government; and
- Does not include savings or benefits.

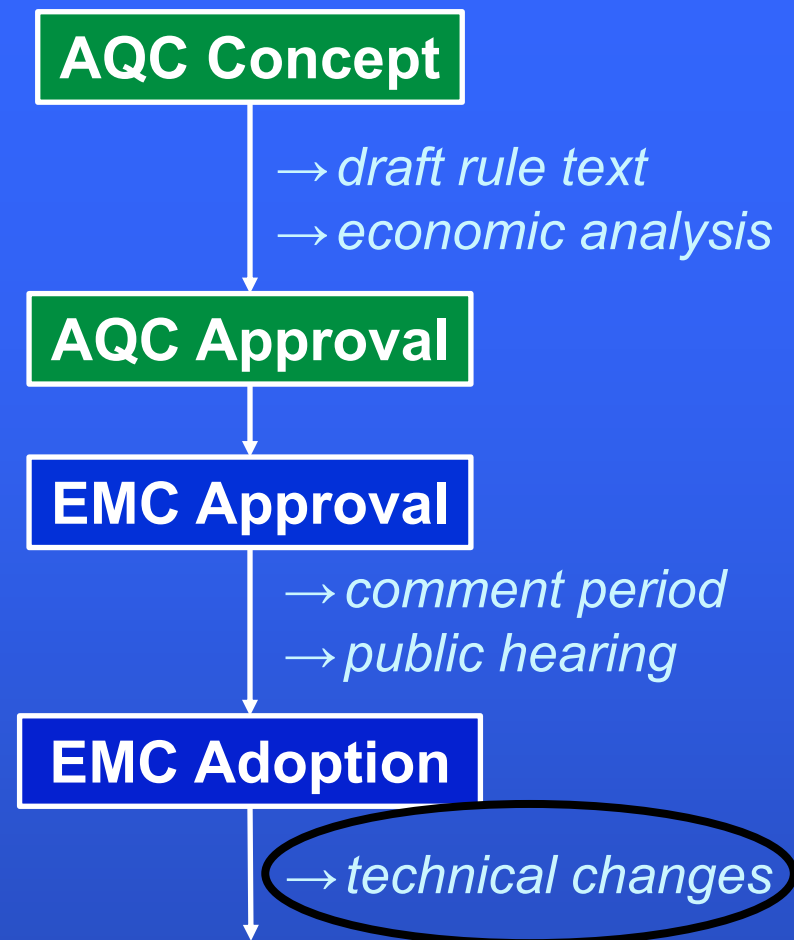
\*the 2/3 and unanimous vote requirements are new per the 2025 Regulations from the Executive In Need of Scrutiny (REINS) Act.





# Address RRC Technical Changes

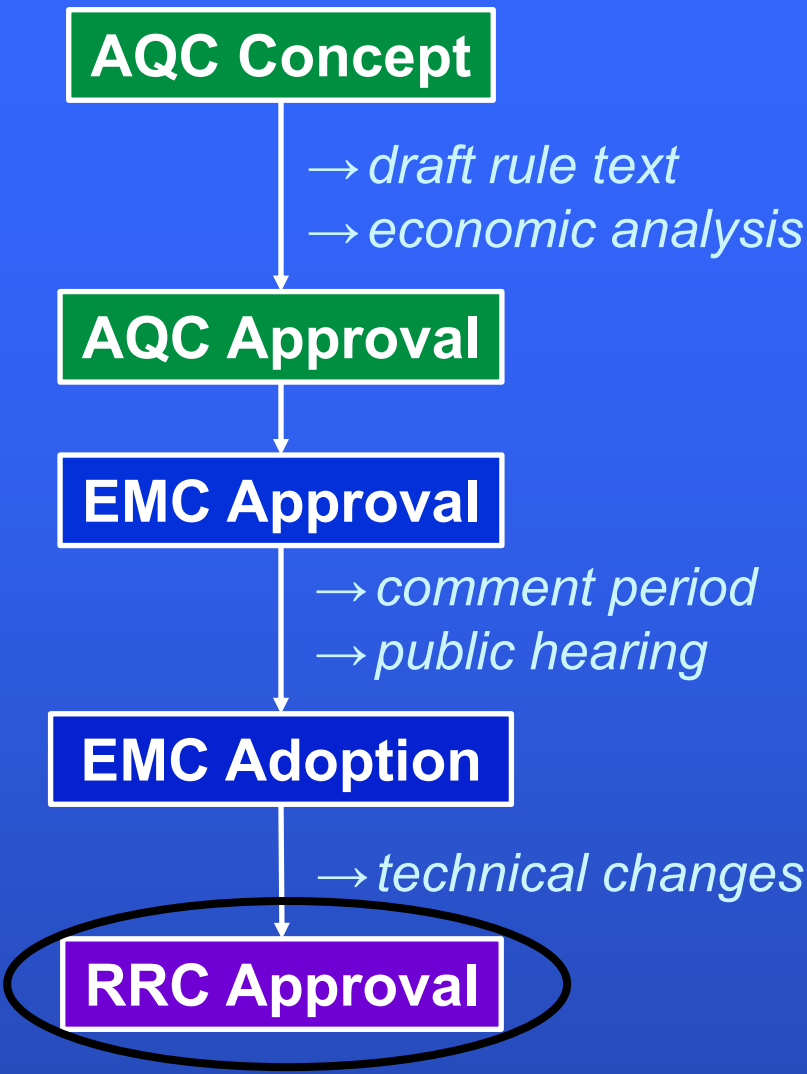
- The RRC Staff Attorney reviews the text of each rule and requests any technical changes needed to make the rule approvable.
- The scope of the RRC's review is limited to the criteria set forth in G.S. § 150B-21.9(a):
  - (1) The rule is within the authority delegated to the agency by the General Assembly.
  - (2) The rule is clear and unambiguous.
  - (3) The rule is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency.
  - (4) The rule was adopted in accordance with the APA.
- The RRC cannot consider questions related to the quality or efficacy of the rule.



# 9 RRC Approval

After the RRC staff attorney's technical change requests have been resolved, the RRC staff attorney makes a recommendation to the RRC at their next meeting.

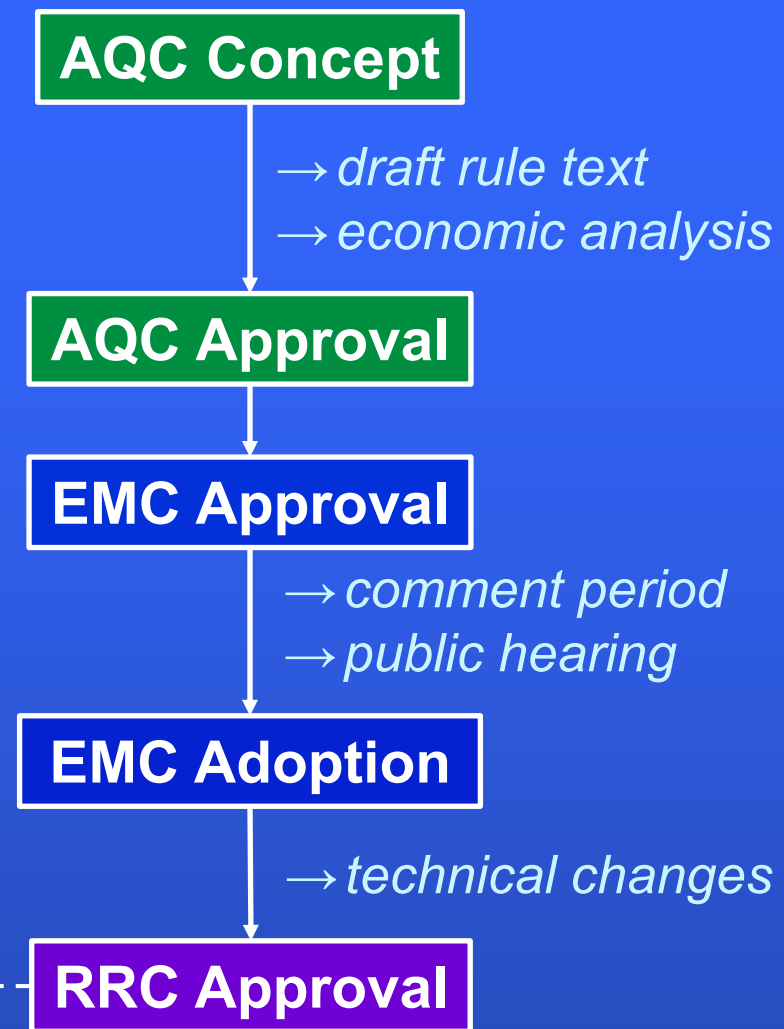
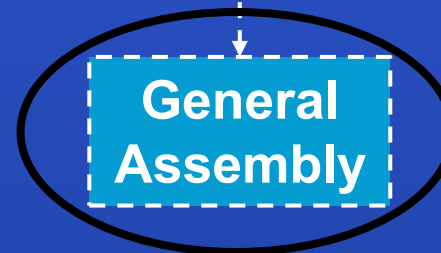
The RRC considers and votes on the rules based on the recommendation of the RRC Staff Attorney.



# 10 **Legislative Approval (if required)**

Circumstances when the rules must be approved by the NC General Assembly before becoming effective:

- If OAH receives  $\geq 10$  letters of objection on the rules;
- If specifically required by law for this rulemaking; or
- If aggregate financial cost  $\geq$  \$20 million during any five-year period (per 2025 REINS Act).
  - Except for rules required by federal law, including rules necessary to maintain compliance with a program delegated to the State from a federal agency.
- REINS Act, Session Law 2025-82:  
<https://www.ncleg.gov/Sessions/2025/Bills/House/PDF/H402v6.pdf>

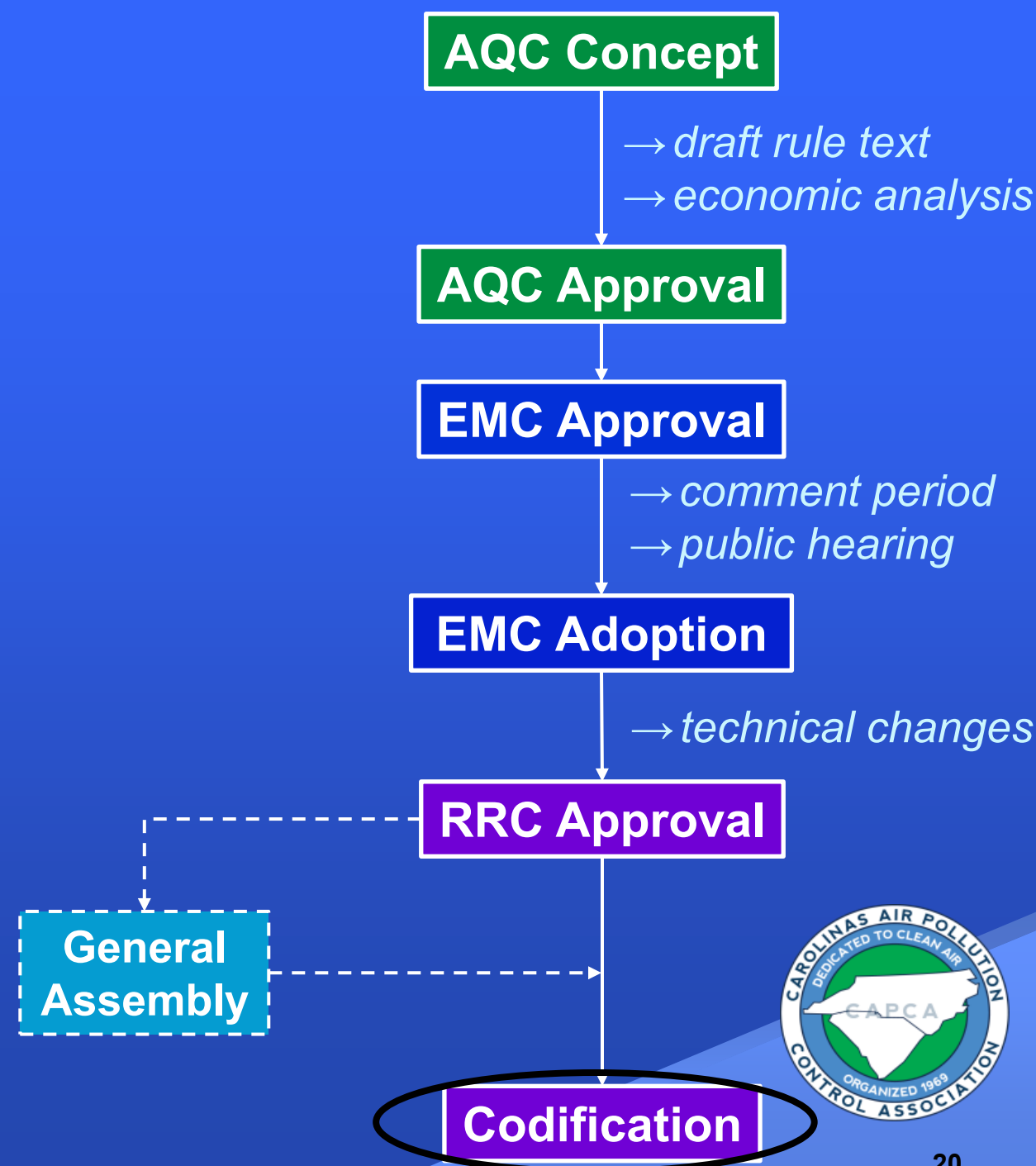


# 11 Codification

If approval by the General Assembly is not required, the rule is entered into the NCAC and becomes state-effective on the first of the month following approval by the RRC.

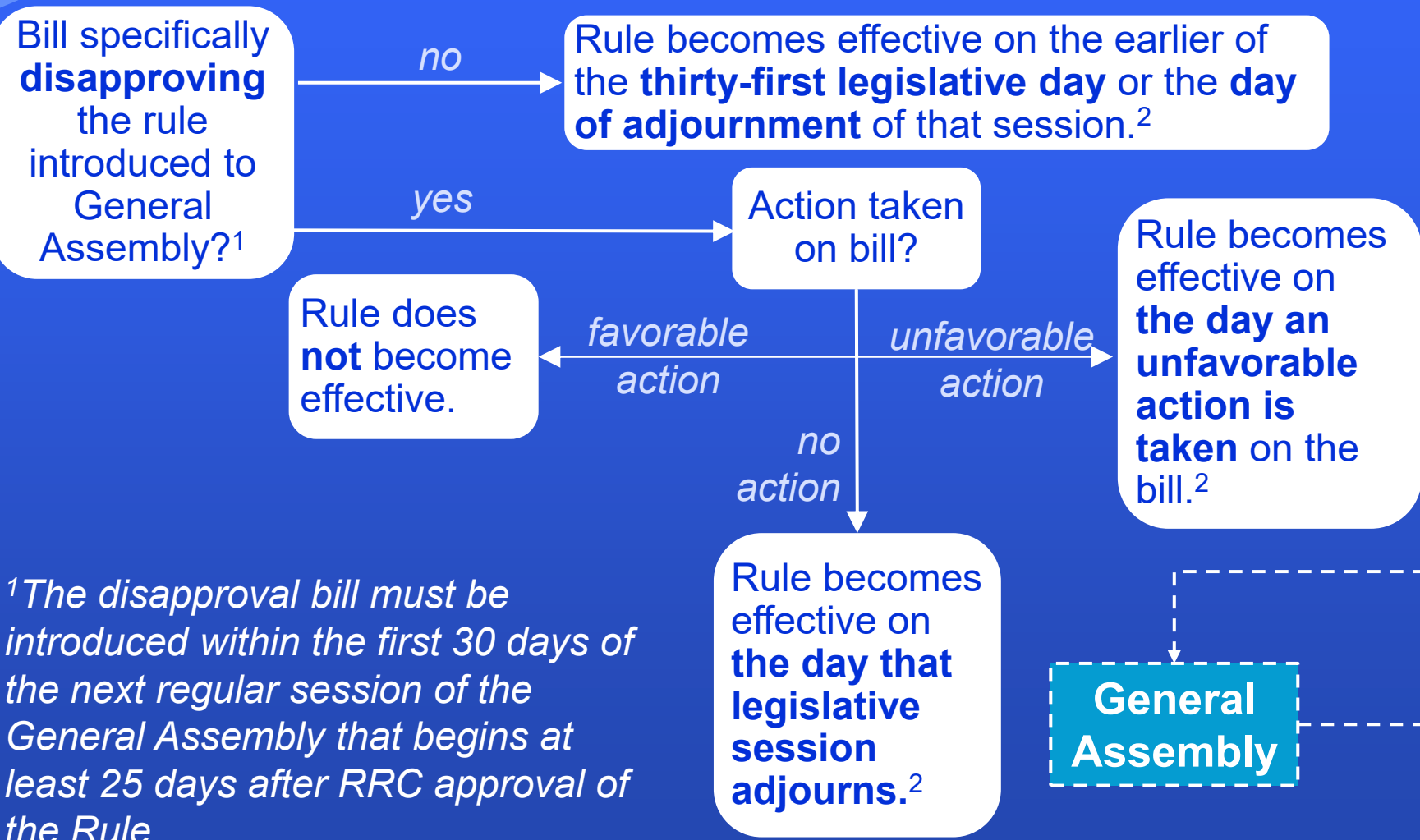
If approval by the General Assembly is required due to REINS Act, the rule is entered into the NCAC and becomes state-effective on the later of:

- the first of the month following the effective date of the bill ratifying the rule; or
- the date specified by the agency adopting the rule (i.e., the EMC).



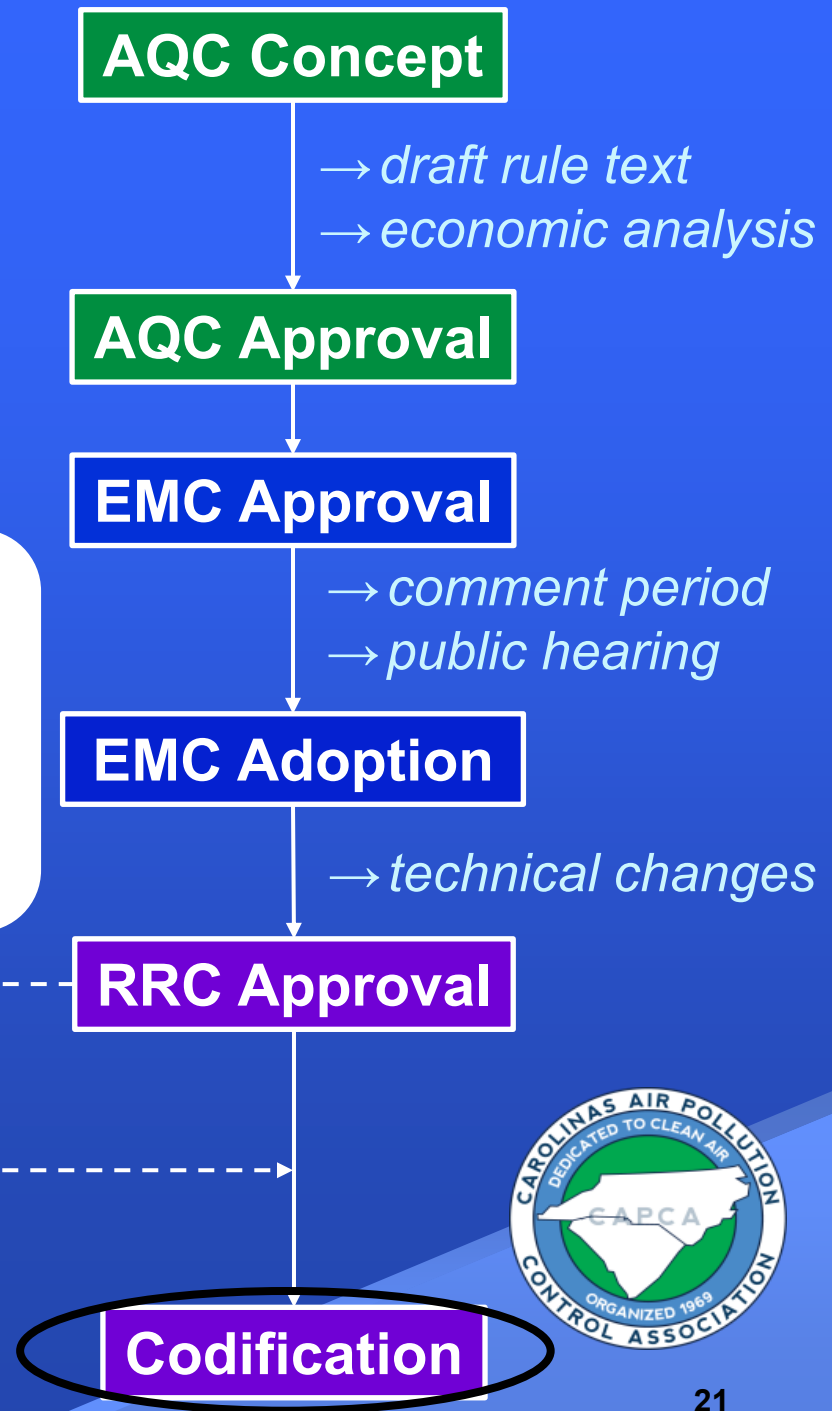
# 11 Codification

When General Assembly approval is required due to 10 letters of objection, the rule becomes state-effective as follows:



<sup>1</sup>The disapproval bill must be introduced within the first 30 days of the next regular session of the General Assembly that begins at least 25 days after RRC approval of the Rule.

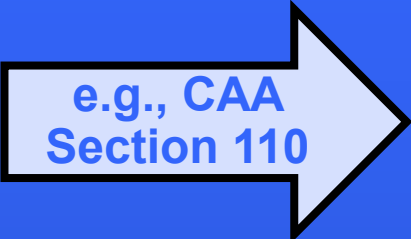
<sup>2</sup> If an agency specifies a later effective date, the later date applies.



# 12 *EPA Approval (as necessary)*

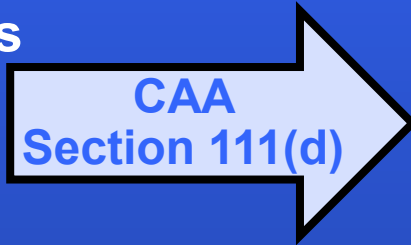
Applies when:

The rule is part of North Carolina's EPA-approved SIP;



DAQ requests EPA approval of the new or amended rule into the SIP.  
If a requirement is relaxed, the request may need a CAA 110(I) noninterference demonstration.

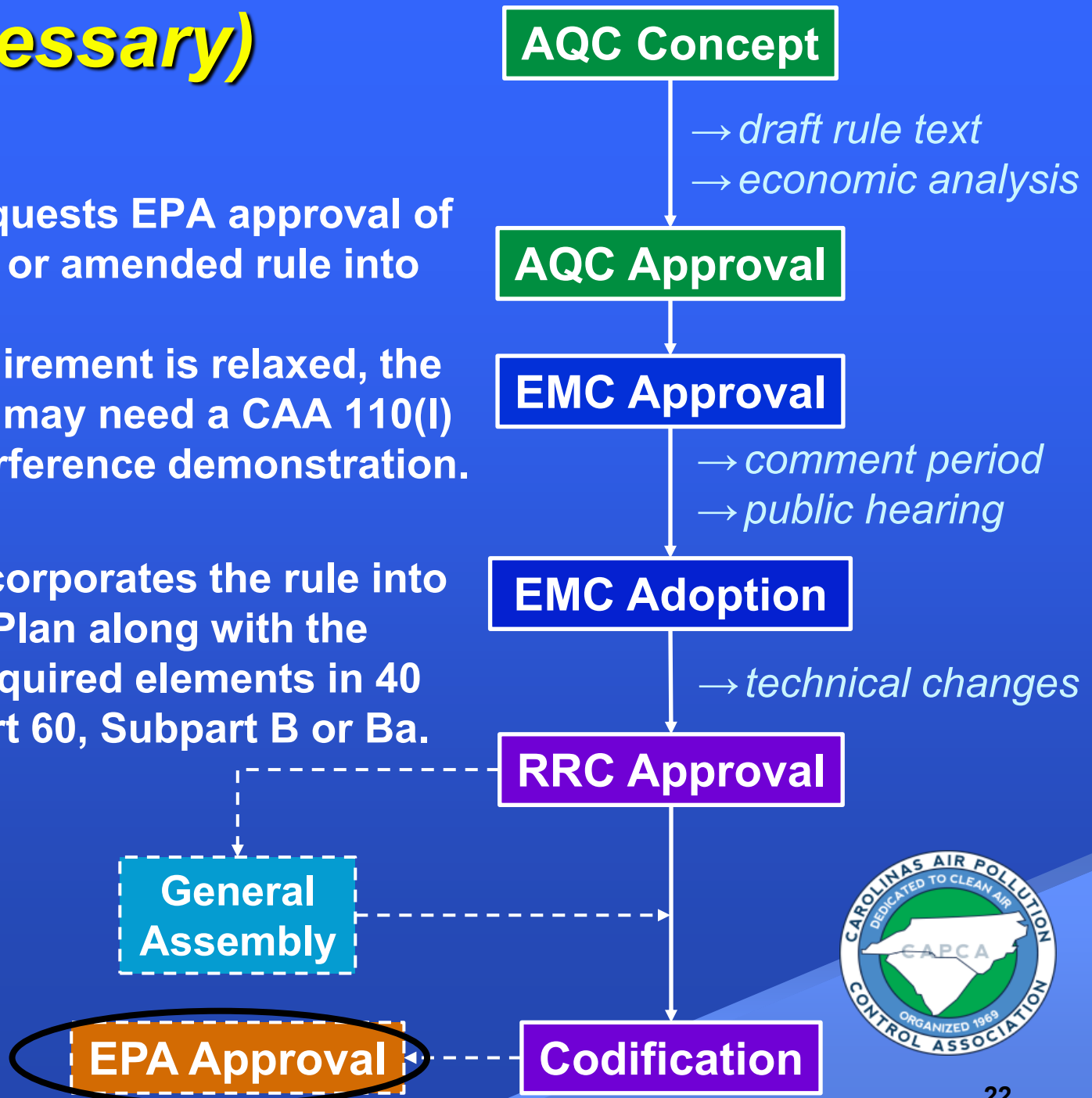
The rule implements an EPA Emission Guideline;



DAQ incorporates the rule into a State Plan along with the other required elements in 40 CFR Part 60, Subpart B or Ba.

or

If a specific state law requires the rule to be EPA-approved before becoming effective.



# Rule Readoption

- G.S. 150B-21.3A (House Bill 74, Session Law 2013-413) requires state agencies in North Carolina to readopt all rules every 10 years.
- Each readoption process consists of two “phases”:
  - Phase 1: Adopt and file Agency Determination Reports that designate each rule as either “necessary” or “unnecessary”.
  - Phase 2: Readopt all “necessary” rules. (“unnecessary” rules expire when the Determination Reports become final).
- Rules can also be amended or repealed during readoption.

<https://www.deq.nc.gov/about/divisions/air-quality/air-quality-planning/air-quality-rules-regulations/periodic-review-existing-rules>





# Rule Readoption

- **First round of readoption for the air quality rules in 15A NCAC 02D and 02Q:**
  - The Determination Reports were completed and filed in 2015.
  - Readoption of the “necessary” rules took place from 2016-2020.
  - The rules were divided into six “groups”, and each group was facilitated through the rulemaking process.
- **The second round of readoption began in 2025.**
  - The Determination Reports were approved by the EMC in September and are scheduled to be reviewed by the RRC at its December meeting.
  - The reports become final after review by the Administrative Procedures Oversight (APO) Committee of the General Assembly (estimated early 2026).
  - After the Reports are finalized, the schedule for readopting the “necessary” air quality rules will be established.





# Contact Information

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