

Regulatory Impact Analysis for Adoption of 10A NCAC 15 .1801

Rule Citation Number: 10A NCAC 15 .1801

Rule Topic: Requirements for Registration of Radon Proficiency Programs

DHHS Division: Health Service Regulation

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Impact Summary: Substantial impact: No
Private Sector: Yes
State government: Yes
Local government: No

Authority: S.L. 2023-91, s.2

Necessity: To adopt a new rule that addresses the intent of Session Law (S.L.) 2023-91, Section 2, which requires NC Department of Health and Human Services to adopt temporary and permanent radon proficiency program approval rules.

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Acronyms

Abbreviation	Term
10A NCAC	Title 10A of the North Carolina Administrative Code
DHHS	Department of Health and Human Services
EPA	U.S. Environmental Protection Agency
NC	North Carolina
NRPP	National Radon Proficiency Program
NRSB	National Radon Safety Board
OSBM	North Carolina Office of State Budget and Management
RPS	Radiation Protection Section
SIRG	State Indoor Radon Grant
S.L.	Session Law

I. Introduction

The purpose of this document is to provide an analysis detailing the fiscal impacts associated with the proposed adoption of new rule 10A NCAC 15 .1801, *Requirements for Registration of Radon Proficiency Programs*. The initiation of this rule was required under Session Law (S.L) 2023-91 for the Department of Health and Human Services (DHHS) to create temporary and permanent rules for the approval of radon proficiency programs.

II. Background

Radon is a naturally-occurring radioactive gas that kills approximately 450 residents in North Carolina every year¹. The NC Radon Program receives funding from the Environmental Protection Agency (EPA) State Indoor Radon Grant (SIRG) in order to accomplish the goal of reducing lung cancer deaths through radon education, testing, and mitigation.

Primary activities of the NC Radon Program are:

- Provide guidance to the NC Advisory Committee on Cancer Coordination and Control.
- Provide guidance to the NC State Health Improvement Plan.
- Provide guidance and coordinate data to the NC Occupational and Environmental Epidemiology Branch.
- Provide guidance to the NC Real Estate Commission.
- Provide guidance to homeowners who have questions on testing and mitigating radon.
- Create and conduct continuing education elective courses to licensed NC real estate brokers.
- Develop educational materials (articles, videos, brochures, website, and presentations) for the general public and target audiences.
- Coordinate and conduct trainings and other outreach events.
- Provide free radon test kits once a year to NC residents.

There are currently no laws or regulations regarding radon professionals who are hired to measure and mitigate radon specific to North Carolina. S.L. 2023-91 is the first and only law regarding radon measurement, mitigation, or certification in North Carolina.

III. Reason for Rule Adoption

In 2001, EPA provided a radon credentialing program and one-time approval of two certification bodies (NRPP and NRSB). Since that time, there has been no federal or state framework for approval of radon proficiency programs. This law gives radon proficiency programs the ability to gain approval in the State of North Carolina. The rule adoption establishes minimum criteria for programs which will certify radon professionals in North Carolina.

IV. Proposed Rule

With this action, the Division is proposing the adoption of one new permanent rule, 10A NCAC 15 .1801, *Requirements for Registration of Radon Proficiency Programs*, as outlined below:

¹ P. Jalbert, US Environmental Protection Agency, presentation on Measuring and Accelerating Results, 2007

In Paragraph (a), Radon proficiency program is defined as an organization that provides training, competency testing, and certification to an individual as a radon professional. This would include both radon testing certification and radon mitigation certification. The proposed rule does not require that radon professionals hold a certification in North Carolina, so individuals will continue to be free to operate without one if they so choose.

Paragraph (b), gives instructions for how to apply as a proficiency program with the agency, including the attachments to the application which are:

- (1) documents establishing compliance and periodic reaccreditation with the international program approval standard through accreditation by a recognized accreditation body or demonstration of current approval by the United States Environmental Protection Agency as a radon proficiency program; **or** list of a board members from various private and public sector stakeholders to make decisions regarding curriculum, testing, instructor qualifications, quality assurance and control, continuing education requirements, and procedures for the handling of complaints;
- (2) minimum training requirements for radon professionals for each type of certification offered;
- (3) examination requirements for each type of certification.

V. Estimating the Fiscal Impacts

The impacts on the private sector, North Carolina State and Local Government, and North Carolina residents will be discussed in the following subsections. Because registering a radon proficiency program is not required by the rules and has no associated costs other than minimal time costs, RPS does not expect any appreciable change for radon professionals or residents contracting with radon professionals. Because there are only 3 known proficiency programs at this time, the NC Radon program does not expect an appreciable change for the state radon program staff either. Overall, there is negligible impact on the estimated costs and savings for all three of the affected entities as well as potential future proficiency programs that might be established.

A. Private Sector

There is no appreciable quantifiable impact to the private sector proficiency programs or the individuals they certify expected as a result of this rule adoption. There are no fees associated with registering a proficiency program with the state, and registering is only required if the organization wishes to be listed on the NC Radon Program website.

Presumably there is some benefit to a business being listed on the state website, as they will receive an endorsement from the state program and potentially more publicity as a result. The publicity could drive more traffic to the businesses' websites. The two current nationally recognized proficiency programs, NRPP and NRSB, have approximately 86 measurement and mitigation professionals in NC. All of these 86 entities may potentially benefit from the state endorsement and publicity provided by having their certifying entity listed. These individuals have typically paid \$200-\$1,000 for one or both radon certifications. The third proficiency program, Inspector Nation, is not nationally recognized and is unable to gain approval because EPA is not currently approving radon proficiency programs. Therefore, Inspector Nation has the potential to receive a greater benefit in being listed on the website relative to the 2 nationally recognized organizations. Inspector Nation lists hundreds of certified radon professionals on their website. It is not known

how much they charge for radon certification.

B. North Carolina State and Local Government

There is no quantifiable impact to state and local government as a result of this rule adoption. The NC Radon Program has already reviewed two proficiency programs under the temporary rules. Since both proficiency programs were able to provide ISO/IEC certification, the review only took a few minutes and the website update took minutes.

One benefit of the rule adoption as mandated under SL 2023-91 is that the NC Radon Program is able to resolve a 7-year restraining order from Inspector Nation on the NC Radon website. The restraining order and accompanying lawsuit required state legal resources, kept the NC Radon Program from being in compliance with the EPA grant requirements, and put the SIRG funding at risk. EPA will be further evaluating whether the rule meets the requirements of their new framework for credentialing programs. However, it is not expected that EPA will have finalized their credentialing framework prior to the permanent rules taking effect in November.

C. North Carolina Residents

NC residents primarily use radon professionals during the home inspection process of a real estate transaction. While radon can exist in any home, there is a greater awareness and likelihood of testing in higher income neighborhoods. There is no quantifiable impact to NC residents as a result of this rule adoption. NC residents will continue to see the same three companies listed on the NC Radon Program website for proficiency programs and may see additional ones in the future. There is no requirement in NC that they hire a certified radon professional, so it is still possible they will hire someone who is not certified by any proficiency program. Certified professionals from NRPP and NRSB typically charge \$100-\$200 to test for radon and \$1,500-\$2,500 for mitigation. It is not known how much Inspector Nation radon professionals will charge for these services and whether they will be required to use the same standards of practice as the NRPP and NRSB professionals. An additional unquantifiable benefit to NC residents is that this law allows NC to be in compliance with EPA, at least for the present, so that NC can continue to get federal funding for educational efforts and radon test kits.

VI. Conclusion

The Division of Health Service Regulation is proposing one new rule for adoption, 10A NCAC 15 .1801, *Requirements for Registration of Radon Proficiency Programs*. S.L. 2023-91 stipulates in Section 2(c) that “rules adopted by the Department shall be substantively identical to the provisions of subsection (b) of this section.” The proposed rules are identical to subsection (b).

Radiation Protection Section and the NC Radon Program do not expect the new rule to have any appreciable cost or benefit except to one interested party. The changes are proposed to satisfy the requirements of the recent session law, while allowing the continued funding from EPA through SIRG. This funding will enable the NC Radon Program to continue to provide services that protect the health and safety of our citizens.

Appendix A: Session Law 2023-91

AN ACT TO AMEND THE NORTH CAROLINA BUILDING CODE EXCLUSION FOR TEMPORARY MOTION PICTURE, TELEVISION, AND THEATER STAGE SETS AND SCENERY TO EXEMPT THEM FROM USE AND OCCUPANCY CLASSIFICATION UNDER THE CODE; TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH AN APPROVAL PROCESS FOR RADON PROFICIENCY PROGRAMS; AND TO PROVIDE THAT EVIDENCE OF A LICENSEE HAVING MAINTAINED A LICENSE IN GOOD STANDING UNDER ARTICLE 2 OF CHAPTER 87 OF THE GENERAL STATUTES FOR AT LEAST FIFTEEN YEARS SHALL BE ACCEPTED AS EXPERIENCE FOR PLUMBING AND HEATING QUALIFICATIONS BY THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b20) reads as rewritten:

"(b20) Exclusion for Temporary Motion Picture, Television, and Theater Stage Sets and Scenery. Buildings used for temporary motion picture, television, and theater stage sets and scenery are exempt from use and occupancy classification under the North Carolina State Building Code. No permit shall be required under the North Carolina State Building Code or any local variant approved under subsection (e) of this section for any construction, installation, repair, replacement, or alteration of temporary motion picture, television, and theater stage sets and scenery that are being used for less than one year in one location and are inspected by the assigned fire code inspector. The Building Code Council shall create a fire code inspection checklist that shall be used for inspections under this subsection.scenery."

SECTION 2.(a) Definitions. The following definitions apply in this section:

- (1) Department. The Department of Health and Human Services, through its Division of Health Service Regulation.
- (2) International Program Approval Standard. The ISO/IEC 17024:2012 standard, an international consensus standard containing principles and requirements for a certifying entity, and including standards for the development and maintenance of a certification program, including certification programs for radon professionals.
- (3) ISO/IEC. The joint technical committee of the International Organization for Standardization and the International Electrotechnical Commission.
- (4) Radon professional. Any individual engaged in the practice of testing for the presence of radon or radon progeny or implementing methods to reduce the concentration of radon or radon progeny in the indoor environment of a building.
- (5) Radon proficiency program approval rules. Rules adopted by the Department for the approval of proficiency programs for radon professionals as set forth in this section.

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- (6) Recognized accreditation body. A third-party accreditation body that accredits the compliance of radon proficiency programs and is a signatory of the International Accreditation Forum's Multilateral Recognition Agreement.

SECTION 2.(b) Radon Proficiency Program Approval Rules. The Department shall adopt temporary and permanent radon proficiency program approval rules that provide for all of the following:

- (1) Approval of a term that is no less than one year for radon proficiency programs that meet the criteria set forth in subdivision (3) of this subsection.

(2) In cases where an application for approval or renewal of approval for a radon proficiency program is denied, that a proficiency program shall have 180 days to engage in corrective actions and reapply for renewal before any approval is revoked or, for a new radon proficiency program, before the applicant will have to resubmit a new application.

(3) Approval of a radon proficiency program that meets either of the following criteria:

a. Establishing compliance and periodic reaccreditation with the international program approval standard through accreditation by a recognized accreditation body or demonstration of current approval by the United States Environmental Protection Agency as a radon proficiency program.

b. Showing to the satisfaction of the Department in a manner that the Department may specify that the radon proficiency program meets the following requirements:

1. Establishment of a board with members from various private and public sector stakeholders to make decisions regarding curriculum, testing, instructor qualifications, quality assurance and control, continuing education requirements, and procedures for the handling of complaints.

2. Minimum training requirements for radon professional certification.

3. Examination requirements.

4. Continuing education requirements.

5. Submission of instructor qualifications demonstrating relevant knowledge and experience.

6. Submission to regular audits regarding proper handling of risk, impartiality, and candidate records.

(4) Publication of a registry of approved proficiency programs in all communications by the Department regarding proficiency programs.

SECTION 2.(c) Additional Rulemaking Authority. Notwithstanding G.S. 150B-19(4), rules adopted by the Department shall be substantively identical to the provisions of subsection (b) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes and shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 2.(d) Transitional Provisions. Radon proficiency programs currently operating and included in public listings of programs by the Department at any time after January 1, 2020, shall be deemed to be an approved radon proficiency program under this act until the Department has adopted permanent rules under Sections 2(a) through 2(c) of this act and has approved or denied approval of the program under those rules.

SECTION 3. G.S. 87-21(b)(3) reads as rewritten:

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"(3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing,

heating, or fire sprinkler contracting, or any combination thereof. The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required. Prior to taking the examination, the applicant may be required by the Board to establish that the applicant is at least 18 years of age and is of good moral character. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Evidence that a plumbing or heating licensee has continuously maintained a license in good standing under this Article for a minimum of 10 years shall be accepted as experience for Class II plumbing and heating qualifications."

SECTION 4. Section 3 of this act becomes effective July 1, 2023. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2023.

s/ Phil Berger

President Pro Tempore of the Senate

s/ Tim Moore

Speaker of the House of Representatives

s/ Roy Cooper

Governor

Approved 12:28 p.m. this 10th day of July, 2023

Appendix B: 10A NCAC 15 .1800

SECTION .1800 – STANDARDS FOR RADON PROFICIENCY PROGRAM APPROVAL

10A NCAC 15 .1801 REQUIREMENTS FOR REGISTRATION OF RADON PROFICIENCY PROGRAMS

(a) In addition to the definitions found in Rule .0104 of this Chapter, the following definition shall apply to this Rule: "Radon proficiency program" means an organization that provides training, competency testing, and certification to an individual as a radon professional.

(b) Persons seeking initial registration, to amend a registration, or to renew a registration as a radon proficiency program shall:

- (1) submit an application for registration to the agency at the addresses shown in Rule .0111(a) of this Chapter or as otherwise instructed by the agency. Applications for initial registration and applications to renew a registration shall be submitted with supporting information demonstrating that the requirements of Paragraph (c) of this Rule and S.L. 2023-91, s. 2 are met. Applications to amend a registration shall be submitted with an attachment explaining the items to be amended; and
- (2) comply with the provisions of Paragraph (h) of this Rule.

(c) The Department shall approve an application for initial registration or to renew a registration as a radon proficiency program that meets the criteria set out in S.L. 2023-91, s. 2.

(d) Radon proficiency program registrations issued by the Department shall expire at midnight on the expiration date stated on the radon proficiency program registration. The Department shall not issue an initial or renewed registration expiring less than one year from the date of issuance.

(e) The Department shall deny an application for initial registration or to renew a registration as a radon proficiency program if the application fails to demonstrate compliance with Paragraph (c) of this Rule and S.L. 2023-91, s. 2.

(f) Persons whose radon proficiency program registrations are revoked or expired may apply for registration in accordance with Paragraph (b) of this Rule and S.L. 2023-91, s. 2.

(g) Each registrant shall, upon notice of at least 48 hours, make available to the Department for inspection records maintained pursuant to this Rule.

(h) Applications submitted to the Department for registration as a radon proficiency program shall contain the following information:

- (1) Box 1, check the box next to the type of registration requested;
- (2) Box 2, business physical address:
 - (A) name of the radiation proficiency program;
 - (B) phone number at the physical location;
 - (C) website associated with the radiation proficiency program;
 - (D) physical address of the business, including the street address, city, county, state, and zip code. The five digit zip code may be used if the nine digit zip code is not known;
 - (E) mailing address if different from Box 1. If the physical and mailing addresses are the same, the mailing address may be left blank: Mailing address of the business, including city, state, and zip code. The five digit zip code may be used if the nine digit zip code is not known; and
 - (F) name, phone number and email for the individual completing the form.
- (3) Box 3, authorizing signature of individual responsible for the radon proficiency program:
 - (A) name of company or corporate office;
 - (B) full legal name. Middle initials may be used in lieu of the full middle name; and
 - (C) signature of the individual registering the radiation proficiency program on behalf of the business; and
- (4) Additional Attachments to include with application:
 - (A) documents establishing compliance and periodic reaccreditation with the international program approval standard through accreditation by a recognized accreditation body or demonstration of current approval by the United States Environmental Protection Agency as a radon proficiency; program; or

- (B) list of a board members from various private and public sector stakeholders to make decisions regarding curriculum, testing, instructor qualifications, quality assurance and control, continuing education requirements, and procedures for the handling of complaints;
 - (C) minimum training requirements for radon professionals for each type of certification offered;
 - (D) examination requirements for each type of certification;
 - (E) continuing education requirements for each type of certification; and
 - (F) instructor names and qualifications demonstrating relevant knowledge and experience.
- (5) copies of the registration form are available free of charge by emailing the contacts listed at <https://www.ncdhhs.gov/divisions/health-service-regulation/north-carolina-radon-program/contacts>.

History Note: Authority S.L. 2023-91, s. 2;
Temporary Adoption Eff. February 14, 2024.