

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Radiation Protection Commission

RULE CITATION: 10A NCAC 15 .0323

**DEADLINE FOR RECEIPT: April 14, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On p.2, line 14, what distinguishes “industrial radiographic operations” from other kinds of radiographic operations? Is this phrase defined?*

*On p.2, lines 21 and 22, the sentence “The instructions for completing the application printed on the application form shall be followed.” is problematic. As written, this would allow the agency to circumvent rulemaking by updating the instructions on the form with substantive requirements. To the extent there are substantive requirements to filling out the form, those requirements or the form itself must go through rulemaking. See G.S. 150B-2(8a)d.*

*On p.3, lines 5 and 6, the sentence “The instructions for completing the application printed on the application form shall be followed.” is problematic. As written, this would allow the agency to circumvent rulemaking by updating the instructions on the form with substantive requirements. To the extent there are substantive requirements to filling out the form, those requirements or the form itself must go through rulemaking. See G.S. 150B-2(8a)d.*

*On p. 3, lines 32 and 33, paragraph (e) is ambiguous. As written, it would allow for requests for exemption for any reason. If the agency means the application for exemption in 10 CFR 34.111, consider “Requests for exemption [~~from the requirements of 10 CFR 34]~~ under 10 CFR 34.111”.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher  
Commission Counsel  
Date submitted to agency: 3/30/2023

1 10A NCAC 15 .0323 is readopted as published in 37:08 NCR 633-639 as follows:

2  
3 **10A NCAC 15 .0323      SPECIFIC LICENSES: SEALED SOURCES IN INDUSTRIAL RADIOGRAPHY:**  
4 **RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR**  
5 **INDUSTRIAL RADIOGRAPHIC OPERATIONS**

6 In addition to the requirements set forth in Rule .0317 of this Section, a specific license for use of sealed sources in  
7 industrial radiography shall be issued if:

- 8       (1) ~~The applicant has a program for training radiographers and radiographers' assistants to meet the~~  
9            ~~requirements of this Rule and Rule .0510 of this Chapter and submits to the agency a schedule or~~  
10           ~~description of such program which specifies the:~~
- 11           (a) ~~initial training;~~  
12           (b) ~~periodic training;~~  
13           (c) ~~on the job training;~~  
14           (d) ~~means to be used by the licensee to determine the radiographer's knowledge and~~  
15               ~~understanding of and ability to comply with agency regulations and licensing requirements,~~  
16               ~~and the operating and emergency procedures of the applicant; and~~  
17           (e) ~~means to be used by the licensee to determine the radiographer's assistant's knowledge and~~  
18               ~~understanding of and ability to comply with the operating and emergency procedures of~~  
19               ~~the applicant;~~
- 20       (2) ~~The applicant has established and submits to the agency satisfactory written operating and~~  
21           ~~emergency procedures described in Rule .0513 of this Chapter;~~
- 22       (3) ~~The applicant has established and submits to the agency a description of its inspection program~~  
23           ~~which is adequate to ensure that each radiographer and radiographer assistant follows the rules in~~  
24           ~~this Chapter and the applicant's operating and emergency procedures.~~
- 25       (4) ~~The inspection program described in the applicant's procedures shall include:~~
- 26           (a) ~~observation of the performance of each radiographer and radiographer's assistant during an~~  
27               ~~actual industrial radiographic operation at the intervals not to exceed six months; provided~~  
28               ~~that, if a radiographer or a radiographer's assistant has not participated in a radiographic~~  
29               ~~operation for more than six months since the last inspection, that individual's performance~~  
30               ~~must be observed and recorded by a practical examination before the individual participates~~  
31               ~~in a radiographic operation;~~
- 32           (b) ~~in those operations where a single individual serves as both radiographer and Radiation~~  
33               ~~Safety Officer, and performs all radiography operations, an inspection program is not~~  
34               ~~required; and~~
- 35           (c) ~~the retention of inspection records on the performance of radiographers or radiographers'~~  
36               ~~assistants for three years;~~

1 ~~(5) The applicant submits to the agency a description of his overall organizational structure pertaining~~  
 2 ~~to the industrial radiography program, including specified delegations of authority and responsibility~~  
 3 ~~for operation of the program;~~

4 ~~(6) The applicant who desires to conduct his own leak tests has established procedures to be followed~~  
 5 ~~in leak testing sealed sources for possible leakage and contamination sufficient to detect 0.005~~  
 6 ~~microcuries of removable contamination on the source, and submits to the agency a description of~~  
 7 ~~the procedures, including:~~

8 ~~(a) instrumentation to be used;~~

9 ~~(b) method of performing tests, e.g., points on equipment to be tested and method of taking~~  
 10 ~~tests; and~~

11 ~~(c) pertinent experience of the person who will perform the test; and~~

12 ~~(7) The licensee conducts a program for inspection and maintenance of radiographic exposure devices~~  
 13 ~~and storage containers to assure proper functioning of components important to safety.~~

14 (a) Persons conducting industrial radiographic operations using radioactive materials shall comply with the  
 15 requirements of 10 CFR 34, which are hereby incorporated by reference including subsequent amendments and  
 16 editions, except for: 10 CFR 34.5, 34.8, 34.121, and 34.123.

17 (b) Applications required by 10 CFR 34.11 shall be made on forms provided by the agency. Applications and  
 18 supporting material shall be submitted to the agency at the address shown in Rule .0111 of this Chapter in lieu of the  
 19 NRC:

20 (1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive  
 21 materials licenses, shall submit an Application for Radioactive Materials License. The instructions  
 22 for completing the application printed on the application form shall be followed. The following  
 23 information shall appear on the application:

24 (A) legal business name and mailing address;

25 (B) physical address(es) where radioactive material shall be used or possessed. The application  
 26 shall indicate if radioactive materials shall be used at temporary jobsites;

27 (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;

28 (D) the name, telephone number, and e-mail address of the individual to be contacted about the  
 29 application. If this individual is same as the Radiation Safety Officer, the application may  
 30 so state;

31 (E) the application shall indicate if the application is for a new license, or for the renewal of an  
 32 existing license, by marking the corresponding check box;

33 (F) if the application is for the renewal of an existing license, the license number shall be  
 34 provided on the application;

35 (G) applicants shall indicate the type and category of license as shown on the form by marking  
 36 the corresponding check box; and

1           (H) the printed name, title, and signature of the certifying official. The certifying official shall  
 2           be an individual employed by the business or licensee, who is authorized by the licensee  
 3           to sign license applications on behalf of the business or licensee.

4           (2) Persons applying for an amendment to an existing license shall submit an Application for  
 5           Amendment of Radioactive Materials and Accelerator Licenses. The instructions for completing the  
 6           application printed on the application form shall be followed. The following information shall  
 7           appear on the application:

8           (A) the license number;

9           (B) amendment number of the current license;

10          (C) expiration date of the license;

11          (D) licensee name as it currently appears on the license;

12          (E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

13          (F) the name, telephone number, and e-mail address of the individual to be contacted about the  
 14          application. If this individual is same as the Radiation Safety Officer, item 5b on the  
 15          application may be left blank;

16          (G) applicants shall provide a description of the action requested by marking the corresponding  
 17          checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief  
 18          description of the action requested in the space provided in item 6b;

19          (H) explanation of the action requested; and

20          (I) the printed name, title, and signature of the certifying official. The certifying official shall  
 21          be an individual employed by the business or licensee who is authorized by the licensee to  
 22          sign license applications on behalf of the business or licensee.

23          (3) Applications specified in this Rule are available at:  
 24          [www.ncradiation.net/rms/rmsforms2.htm\(Rev01\).htm](http://www.ncradiation.net/rms/rmsforms2.htm(Rev01).htm)

25          (c) Reports of leaking sealed sources required by 10 CFR 34.27 shall be made to the agency at the address shown in  
 26          Rule .0111 of this Chapter in lieu of the NRC.

27          (d) Notifications required by 10 CFR 34.101, including notifications of source disconnects, shall be made to the  
 28          agency at the address shown in Rule .0111 of this Chapter in lieu of the NRC. In addition to the information required  
 29          by 10 CFR 34.101(b), notifications of devices with failed or worn through S-tubes shall contain the serial number and  
 30          storage location of the device, whether the device has been disposed of or returned to the manufacturer, and whether  
 31          personnel contamination occurred.

32          (e) Requests for exemption from the requirements of 10 CFR 34, incorporated by reference in this Rule, shall be made  
 33          to the agency as specified in Paragraph (b) of this Rule.

34  
 35          *History Note: Authority G.S. 104E-7; 104E-10(b);*  
 36                    *Eff. February 1, 1980;*  
 37                    *Amended Eff. April 1, 1999; June 1, 1989;*

1                    *Transferred and Recodified from 15A NCAC 11 .0323 Eff. February 1, ~~2015~~ 2015;*  
2                    *Readopted Eff. May 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Radiation Protection Commission

RULE CITATION: 10A NCAC 15 .1203

**DEADLINE FOR RECEIPT: April 14, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Regarding (a)(2) (lines 16 and 17), what is the agencies authority to grant this authorization outside of the licensure procedures described by rule?*

*On line 30, what is meant by “temporary or emergency basis”? Is that defined somewhere?*

*What is the authority for the agency to access and inspect “in its discretion” (line 30)? G.S. 104E-11 gives broad authority to enter for “the purpose of determining compliance” which is a different standard.*

*On p.2, lines 14 and 15, “at the discretion of the agency for any reason” is vague and seems like it would exceed the agency’s authority. Does the agency mean something like “for failure to comply with rule or statute”? This may also require rewording the examples in the rule.*

*On p. 2, line 23, the rule as written allows that agency to inspect the licenses themselves. Does the agency mean something like “Facilities licenses by the agency may be inspected. . .”*

*On p. 2, lines 31 and 32, the sentence “The instructions for completing the application printed on the application form shall be followed.” is problematic. As written, this would allow the agency to circumvent rulemaking by updating the instructions on the form with substantive requirements. To the extent there are substantive requirements to filling out the form, those requirements or the form itself must go through rulemaking. See G.S. 150B-2(8a)d.*

*On p. 3, lines 14 and 15, the sentence “The instructions for completing the application printed on the application form shall be followed.” is problematic. As written, this would allow the agency to circumvent rulemaking by updating the instructions on the form with substantive requirements. To the extent there are substantive requirements*

Seth Ascher  
Commission Counsel

Date submitted to agency: 3/30/2023

*to filling out the form, those requirements or the form itself must go through rulemaking. See G.S. 150B-2(8a)d.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher  
Commission Counsel  
Date submitted to agency: 3/30/2023

1 10A NCAC 15 .1203 is readopted with changes as published in 37:08 NCR 633-639 as follows:

2  
3 **10A NCAC 15 .1203 LICENSE ~~REQUIRED~~ **REQUIRED: LAND DISPOSAL OF LOW-LEVEL****  
4 **RADIOACTIVE WASTE**

5 ~~(a) No person may receive, possess, and dispose of waste from other persons at a land disposal facility unless~~  
6 ~~authorized by a license issued by the agency pursuant to the rules in this Section and the rules in Section .0300 of this~~  
7 ~~Chapter.~~

8 ~~(b) Each person shall file an application with the agency pursuant to Rule .0317 of this Chapter and obtain a license~~  
9 ~~as provided in this Section before commencement of construction of a land disposal facility. Failure to comply with~~  
10 ~~this requirement may be grounds for denial of a license.~~

11 (a) This Rule establishes the procedures, standards, criteria, and terms and conditions upon which the Department  
12 issues licenses authorizing land disposal of low-level radioactive waste received from other persons for disposal.

13 (1) No person may receive, possess, and dispose of low-level radioactive waste at a land disposal facility  
14 located in North Carolina unless authorized by a license issued by the Department pursuant to this  
15 Rule.

16 (2) No low-level radioactive waste shall be received from any source not licensed by the agency except  
17 as may be specifically authorized in writing by the agency.

18 (3) The regulations in 10 CFR 61 which are hereby incorporated by reference, including subsequent  
19 amendments and editions, except that 10 CFR 61.5, 61.8, 61.16, 61.23(i) and (j), 61.83, and 61.84  
20 are not incorporated by reference. Communications, records, reports, and notifications required by  
21 10 CFR 61.4 and 61.80 shall be submitted to the agency at the address shown in Rule .0111 of this  
22 Chapter in lieu of the NRC.

23 (4) The requirements found in G.S. 104E-6.1, 104E-10.1(a), (a1), and (b), 104E-10.2, 104E-25(a), (c)  
24 through (h), and (j) shall be met.

25 (5) In addition to the definitions found in 10 CFR 61.2, the definitions in G.S. 104E-5 shall apply.  
26 [Where terms are defined by both the regulations and the General Statutes, the definition in the  
27 General Statutes shall prevail, except as stated by G.S. 104E-5. apply to the General Statutes cited  
28 in this Rule.]

29 (6) The agency may access and inspect any licensed low-level radioactive waste disposal facility on a  
30 temporary or emergency basis in its discretion.

31 (b) This Rule establishes the procedures, criteria, and terms and conditions upon which the agency issues licenses  
32 authorizing access to low-level radioactive waste land disposal facilities licensed under Paragraph (a) of this Rule.

33 (1) No person shall transport or transfer waste to a low-level radioactive waste land disposal facility  
34 licensed under Paragraph (a) of this Rule unless licensed by the agency or otherwise specifically  
35 authorized in writing by the agency.

36 (2) The definitions of terms in G.S. 104E-5 shall apply.



1       (3) Generators, waste brokers, and waste processors of low-level radioactive waste shall develop  
2       procedures and implement practices to prevent, minimize, and reduce the generation of low-level  
3       radioactive waste, including segregating radioactive waste by half-life and holding low-level  
4       radioactive waste for decay in storage.

5       (4) Upon receipt of an application for a license authorizing access to low-level radioactive waste land  
6       disposal facilities licensed under Paragraph (a) of this Rule, the agency shall review the contents of  
7       the application and determine if the applicant's facilities, staffing, equipment, and procedures are  
8       adequate to protect the health and safety of the public and occupationally exposed workers, and if  
9       the requirements in Subparagraph (b)(3) of this Rule are met. If the agency determines that the  
10       applicant's facilities, staffing, equipment, and procedures are adequate to protect the health and  
11       safety of the public and occupationally exposed workers, and that the applicant's procedures and  
12       practices prevent, minimize and reduce the generation of low-level radioactive waste, the agency  
13       shall issue a license as described in this Rule.

14       (5) Licenses issued under this Rule are subject to suspension or revocation at the discretion of the  
15       agency for any reason, including, but not limited to:

16       (A) Deliberate misconduct by any employee or agent acting on behalf of the licensee that  
17       causes, or would have caused if not detected, a licensee to be in violation of any rule; or  
18       any term, condition, or limitation of any license issued by the agency.

19       (B) Deliberately submitting information that the person submitting the information knows to  
20       be incomplete or inaccurate on any shipping manifest used for the transportation of low-  
21       level radioactive waste for disposal at a facility licensed under Paragraph (a) of this Rule.

22       (C) Failure to pay license fees as instructed on an invoice issued by the agency.

23       (6) Licenses issued by the agency may be inspected by authorized representatives of the Department as  
24       permitted by G.S. 104E-11(a). For licenses issued to licensees located outside of the jurisdiction of  
25       the Department, the Department may delegate this authority to individuals representing the radiation  
26       control programs within those jurisdictions.

27       (c) Applications required by this Rule shall be made on forms provided by the agency, and the payment of fees  
28       required by 10 CFR 61.20(c) shall not apply. Applications and supporting material shall be submitted to the agency  
29       at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

30       (1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive  
31       materials licenses, shall submit an Application for Radioactive Materials License. The instructions  
32       for completing the application printed on the application form shall be followed. The following  
33       information shall appear on the application:

34       (A) legal business name and mailing address;

35       (B) physical address(es) where radioactive material shall be used or possessed. The application  
36       shall indicate if radioactive materials shall be used at temporary jobsites;

37       (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;

1           (D) the name, telephone number, and e-mail address of the individual to be contacted about the  
2           application. If this individual is same as the Radiation Safety Officer, the application may  
3           so state;

4           (E) the application shall indicate if the application is for a new license, or for the renewal of an  
5           existing license, by marking the corresponding check box;

6           (F) if the application is for the renewal of an existing license, the license number shall be  
7           provided on the application;

8           (G) applicants shall indicate the type and category of license as shown on the form by marking  
9           the corresponding check box; and

10          (H) the printed name, title, and signature of the certifying official. The certifying official shall  
11          be an individual employed by the business or licensee, who is authorized by the licensee  
12          to sign license applications on behalf of the business or licensee.

13          (2) Persons applying for an amendment to an existing license shall submit an Application for  
14          Amendment of Radioactive Materials and Accelerator Licenses. The instructions for completing the  
15          application printed on the application form shall be followed. The following information shall  
16          appear on the application:

17           (A) the license number;

18           (B) amendment number of the current license;

19           (C) expiration date of the license;

20           (D) licensee name as it currently appears on the license;

21           (E) the name, telephone number, and e-mail address of the Radiation Safety Officer;

22           (F) the name, telephone number, and e-mail address of the individual to be contacted about the  
23           application. If this individual is same as the Radiation Safety Officer, item 5b on the  
24           application may be left blank;

25           (G) applicants shall provide a description of the action requested by marking the corresponding  
26           checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief  
27           description of the action requested in the space provided in item 6b;

28           (H) explanation of the action requested; and

29           (I) the printed name, title, and signature of the certifying official. The certifying official shall  
30           be an individual employed by the business or licensee who is authorized by the licensee to  
31           sign license applications on behalf of the business or licensee.

32          (3) Application forms specified in this Rule shall be made available by the agency on the agency's  
33          public website.

34          (d) Nothing in this Rule shall relieve any person of responsibility for complying with other applicable North Carolina  
35          laws and rules.

36

1 *History Note:* Authority G.S. 104E-5; 104E-6.1; 104E-7;104E-10(b); 104E-10.1; 104E-10.2; 104E-10.3; 104E-  
2 11; 104E-18; 104E-25; 104E-26; 104E-27;  
3 *Eff. December 1, 1987;*  
4 *Amended Eff. May 1, 1993;*  
5 *Transferred and Recodified from 15A NCAC 11 .1203 Eff. February 1, ~~2015~~. 2015;*  
6 *Readopted Eff. May 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Radiation Protections Commission

RULE CITATION: 10A NCAC 15 .1701

**DEADLINE FOR RECEIPT: April 14, 2023**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*On line 7, "except as follows" is ambiguous. Consider "except the following sections are not incorporated."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher  
Commission Counsel  
Date submitted to agency: 3/30/2023

1 10A NCAC 15 .1701 is amended with changes as published in 37:08 NCR 633-639 as follows:

2  
3 **10A NCAC 15 .1701      ADDITIONAL REQUIREMENTS FOR LICENSEES POSSESSING CATEGORY**  
4 **1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL**

5 (a) Licensees possessing an aggregate category 1 or category 2 quantity of radioactive material, as defined in 10 CFR  
6 37.5, shall comply with the requirements for the physical protection program listed in 10 CFR Part 37, which is hereby  
7 incorporated by reference, including any subsequent amendments and editions, except as follows:

- 8           (1)     10 CFR 37.1;  
9           (2)     10 CFR 37.3;  
10          (3)     10 CFR 37.7;  
11          (4)     10 CFR 37.9;  
12          (5)     10 CFR 37.11(a) and (b);  
13          (6)     10 CFR 37.13;  
14          (7) ~~10 CFR 37.71;~~  
15          (8) ~~10 CFR 37.77(f);~~  
16          (9)(7)  10 CFR 37.105;  
17          (10)(8) 10 CFR 37.107; and  
18          (11)(9) 10 CFR 37.109.

19 ~~(b) In lieu of the address given in 10 CFR 37.27(e), licensees shall submit fingerprint cards or records to Director,~~  
20 ~~Division of Facilities and Security, U.S. NRC, 11545 Rockville Pike, Rockville, Maryland 20852 2738, ATTN:~~  
21 ~~Criminal History Program, Mail Stop T 03B46M.~~

22 ~~(e)(b)~~ Licensee required reports of events or notifications in 10 CFR **37.23(b)(2)**, 37.41, 37.45, 37.57, 37.77(a)  
23 through (d), **37.81**, **and 37.81** shall use the Agency contact information in Rule .0111 of this Chapter.

24 ~~(d) A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the U.S. Nuclear~~  
25 ~~Regulatory Commission (NRC) or to an Agreement State of the NRC shall meet the license verification provisions~~  
26 ~~listed in Rule .0343 of this Chapter.~~

27 ~~(e)(c)~~ The Code of Federal Regulations incorporated by this Rule ~~may be obtained from the U.S. Government~~  
28 ~~Publishing Office, P.O. Box 979050 St. Louis, MO 63197 9000 for sixty four dollars (\$64.00), and are available free~~  
29 ~~of charge at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>. [https://www.ecfr.gov/current/title-10/chapter-I/part-](https://www.ecfr.gov/current/title-10/chapter-I/part-37)~~  
30 ~~[37](http://www.ecfr.gov/cgi-bin/ECFR?page=browse).~~

31  
32 *History Note:     Authority G.S. 104E-7;*  
33 *Eff. June 1, 2016- 2016;*  
34 *Amended Eff. May 1, 2023.*