

Burgos, Alexander N

From: Pfeiffer, Nadine
Sent: Tuesday, April 18, 2023 11:04 AM
To: Ascher, Seth M
Cc: Albright, James; Burgos, Alexander N
Subject: Thursday's RRC meeting

Hi Seth,

Just to let you know for Thursday's meeting for the Radiation Protection rules in 10A NCAC 15, I will be in attendance at the meeting, however in case any of the Commissioners has a question about the substance of those rules, the subject matter expert for the rules, James Albright, will be attending the meeting via WebEx and will be available to answer any questions on the rules.

Nadine Pfeiffer

Rules Review Manager
Division of Health Service Regulation
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Burgos, Alexander N

Subject: FW: Submission of Permanent Rule Technical Changes - 10A NCAC 15
Attachments: Request for Changes RPC response to RRC Ch 15.docx; 10A NCAC 15 .0323.docx; 10A NCAC 15 .1203.docx; 10A NCAC 15 .1701.docx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, April 13, 2023 12:28 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: Submission of Permanent Rule Technical Changes - 10A NCAC 15

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>
Sent: Wednesday, April 12, 2023 2:26 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Subject: Submission of Permanent Rule Technical Changes - 10A NCAC 15

Good Afternoon Seth,
We were notified of the technical changes on March 30, 2023 pursuant to G.S. 150B-21.10 for the following rules: 10A NCAC 15 .0323, .1203, and .1701. In preparation for the April 20, 2023 RRC meeting, attached to this email you will find the amended text for those rules as requested in the "Request for Changes" document received. The Agency's responses to the concerns raised in the "Request for Changes" document may be seen in bold black font on the document.

Should you have any questions regarding the attachments, or should you have any follow up questions or concerns, please feel free to contact me.

Thank you,

Nadine Pfeiffer
Rules Review Manager
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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? **Radiographic operations can be interpreted to apply to non-industrial settings such as dentist offices (ex: dental x-ray) and diagnostic medicine (ex: cardiac imaging using radioactive drugs) where images of internal structures are made using radiation from sources of radiation, while “industrial radiographic operations” applies expressly to industrial uses of radioactive material for radiography. Although the term “industrial radiographic operations” is not defined in the Rule, it has a generally accepted and recognized meaning that specifically includes all activities authorized by 10 CFR 34, and excludes activities authorized by the other Parts of 10 CFR. The term has been replaced by the term “industrial radiography,” which is defined in 10 CFR 34.3 in response to this comment on page 2 line 14.***

*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. **Revised the citation on p. 2, line 17 that specified 10 CFR 34.11 to refer to 10 CFR 34 instead, to allow for applications in the general sense and not just those specified in 10 CFR 34.11. Added the agency’s email address in Paragraph (b) and removed the problematic sentence from Subparagraph (b)(1).***

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

Seth Ascher

Commission Counsel

Date submitted to agency: 3/30/2023

rulemaking. See G.S. 150B-2(8a)d. **Removed the problematic sentence from Subparagraph (b)(2).**

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”. **Noted and this suggestion is a good one for this rule and all the other rules we will be working on that have this kind of provision. Paragraph (e) revised as suggested.**

Please note: although not asked for in this document, we added the language for the cost of the federal regulations in Paragraph (a) of this rule to comply with G.S. 150B-21.6.

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

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

AGENCY: Radiation Protection Commission

RULE CITATION: 10A 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? G.S. 104E-7.(b) requires the General Assembly to authorize the issuance of a low-level radioactive waste (LLRW) land disposal facility license. The agency has no authority to grant authorization for the receipt, possession and disposal of LLRW from the public, or from a person for a fee, at a land disposal facility in North Carolina outside of the licensing process described by the Rule. A different standard applies to persons transporting or transferring waste to a LLRW land disposal facility licensed in the state, as stated in (a)(5) on pg. 1, lines 28 and 29, and (b)(1) on pg. 2, lines 20–22. The Radiation Protection Section is the Department’s delegated regulatory agency for the use of radioactive materials in the state and is authorized to grant authorization for persons to transport or transfer LLRW to a North Carolina LLRW land disposal facility licensee outside of the licensure procedures described by Rule .1203 by G.S. 104E-10.3. G.S. 104E-10.3 states, in part (underlining is mine): “No person shall send waste to a low-level radioactive waste facility unless licensed or otherwise authorized to do so by the Department. No low-level radioactive waste facility shall receive waste from any source not licensed by the Department except as may be otherwise specifically authorized by the Department.” The agency intends to invoke this authorization only if not granting access to the licensed facility will result in a greater radiation exposure risk to the public, occupationally exposed workers or the environment than granting access would. It is also highly likely that the agency would follow up this action with escalated enforcement.

On line 30, what is meant by “temporary or emergency basis”? Is that defined somewhere? No, it is not defined. This part of the Rule comes directly from the G.S. 104E-10.3 requirement that the (radiation protection) commission provide by regulation: “... for authorization for access to a low-level radioactive waste facility by the Department on a temporary or emergency

Seth Ascher

Commission Counsel

Date submitted to agency: 3/30/2023

basis.” The agency interprets this to mean that routine or non-routine inspections are permitted onsite on a ‘temporary basis,’ where the length of time spent onsite is not known ahead of time, is not intended to become permanent, and lasts only as long as is necessary to protect public health and safety; while ‘emergency basis’ falls more under the Department’s broader responsibilities codified in G.S. 104E-9.(a)(5) that authorizes the agency, as the Department’s delegated regulatory agency for the use of radioactive materials, to “...respond to any emergency which involves possible or actual release of radioactive material; and to perform or supervise decontamination and otherwise protect the public health and safety in any manner deemed necessary.”

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. The Rule has been revised to address the concerns raised in this comment by removing the phrase “in its discretion” in Subparagraph (a)(6), and substituting “to determine compliance with the Rules in this Chapter or to respond to any emergency which involves possible or actual release of radioactive material.” The authority for this comes from G.S. 104E-11 and 104E-9.(a)(5) respectively.

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. Rule .1203(b)(5) has been revised to limit the agency’s authority as suggested. The 3 examples in Parts (5)(A) through (C) become superfluous with the change in language and have been removed from 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. . .” Yes, the intent is to inspect facilities and licensed activities, not licenses. It should read “Facilities licensed by the agency and licensed activities may be inspected...as permitted by G.S. 104E-11(a).” This change has been made to the Rule.

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. Revised Paragraph (c) to add the agency’s email address. Removed the problematic sentence from Subparagraph (c)(1).

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

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

Please note: although not asked for in this document, we added the language for the cost of the federal regulations in Subparagraph (a)(3) of this rule to comply with G.S. 150B-21.6.

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

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." **Wording changed to say "except the following regulations are not incorporated" because these are regulations and not sections.***

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

1 10A NCAC 15 .0323 is readopted with changes 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] radiography using radioactive materials shall comply with
 15 the 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. Copies of these regulations are available free of charge
 17 at <https://www.nrc.gov/reading-rm/doc-collections/cfr/part034/>.

18 (b) Applications required by 10 CFR [34.11] 34 shall be made on forms provided by the agency. Applications and
 19 supporting material shall be submitted to the agency by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address
 20 shown in Rule .0111 of this Chapter in lieu of the NRC:

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

25 (A) legal business name and mailing address;

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

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

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

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

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

36 (G) applicants shall indicate the type and category of license as shown on the form by marking
 37 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
 6 the 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,] under 10
 33 CFR 34.111 shall be made 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.*

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. Copies of these regulations are available free of charge at
21 <https://www.nrc.gov/reading-rm/doc-collections/cfr/part061/>. Communications, records, reports,
22 and notifications required by 10 CFR 61.4 and 61.80 shall be submitted to the agency at the address
23 shown in Rule .0111 of this Chapter in lieu of the NRC.

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

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

30 (6) The agency may access and inspect any licensed low-level radioactive waste disposal facility on a
31 temporary or emergency basis [in its discretion] to determine compliance with the Rules in this
32 Chapter or to respond to any emergency which involves possible or actual release of radioactive
33 material.

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

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

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

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

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

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

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

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

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

27 for failure to comply with the Rules of this Chapter or in accordance with 10 CFR 61.9b(a) and (c).

28 (6) [Licenses issued] Facilities licensed by the agency and licensed activities may be inspected by
 29 authorized representatives of the Department as permitted by G.S. 104E-11(a). For licenses issued
 30 to licensees located outside of the jurisdiction of the Department, the Department may delegate this
 31 authority to individuals representing the radiation control programs within those jurisdictions.

32 (c) Applications required by this Rule shall be made on forms provided by the agency, and the payment of fees
 33 required by 10 CFR 61.20(c) shall not apply. Applications and supporting material shall be submitted to the agency
 34 by e-mail at Licensing.RAM@dhhs.nc.gov, or at the address shown in Rule .0111 of this Chapter in lieu of the NRC:

35 (1) Persons applying for new radioactive materials licenses, or for the renewal of existing radioactive
 36 materials licenses, shall submit an Application for Radioactive Materials License. [The instructions

for completing the application printed on the application form shall be followed.] The following information shall appear on the application:

- (A) legal business name and mailing address;
- (B) physical address(es) where radioactive material shall be used or possessed. The application shall indicate if radioactive materials shall be used at temporary jobsites;
- (C) the name, telephone number, and e-mail address of the Radiation Safety Officer;
- (D) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, the application may so state;
- (E) the application shall indicate if the application is for a new license, or for the renewal of an existing license, by marking the corresponding check box;
- (F) if the application is for the renewal of an existing license, the license number shall be provided on the application;
- (G) applicants shall indicate the type and category of license as shown on the form by marking the corresponding check box; and
- (H) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee, who is authorized by the licensee to sign license applications on behalf of the business or licensee.

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

- (A) the license number;
- (B) amendment number of the current license;
- (C) expiration date of the license;
- (D) licensee name as it currently appears on the license;
- (E) the name, telephone number, and e-mail address of the Radiation Safety Officer;
- (F) the name, telephone number, and e-mail address of the individual to be contacted about the application. If this individual is same as the Radiation Safety Officer, item 5b on the application may be left blank;
- (G) applicants shall provide a description of the action requested by marking the corresponding checkbox in item 6a. If the check box next to "Other" is marked in item 6a, provide a brief description of the action requested in the space provided in item 6b;
- (H) explanation of the action requested; and
- (I) the printed name, title, and signature of the certifying official. The certifying official shall be an individual employed by the business or licensee who is authorized by the licensee to sign license applications on behalf of the business or licensee.

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

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

5
6 *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-*
7 *11; 104E-18; 104E-25; 104E-26; 104E-27;*

8 *Eff. December 1, 1987;*

9 *Amended Eff. May 1, 1993;*

10 *Transferred and Recodified from 15A NCAC 11 .1203 Eff. February 1, ~~2015~~; 2015;*

11 *Readopted Eff. May 1, 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: the following
8 regulations are not incorporated:

- 9 (1) 10 CFR 37.1;
10 (2) 10 CFR 37.3;
11 (3) 10 CFR 37.7;
12 (4) 10 CFR 37.9;
13 (5) 10 CFR 37.11(a) and (b);
14 (6) 10 CFR 37.13;
15 (7) — 10 CFR 37.71;
16 (8) — 10 CFR 37.77(f);
17 (9)(7) 10 CFR 37.105;
18 (10)(8) 10 CFR 37.107; and
19 (11)(9) 10 CFR 37.109.

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

23 ~~(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)
24 through (d), 37.81, and 37.81 shall use the Agency contact information in Rule .0111 of this Chapter.

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

28 ~~(e)(c)~~ The Code of Federal Regulations incorporated by this Rule ~~may be obtained from the U.S. Government~~
29 ~~Publishing Office, P.O. Box 979050 St. Louis, MO 63197 9000 for sixty four dollars (\$64.00), and are available free~~
30 ~~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)
31 37.

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

Burgos, Alexander N

Subject: FW: Radiation Protection Commission RFC

From: Pfeiffer, Nadine <nadine.pfeiffer@dhhs.nc.gov>
Sent: Monday, April 3, 2023 8:38 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Radiation Protection Commission RFC

Thank you, Seth. I was on annual leave Friday so I am just seeing your email this morning. I will forward your concerns/questions to the staff at our Radiation Protection Section to address and we will respond back to you by your deadline.

Nadine Pfeiffer
Rules Review Manager
Division of Health Service Regulation
[NC Department of Health and Human Services](#)

Office: 919-855-3811
Fax: 919-733-2757
nadine.pfeiffer@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building
2701 Mail Service Center
Raleigh, NC 27699-2701

Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, March 30, 2023 5:44 PM
To: Pfeiffer, Nadine
Cc: Burgos, Alexander N
Subject: Radiation Protection Commission RFC
Attachments: Radiation Protection Commission RFC.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Radiation Protection Commission for the April 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, April 20, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached are Requests for Changes Pursuant to G.S. 150B-21.10. Note that I have not created forms for the repeals through readoption. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on April 14, 2023.

In the meantime, please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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