

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0529

DEADLINE FOR RECEIPT: December 10, 2024.

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:

S.L. 2023-134, that requires the creation of this Rule, refers to the type of research and development activities in this Rule as “non-major” rather than “insignificant”. Please consider making that change in the Rule name.

In line 5, consider replacing “means” with “includes”.

In line 7, where is “adverse environmental impact” defined? Please cross-reference a citation to where the definition you intend is located.

In lines 7-8, how does the regulated public determine whether the activities “contribute to the production of an intermediate or final product for sale or exchange for commercial profit”? How would the regulated public know if the R & D activities are going to help create a product used for commercial profit at the time the activities were conducted?

In line 8, does the use of “and” after the semicolon mean both (1) and (2) must be applicable to constitute “R&D activities”? Or was it your intention that either (1) or (2) can be considered “R&D activities”?

In (2), line 9, what is the definition of “close supervision” and where can it be found?

In line 10, what is the definition of “technically trained personnel” and where can it be found? What standards or criteria are used to determine if personnel are “technically trained”? Also, add a comma after “personnel”.

In line 10, “primary purpose” is unclear and ambiguous. What standards or criteria are used to determine if a purpose is the “primary purpose”?

In line 11, add a comma after “products”. Also, in lines 11-12, how would the regulated public know if the R & D activities are going to help create a “new” product used for commercial profit at the time the activities were conducted?

In (b), line 13, please delete “Notwithstanding” as it’s vague and unnecessary. Also, why is all of line 13 through “.0503(8)” necessary? It seems to make (b) more unclear.

In line 14, does “meet the definition in Paragraph (a)” mean both (1) and (2) must apply for Paragraph (b) to be applicable?

In line 14, where is the definition of “major facility” located? Please cross-reference the definition for clarity.

In (b), are you mandating that the regulated public ignore Rule 15A NCAC 02Q .0503(8) for Paragraph (b) to apply? It’s unclear to me if you’re trying to create an exception to Rule 15A NCAC 02Q .0503(8). Please consider rephrasing Paragraph (b) or amending Rule 15A NCAC 02Q .0503(8) to make it clear if your intent is to create an exception.

In lines 15-16, add “following” before “requirements” and delete “of this Paragraph”.

In (1), line 17, where is the “applicable emissions standard” found? Please provide a citation for clarity.

In line 19, add a comma after “monoxide”. Also, consider adding “are utilized” after “devices”.

In (4), line 23, how are “Potential emissions” determined? What are the processes or standards used to make this determination?

In line 24, please incorporate “40 CFR 70.2” by reference in accordance with 150B-21.6.

In (c), line 25, the Rule you cited doesn’t refer to a “new major facility”. The Rule uses “new or existing source” instead. How is (c) pursuant to 15A NCAC 02Q .0507(b) if different language is used?

In lines 26-27, please delete “pursuant to Paragraph (b) of this Rule” as it’s unnecessary.

In line 29, what “Division” are you referring to?

In line 29, consider making “activity” plural.

In line 30, add a comma after “activities” and after “Rule”.

In line 30, delete “also”. How long shall the regulated public “keep records” to demonstrate compliance with this Rule?

In the History Note, add the S.L. 2023-134 (Section 12.11(d)) that directed the creation of this Rule.

Please email me a copy of the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications" that your agency used to draft this Rule.

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

1 15A NCAC 02Q .0529 is adopted as published in 39:01 NCR 35 as follows:

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3 **15A NCAC 02Q .0529 TITLE V INSIGNIFICANT RESEARCH AND DEVELOPMENT ACTIVITIES**

4 **EXEMPTION**

5 (a) For the purposes of this Rule, “research and development activities” or “R&D activities” means the following:

- 6 (1) activities conducted to test more efficient production processes or methods for preventing or
7 reducing adverse environmental impacts, provided that the activities do not include or contribute to
8 the production of an intermediate or final product for sale or exchange for commercial profit; and
9 (2) activities conducted at a research or laboratory facility that is operated under the close supervision
10 of technically trained personnel the primary purpose of which is to conduct research and
11 development into new processes and products and that is not engaged in or contributing to the
12 manufacture of products for sale or exchange for commercial profit.

13 (b) Notwithstanding the definition of "insignificant activities because of size or production rate" in 15A NCAC 02Q
14 .0503(8), R&D activities that meet the definition in Paragraph (a) of this Rule and are located at a major facility shall
15 qualify as an insignificant activity because of size or production rate if the R&D activities meet the requirements of
16 this Paragraph:

- 17 (1) Emissions from the R&D activities would not violate any applicable emissions standard;
18 (2) Actual emissions of particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds,
19 and carbon monoxide from the R&D activities, before air pollution control devices, are each no
20 more than five tons per year;
21 (3) Actual emissions of each hazardous air pollutant from the R&D activities, before air pollution
22 control devices, are below 1,000 pounds per year; and
23 (4) Potential emissions from the R&D activities are less than the major source emission thresholds
24 specified in 40 CFR 70.2.

25 (c) Pursuant to 15A NCAC 02Q .0507(b), the owner or operator of a new major facility shall include in the Title V
26 permit application R&D activities that qualify as an insignificant activity because of size or production rate pursuant
27 to Paragraph (b) of this Rule. For an existing major facility with new R&D activities that qualify as an insignificant
28 activity pursuant to Paragraph (b) of this Rule, the owner or operator shall provide notification of the R&D activities
29 to the Division no less than seven days prior to commencing the R&D activity. The owner or operator of insignificant
30 R&D activities pursuant to Paragraph (b) of this Rule shall also keep records demonstrating compliance with this Rule
31 and provide those records to the Division upon request.

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33 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*
34 *Eff. January 1, 2025.*
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