

# ***NORTH CAROLINA REGISTER***

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**November 15, 2010**

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2010 – December 2010

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
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24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
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25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



**EXECUTIVE ORDER NO. 70**

**RULES MODIFICATION AND IMPROVEMENT PROGRAM**

**WHEREAS**, rulemaking is one of the most significant public policy actions government can take, directly affecting businesses and citizens alike; and

**WHEREAS**, improved rulemaking provides more effective protections for public health, safety, welfare, and the environment; and

**WHEREAS**, outdated, unnecessary, or vague rules often impose unnecessary costs and burdens on local governments, small businesses, and other regulated entities; and

**WHEREAS**, North Carolina citizens deserve better access to regulatory information; and

**WHEREAS**, rules, as defined by N.C. Gen. Stat. § 150B-2(8a), are required for a functioning market economy; and

**WHEREAS**, the development of rules should be informed with rigorous analysis; and

**WHEREAS**, in promulgating rules, agencies should seek to achieve statutory goals as effectively and efficiently as possible; and

**WHEREAS**, public comment is encouraged for all rules, including both new and existing rules; and

**WHEREAS**, N.C. Gen. Stat. § 150B-21.26 requires a preliminary review of certain rules before the proposed text is published in the North Carolina Register; and

**WHEREAS**, for the last fifteen years, the Office of State Budget and Management has reviewed all significant rule changes before the proposed text is published in the North Carolina Register under N.C. Gen. Stat. §150B-21.4.

**NOW, THEREFORE**, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED:**

**Section 1. Scope of Executive Order**

This Executive Order applies to all Cabinet agencies and all boards and commission with rule-making powers located within the Cabinet agencies.

The Governor urges the heads of Council of State agencies, the Board of Governors of the University of North Carolina, the State Board of Community Colleges, the State Board of Education, and all other boards with rule-making authority to participate in this Order.

**Section 2. Statement of Regulatory Principles**

1. The following principles shall guide the drafting, adoption, modification and review of any rules and regulations:
  - a. Rules shall only be adopted when required by federal or state law or when deemed necessary by the agency to serve the public interest.
  - b. Rules shall not impose undue burden upon those persons or entities who must comply with the rules.
  - c. Rules shall be clearly written, relevant and up-to-date.
  - d. Rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall cite this information in support of regulatory proposals.
  - e. Rules shall be designed to achieve their regulatory objective in a cost-effective and timely manner.
2. All agency heads shall implement the following requirements to ensure that regulations are drafted and adopted in accordance with the above principles.
  - a. Rules shall be subject to periodic evaluation and review in accordance with the procedures described in this Executive Order.
  - b. Agencies shall encourage public comment and involvement on all rules by posting new rule actions and rule analysis and fiscal notes online.
  - c. Agencies shall ensure citizens have better access to timely and accurate rule information.
  - d. Fiscal notes and rule analysis shall be updated to reflect any significant changes before the rule is adopted.

- e. Approved rule actions shall be completed in a timely manner to ensure proper protection of the public and clear implementation of law.
- f. Agencies shall coordinate rule actions with other agencies where rules, policies and programs overlap.
- g. Agencies shall quantify the costs and benefits to all parties of a rule to the greatest extent possible. The level of analysis shall be proportional to the significance of the rule.
- h. Agencies shall identify and assess available alternatives to regulation, including the use of economic incentives, information disclosure requirements, and performance standards.
- i. Each agency head will be held accountable for ensuring that the policies and objectives in this Executive Order are put into effect and that information requested in connection with the requirements of this Executive Order is provided on a timely basis.

### **Section 3. Review of Existing Rules**

A Rules Modification and Improvement Program (“RMIP”) shall be established to annually evaluate, reform, expand, or, where necessary, repeal existing rules and associated requirements in order to promote the goals of this Executive Order. The Office of State Budget and Management (“OSBM”) shall coordinate and oversee the RMIP. OSBM shall consult with experts, stakeholders and other relevant parties in implementing the RMIP.

1. The RMIP shall accomplish the following within the first 30 days after publication of this Executive Order:
  - a. Invite comment on whether any existing rules, implementation processes and associated requirements are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order. Comments may include modifying, expanding, or rescinding existing rule programs or the rule review and publication process.
  - b. Direct agencies to undertake an internal review to identify existing rules and associated requirements that are unnecessary, unduly burdensome, or inconsistent with the goals of this Executive Order.
2. The RMIP shall continue to invite and consider comment on rule reforms beyond the first 30 days after publication of this Executive Order. Comments received during the first 30 days will inform the first annual report required by paragraph 8 of this section, while comments received after the first 30 days will inform future reports.

3. The State Chief Information Officer shall ensure that there is a single web portal for receiving public comments and tracking agency progress on any resulting rule reform actions.
4. OSBM shall assemble and evaluate the reform suggestions resulting from the public comment process and internal agency reviews.
5. Agencies, as requested by OSBM, shall review the merits of the reform suggestions.
6. Agencies shall prepare a report, in a form designated by OSBM, on whether reform suggestions have potential merit and justify further action. The report shall be submitted to OSBM by January 31 each year.
7. OSBM shall make final determinations on which reform suggestions have potential merit and justify further action. OSBM shall also consider and propose recommended improvements to the rule process to the Governor, including any legislation that may be necessary to achieve reforms.
8. OSBM shall publish by April 30 every year an annual report summarizing all reform comments and any resulting actions taken or planned.
9. OSBM shall receive assistance, services, or data from any state agency as it determines is reasonably necessary to carry out the purposes of this Executive Order.
10. The State CIO shall coordinate and consolidate systems across state government required to comply with existing rules at the direction of OSBM.

#### **Section 4. Review of New Rules**

Rule improvement efforts shall extend beyond an evaluation of existing rules to the current process used to promulgate new rules. Given the significant impact of rules, rule decisions shall be informed by a careful assessment of the likely consequences of rule action.

1. During OSBM's review and approval process for fiscal notes and rule analysis under N.C. Gen. Stat. §150B-21.4, OSBM shall ensure agencies adhere to the principles outlined in Section 2 of this Executive Order.
2. For significant rules, agency heads shall certify completion of a fiscal note and rule analysis and submit them to OSBM for review under N.C. Gen. Stat. § 150B-21.4 and other related statutes, at least 60 days prior to rule publication.
3. In order that an independent analysis can be made, state agencies shall not request OSBM to prepare a fiscal note and rule analysis under N.C. Gen. Stat. § 150B-21.4(b1) until the agency, working with OSBM, has exhausted all resources, internal and external, to otherwise prepare the required analysis.



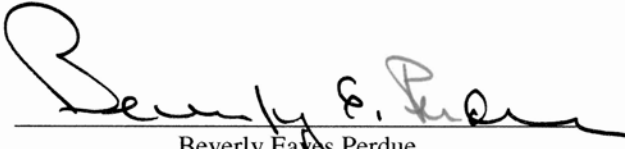
4. OSBM, as part of the Office of the Governor, shall conduct the preliminary review in N.C. Gen. Stat. § 150B-21.26 on behalf of the Governor.
5. Consistent with N.C. Gen. Stat. § 150B-21.26, agencies shall submit the required rule information to OSBM at least 60 days prior to rule publication for rules that impact local governments.

**Section 5. Effect and Duration**

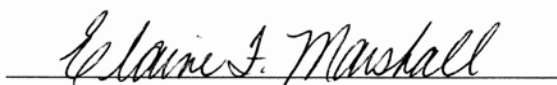
This Executive Order is effective immediately and shall remain in effect until rescinded. It supersedes and replaces all other executive orders on this subject.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-first day of October in the year of our Lord two thousand and ten and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

**Notice of Rule-making Proceedings** is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

**Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Energy Conservation and Residential Codes.*

**Authority for Rule-making:** *G.S. 143-136; 143-138.*

**Reason for Proposed Action:** *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

**Public Hearing:** *December 13, 2010, 1:00PM, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603.*

**Comment Procedures:** *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on January 14, 2011.*

**Statement of Subject Matter:**

**1. Request by Curt Willis and Rusty Styons, to amend the 2009 NC Residential Code, Sections R703.11.2 and R703.11.3. The proposed amendment is as follows:**

**R703.11.2 Soffit.** In One- and Two-Family Dwelling construction using vinyl or aluminum as a soffit material, the soffit material shall be securely attached to framing members and use an underlayment material of either: fire retardant treated wood, ¾ inch wood sheathing or 5/8 inch gypsum board. Venting requirements shall apply to both soffit and underlayment and shall be per section R806 of the North Carolina Residential Code. Where the property line is 10 feet or more from the building face, the provisions of this code section shall not apply.

**R703.11.3 Flame Spread.** Vinyl siding and vinyl soffit materials when used in One- and Two-Family Dwelling construction shall have a Flame Spread Index of 25 or less as tested in accordance with ASTM E-84.

**2. Request by David Smith, Building Code Council, to amend the 2012 NC Residential Code, Section N1101.5. The proposed amendment is as follows:**

**N1101.5 Fenestration product rating and glass deflection.** U-factors of fenestration products (windows, doors and skylights) shall be determined in accordance with NFRC 100 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled U-factor shall be assigned a default U-factor from Tables N1101.5(1) and N1101.5(2). The solar heat gain coefficient (SHGC) of glazed fenestration products (windows, glazed doors and skylights) shall be determined in accordance with NFRC 200 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled SHGC shall be assigned a default SHGC from Table N1101.5(3).

Glass collapse/gap width reduction shall not exceed the limits set by the During Plant Inspection Checklist, of the NFRC, Certification and Inspection Agency (IA) Operations Manual (First Edition). Compliance shall be determined by an accredited, independent laboratory, and labeled and certified by the manufacturer.

**3. Request by David Smith, Building Code Council, to amend the 2012 NC Energy Conservation Code, Section 303.1.3. The proposed amendment is as follows:**

**303.1.3 Fenestration product rating and glass deflection.** U-factors of fenestration products (windows, doors and skylights) shall be determined in accordance with NFRC 100 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled U-factor shall be assigned a default U-factor from Table 303.1.3(1) or 303.1.3(2). The solar heat gain coefficient (SHGC) of glazed fenestration products (windows, glazed doors and skylights) shall be determined in accordance with NFRC 200 by an accredited, independent laboratory, and labeled and certified by the manufacturer. Products lacking such a labeled SHGC shall be assigned a default SHGC from Table 303.1.3(3).

Glass collapse/gap width reduction shall not exceed the limits set by the During Plant Inspection Checklist, of the NFRC, Certification and Inspection Agency (IA) Operations Manual (First Edition). Compliance shall be determined by an accredited, independent laboratory, and labeled and certified by the manufacturer.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

## TITLE 11 – DEPARTMENT OF INSURANCE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to adopt the rule cited as 11 NCAC 06A .0814 and amend the rules cited as 11 NCAC 06A .0801, .0809; 13 .0512.

**Proposed Effective Date:** March 1, 2011

### Public Hearing:

**Date:** December 3, 2010

**Time:** 10:00 a.m.

**Location:** 430 N. Salisbury Street, Raleigh, NC 27603; 3<sup>rd</sup> floor Jim Long Conference Room

### Reason for Proposed Action:

**11 NCAC 06A .0801** – Amends Rules to keep current with the new Session Law 2010-68 which establishes Long Term Care Partnership Standards by updating the Continuing Education definitions and licensee requirements.

**11 NCAC 06A .0809** – To allow provider exemption.

**11 NCAC 06A .0814** – Establishes LTCP CE requirements & responsibilities of agents & insurers who sell, solicit or negotiate Qualified Policies.

**11 NCAC 13 .0512** – updating and correcting language.

**Procedure by which a person can object to the agency on a proposed rule:** The North Carolina Department of Insurance will accept written objections to this rule until the expiration of the comment period on January 14, 2011.

**Comments may be submitted to:** Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, karen.waddell@ncdoi.gov

**Comment period ends:** January 14, 2011

### Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### Fiscal Impact:

- ☐ State  
☐ Local  
☐ Substantial Economic Impact (≥\$3,000,000)  
☒ None

## CHAPTER 06 - AGENT SERVICES DIVISION

### SUBCHAPTER 06A - AGENT SERVICES DIVISION

#### SECTION .0800 - CONTINUING EDUCATION

### 11 NCAC 06A .0801 DEFINITIONS

As used in this Section:

- (1) "Biennial compliance period" means the 24-month period during which an agent or adjuster shall comply with continuing education requirements.
- (2) "Cluster of courses" means a number of courses, each of which is less than 100 minutes in length, but altogether 100 minutes or more in length, that are offered within one state or national program or convention.
- (3) "Compliance year" means the second year of the biennial compliance period.
- (4) "Continuing Education Administrator" or "Administrator" means the entity with which the Commissioner contracts for continuing education administration, including the approval of providers and courses and the retention of ICEC records for licensees.
- (5) "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course. Courses shall be for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (6) "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final examination.

- (7) "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.
- (8) "Ethics course" means a continuing education course that deals with usage and customs among members of the insurance profession involving their moral and professional duties toward one another, toward clients, toward insureds, and toward insurers.
- (9) "Insurance continuing education credit" or "ICEC" means a value assigned to a course by the Commissioner after review and approval of a course information. This term means the same as "credit hour" as used in G.S. 58-33-130.
- (10) "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.
- (11) "Licensee" means a licensed adjuster, a licensed broker, or a licensed agent with any of the following lines of authority: property, casualty, personal lines, life, or accident and health or sickness.
- (12) "Long-Term Care Partnership Education" means a continuing education course related to long-term care insurance, long-term care services and qualified state long-term care insurance partnership programs which includes:
  - (a) State and federal regulations and requirements relating to long-term care partnership policies;
  - (b) the relationship between qualified state long-term care insurance partnership programs other public and private coverage of long-term care services, including Medicaid;
  - (c) available long-term care services and providers;
  - (d) changes or improvements in long-term care services or providers;
  - (e) alternatives to the purchase of private long-term care insurance;
  - (f) the effect of inflation on long-term care partnership policy benefits and the importance of inflation protection; and
  - (g) consumer suitability standards and guidelines for long-term care partnership policies.
- (13) "Qualified Policy" has the same meaning as in G.S. 58-55-55(6) and includes a certificate issued under a group policy as specified in G.S. 58-55-60.
- ~~(12)~~(14) "Supervised examination" means a timed, closed book examination that is monitored and graded by a disinterested third party.

- ~~(13)~~(15) "Supervised individual study" means learning through the use of audio tapes, video tapes, computer programs, programmed learning courses, and other types of electronic media that are completed in the presence of an instructor.

*Authority G.S. 58-2-40; 58-33-130; 58-55-55; 58-55-60; 58-55-65; 58-55-75.*

#### **11 NCAC 06A .0809 APPROVAL OF COURSES**

(a) Providers of all courses specifically approved under Rule .0803 of this Section shall file with the Commissioner or Administrator copies of program catalogs, course outlines, copies of advertising literature, and pay the fee prescribed in G.S. 58-33-133(b).

(b) All providers of courses not specifically approved under Rule .0803 of this Section shall do the following:

- (1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the Commissioner or Administrator; pay the fee prescribed in G.S. 58-33-133(b), provide detailed outlines of the subject matter to be covered, and copies of handouts to be given.
- (2) Providers of supervised individual study programs shall file copies of the study programs and the examination, and Internet course security procedures.

(c) The Commissioner shall indicate the number of ICECs that have been assigned to the course that has been approved. If a course is not approved or disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.

(d) If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.

(e) Course approval applications shall include the following:

- (1) A statement for whom the course is designed;
- (2) The course objectives;
- (3) The names and duties of all persons who will be affiliated in an official capacity with the course;
- (4) The course provider's tuition and fee refund policy;
- (5) An outline that shall include:
  - (A) a statement of whether there will be a written examination, a written report, or a certification of attendance only;
  - (B) the method of presentation;
  - (C) a course content outline with instruction hours assigned to the major topics; and
  - (D) the schedule of dates, beginning and ending times and places the course will be offered, along with the names

of instructors for each course session, submitted at least 30 days before any subsequent course offerings;

- (6) A copy of the course completion certificate;
- (7) A course rating form;
- (8) A course bibliography; and
- (9) An electronic copy of the course content and course examination for Internet courses.

(f) A provider may request that its materials be kept confidential if they are of a proprietary nature.

(g) Courses awarded more than six ICECs shall have an examination approved by the Commissioner in order for the licensee to get full credit.

(h) A provider may request an exemption to the examination requirement in Paragraph (g) of this Rule when filing a long-term care partnership continuing education course of eight hours.

~~(h)(i)~~ (i) A provider shall not cancel a course unless the provider gives written notification to all students on the roster and to the Commissioner or Administrator at least five days before the date of the course.

~~(i)(j)~~ (j) A provider shall submit course attendance records electronically within 15 business days after course completion.

~~(j)(k)~~ (k) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.

*Authority G.S. 58-2-40; 58-33-130; 58-33-132.*

#### **11 NCAC 06A .0814 AGENT EDUCATION ON LTCP POLICIES: COMPANY RESPONSIBILITY**

(a) Each licensee who holds an accident and health or sickness license, a Medicare/Supplement Long-Term Care limited lines license, and who sells, solicits or negotiates Long-term Care Partnership policies shall complete eight hours of continuing education in Long-Term Care Partnership as defined in 11 NCAC 06A .0801(12) within one year of January 1, 2011.

(b) Each licensee issued an accident and health or sickness license, a Medicare/Supplement Long-Term Care limited lines license, and who sells, solicits or negotiates Long-term Care Partnership policies after January 1, 2011, shall complete eight hours of continuing education in Long-Term Care Partnership as defined in 11 NCAC 06A .0801(12) prior to selling, soliciting or negotiating a Long-Term Care Partnership Policy.

(c) Each licensee who holds an accident and health or sickness license, a Medicare/Supplement Long-Term Care limited lines license, and who sells, solicits or negotiates Long-term Care Partnership policies shall complete four hours of continuing education in Long-Term Care Partnership every biennial compliance period thereafter as defined in this Section.

(d) Insurers who provide Long-Term Care Partnership insurance shall verify that their appointed agents who sell, solicit or negotiate Long-Term Care Partnership policies as defined in G.S. 58-55-55(6) and G.S. 58-55-60 meet the continuing education requirements prescribed by this rule. Verification may be accomplished by obtaining and maintaining the continuing education certificate of completion or by obtaining and maintaining a copy of the continuing education transcript for each agent.

(e) Upon written request by the Commissioner the records obtained by the insurer to verify the agent has satisfied the continuing education requirements of this rule shall be provided to the Commissioner within 30 calendar days.

*Authority G.S. 58-2-40; 58-2-190; 58-33-130; 58-55-55; 58-55-60.*

### **CHAPTER 13 - AGENT SERVICES DIVISION – NON-INSURANCE ENTITIES**

#### **SECTION .0500 - BAIL BONDSMEN AND RUNNERS**

##### **11 NCAC 13 .0512 COLLATERAL SECURITY REQUIRED BY BONDSMEN**

(a) The collateral security required by bail bondsmen ~~must~~ shall be reasonable in relation to the amount of the bond in that any collateral security (including personal property, real property, indemnity agreement and guarantee) received by such licensee shall not, in the aggregate, exceed the amount of the bond.

(b) Any collateral security shall be returned to the person who deposited it with the bail bondsman immediately after the obligation, the satisfaction of which was secured by the collateral, is discharged.

(c) Any bail ~~bondsman, runner or other representative~~ bondsman or runner who receives collateral security shall hold such collateral security in trust. No indemnity agreement or other security received as collateral security for a bond shall contain any provision whereby any liability or obligation under such agreement extends beyond the termination of liability under the bond.

(d) If the bondsman's liability is reduced at any time and for any reason, the collateral security and all obligations under collateral indemnity agreements or guarantees shall be reduced to the same extent that the liability under the bond was reduced, and any excess thereof shall be immediately returned to the depositor of the security.

(e) No indemnity agreement or other security agreement taken as collateral for bonds shall include any provision for the payment of interest or other additional fees or charges.

(f) All persons who sign any type of indemnity agreement or other type of security agreement to be used as collateral shall be furnished by the bondsman or ~~his representative~~ runner with a copy of such agreement.

(g) The provisions of this Section relating to indemnity agreements or other security agreements apply to all such agreements whether set forth on the face of the bond or contained in a separate agreement.

(h) All indemnity agreements or other security agreements shall be considered as collateral security and shall be listed and described on the form provided by the Administrative Office of the Courts ~~(Form No. 277 AOC-L or its successor) entitled "Affidavit of Surety."~~ (Form AOC-CR-201 or its successor) entitled "Appearance Bond for Pretrial Release."

(i) Upon any modification or alteration of the collateral security, the bondsman shall comply with the provisions of 11 North Carolina Administrative Code 13 .0513.

(j) All agreements and contracts with defendants or anyone on behalf of the defendant, shall have a form number and the

license number of the bail bondsman printed thereon and ~~must~~ shall be submitted to the Department for approval. No such agreements or contracts shall be used by the licensee until written approval has been given by the Department.

*Authority G.S. 58-2-40; 58-71-5(a); 58-71-95; 58-71-100.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commissioner of Insurance intends to amend the rule cited as 11 NCAC 11F .0406.*

**Proposed Effective Date:** *March 1, 2011*

**Public Hearing:**

**Date:** *December 6, 2010*

**Time:** *10:00 a.m.*

**Location:** *430 N. Salisbury Street, Raleigh, NC 27603; 3<sup>rd</sup> floor Jim Long Conference Room*

**Reason for Proposed Action:** *The NAIC changed a sunset date in the Actuarial Guideline. We are updating the rule to be consistent with the guideline.*

**Procedure by which a person can object to the agency on a proposed rule:** *The North Carolina Department of Insurance will accept written objections to this rule until the expiration of the comment period on January 14, 2011.*

**Comments may be submitted to:** *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, fax (919)733-6495, karen.waddell@ncdoi.gov*

**Comment period ends:** *January 14, 2011*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- ☐ **State**  
☐ **Local**  
☐ **Substantial Economic Impact ( $\geq$ \$3,000,000)**  
☒ **None**

**CHAPTER 11 - FINANCIAL EVALUATION DIVISION**

**SUBCHAPTER 11F - ACTUARIAL**

**SECTION .0400 – COMMISSIONER'S RESERVE VALUATION METHOD**

**11 NCAC 11F .0406 LIMITED USE OF ANTICIPATED WITHDRAWAL RATES**

(a) This Rule applies to universal life insurance policies and certificates issued after December 31, 2006, and before January 1, ~~2014~~, 2015, that contain a secondary guarantee that the death benefits will remain in effect as long as the accumulation of premiums paid satisfies the secondary guarantee requirement stated in the policy or certificate.

(b) For purposes of applying 11 NCAC 11F .0405(b) and 11 NCAC 11F .0405(c), a withdrawal rate of no more than two percent per year for the first five policy years, followed by no more than one percent per year to the policy anniversary specified in the following table, and zero percent thereafter shall be used. If the duration determined by reference to the table is less than five policy years, a withdrawal rate of no more than two percent per year shall be used through that duration, with zero percent per year used thereafter.

<u>Issue Age</u>	<u>Duration</u>
0-50	Policy Duration 30 years.
51-60	Duration at which policyholder reaches attained age 80.
61-70	Policy Duration 20 years.
71-89	Duration at which policyholder reaches attained age 90.
90 and over	No withdrawal rate assumption allowed.

*Authority G.S. 58-2-40; 58-58-50(b); 58-58-50(l).*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt the rules cited as 15A NCAC 02H .0150-.0154, .1014-.1017 and amend the rules cited as 15A NCAC 02H .0126, .1002, .1005.*

**Proposed Effective Date:** *Upon Legislative Approval*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): The Session Laws from which these requirements are being moved from state that a public hearing is not required for moving the requirements to the rules. This is because the requirements are not changing from what is currently being implemented. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4)*

**Reason for Proposed Action:** *The two Session Laws (SL), 2006-246 and 2008-211, disapproved and replaced permanent*

rules, 2H .0126, 2H .1014, and 2H .1005, adopted by the EMC. The requirements of SL 2006-246 have been implemented since they became effective on July 1, 2007. The requirements of SL 2008-211 have been implemented since they became effective on October 1, 2008. These SL's state that the EMC may adopt rules to replace the rules that were disapproved within the SL's, but the EMC cannot change the requirements. These draft rules are placing the same requirements of the SL's that are currently being implemented, back into the EMC's rules. This is being done to reduce confusion for the regulated community and our staff by having all the stormwater requirements together in the 2H rules. There is no change to the current requirements being implemented by adopting these rules. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4).

**Procedure by which a person can object to the agency on a proposed rule:** A person can submit written comments to the contact below, objecting to the proposed rules. However, the Session Laws do not allow the EMC to make changes to the current requirements being implemented in the session laws. So, even with objections, the requirements copied from the SL's cannot be changed. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4).

**Comments may be submitted to:** Robert Patterson, NCDENR - DWQ - SPU, 1617 Mail Service Center, Raleigh, NC 27699-1617, Phone (919)807-6300, Fax (919)807-6494, E-Mail robert.patterson@ncdenr.gov

**Comment period ends:** January 14, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000. Also see S.L. 2006-246, Section 15 and S.L. 2008-211, Section 4.

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact ( $\geq$ \$3,000,000)
- ☒ None

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02H - PROCEDURES FOR PERMITS:  
APPROVALS**

**SECTION .0100 - POINT SOURCE DISCHARGES TO  
THE SURFACE WATERS**

**15A NCAC 02H .0126 STORMWATER DISCHARGES**

(a) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs), subject to NPDES permitting, shall be issued NPDES Permits—permits for stormwater discharges to surface waters—shall be issued in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0154, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.21, and 122.26, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty six dollars (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Environmental Management, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. These federal regulations can be accessed on the world wide web at <http://www.gpoaccess.gov/cfr/index.html>. State regulations can be accessed on the world wide web at <http://www.ncdoh.com/rules>.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

**15A NCAC 02H .0150 DEFINITIONS**

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

- (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
- (2) "Division" means the Division of Water Quality in the Department.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (5) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant

- Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:
- (a) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with Paragraphs (d) and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
  - (b) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended.
  - (c) Waters for which the designated use, as described by the classification system set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313.
- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

- 15A NCAC 02H .0151 DESIGNATION AND PETITION PROCESS**
- (a) Designation of Regulated Entities: A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this Paragraph.
- (1) Federal designation: A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations 122.32.
  - (2) State designation process: The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below.
    - (A) Designation schedule: The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
    - (B) Identification of candidate regulated entities: The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
      - (1) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
      - (2) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
    - (C) Notice and comment on candidacy: The Commission shall notify each public entity identified as a candidate for designation as a regulated entity.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).



After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.

**(D) Designation of regulated entities:**

After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

- (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
- (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.
- (iii) The public entity has an actual population increase that exceeds 15% of its previous population for the previous two years.
- (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
- (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support

the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

**(E) Notice of designation:** The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

**(F) Application schedule:** A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

**(3) Designation under a total maximum daily load (TMDL) implementation plan:** The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(b) Petition Process: A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

(1) Connected discharge petition: An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

(2) Adverse impact petition: Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(A) Petition review: The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

(i) The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation.

(ii) The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters.

(iii) The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name

as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313.

(B) Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:

(i) Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.

(ii) Scientific or technical literature that supports the sampling methods.

(iii) Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.

(iv) A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.

(v) For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the

- municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.
- (vi) For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.
- (C) Water quality protection program offset. – If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.
- (3) Petition administration: The Commission shall process petitions in the following manner:
- (A) The Commission shall only accept petitions submitted on Department forms.
- (B) A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.
- (C) The Commission shall evaluate only complete petitions. The Commission shall make a determination on the
- completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.
- (D) The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.
- (E) The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.
- (F) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.
- (G) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

(i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

(H) The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days

of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(c) Exemption: A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

(d) Waiver: The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e).

*Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).*

## **15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS**

(a) Development in Unincorporated Areas of Counties:

(1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule 02H .0154 of this Section beginning 1 July 2007 if the development is located in:

(A) An area that is designated as an urbanized area under the most recent federal decennial census.

(B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

(i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

(ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

(iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

- (A) An area delineated pursuant to Item (2) of this Paragraph.
- (B) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Rule 02H .0151(a) of this Section; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Rule 02H .0151(b) of this Section; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this Paragraph, the stormwater programs administered by the Division are:
  - (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212.
  - (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214.
  - (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215.
  - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216.
  - (v) High Quality Waters (HQW) – 15A NCAC 02H .1006.
  - (vi) Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007.
  - (vii) The Coastal Stormwater Program – 15A NCAC 02H .1005.
  - (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235.
  - (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258.
- (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (C) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.
- (2) Delineation Process: The Commission shall delineate regulated coverage areas as provided in Subparagraphs (2)(A) through (F) below.
  - (A) Schedule. – The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
  - (B) Potential candidate coverage areas: A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule 02H .0151(a) of this Section that:
    - (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
    - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
    - (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
  - (C) Identification of candidate coverage areas: The Commission shall identify an area within a potential candidate coverage area described in Subparagraph (2)(B)(ii) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any

activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

(D) Notice and comment on candidacy: The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.

(E) Delineation of regulated coverage areas: After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:

(i) Adversely impacts water quality.

(ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

(F) Notice of delineation: The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

(3) Except as provided in this Paragraph and 15A NCAC 02H .1016(d), the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).

(b) Development in Non-Phase II Incorporated Areas in Certain Counties: Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (1)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule 02H .0151(a) of this Section of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).

*Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02H .0153 PROGRAM IMPLEMENTATION**

(a) Permit Standards: To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations 122.34(b). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations 122.34(b)(5) shall be conducted as provided in Rule .0154(a) of this Section. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

(b) Implementation Schedule: The requirements of this act shall be implemented as follows:

(1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b), and .0152 of this Section.

- (2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.
- (3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.
- (4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

(c) Federal and State Projects: The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular project, then the project is subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit: The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations 122.34(b)(5) shall require a permittee to meet the standards set out in Rule .0154(a) of this Section but shall not impose any requirement on the permittee that exceeds the standards set out in Rule .0154(a) of this Section. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

*Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).*

## **15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES**

(a) Requirements for Post-Construction Practices:

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land,

including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) Low Density Option: A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(B) High Density Option: A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must

- also meet the following design standards:
- (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
  - (ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
  - (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
  - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 2H .1008(c).
  - (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.
- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the
- Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.
- (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
- (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
- (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
  - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
  - (C) Meet the requirements of 15A NCAC 02H .1005(a)(2).
- (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:
- (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
  - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
- (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a



- Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
- (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
- (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
- (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212.
- (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214.
- (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215.
- (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216.
- (E) Freshwater High Quality Waters (HQW) – 15A NCAC 02H .1006.
- (F) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007.
- (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235.
- (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258.
- (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5).
- (11) Nothing in this Paragraph shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices: The post-construction practices required by Paragraph (a) of this Rule shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
- (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
- (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
- (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:
- (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
- (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.
- (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a).
- (E) A vested right to the development pursuant to common law.
- (2) Redevelopment as defined in Rule .0150 of this Section.
- (c) Exceptions: The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

- (1) An exception may be granted if the application meets all of the following criteria:
  - (A) Unnecessary hardships would result from strict application of the act.
  - (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
  - (C) The hardships did not result from actions taken by the petitioner.
  - (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
- (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
  - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
  - (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
  - (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or

density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

*Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).*

## **SECTION .1000 - STORMWATER MANAGEMENT**

### **15A NCAC 02H .1002 DEFINITIONS**

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

- (1) "Built-upon Area" means that portion of a development project that is covered by impervious or partially impervious ~~cover including surface including, but not limited to, buildings, buildings, pavement, pavement and gravel areas such as roads roads, and parking areas lots, and paths; and recreation facilities (e.g., such as tennis courts courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).~~ "Built upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (2) "CAMA Major Development Permits" mean those permits or revised permits required by the Coastal Resources Commission according to 15A NCAC 7J Sections .0100 and .0200.
- (3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (4) "Coastal Counties" include Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford,

- Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (5) "Curb Outlet System" means curb and gutter installed in a development which meets low density criteria [Rule .1003(d)(1) of this Section] with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.
- (6) "Development" means any land disturbing activity ~~which that~~ increases the amount of built-upon area or ~~which that~~ otherwise decreases the infiltration of precipitation into the soil.
- (7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.
- (10) "Infiltration Systems" mean stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.
- (11) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (12) "Off-site Stormwater Systems" mean stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.
- (13) "On-site Stormwater Systems" mean the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (14) "Redevelopment" means any ~~rebuilding- land~~ disturbing activity ~~which that has no~~ does not result in a net increase in built-upon area ~~or which and that~~ provides ~~equal or greater or equal~~ stormwater control than the previous development (stormwater controls shall not be allowed where otherwise prohibited).
- (15) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- (16) "Sedimentation/Erosion Control Plan" means any plan, amended plan or revision to an approved plan submitted to the Division of Land Resources or delegated authority in accordance with G.S. 113A-57.
- (17) "Stormwater" is defined in G.S. 143, Article 21.
- (18) "Stormwater Collection System" means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.
- (19) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- (20) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and boat storage areas are not water dependent uses.
- (21) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.
- (22) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- (23) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and which

provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.

- (24) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (25) "BMP" means Best Management Practice.
- (26) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.
- (27) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- (28) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

*Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).*

#### **15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES**

(a) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties: All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in Items (1), (2), and (3) below. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006.

- (1) Development Near Outstanding Resource Waters (ORW): Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding

Resource Waters (ORW) shall meet the requirements of Rule .1007 of the Section and shall be permitted as follows:

(A) Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of 12 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
- (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.
- (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(B) High Density Option: Development shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of greater than 12 percent.
- (ii) The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126.
- (iii) The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns,

rain gardens or alternative low impact development (LID) stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the greater of, runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm. Wet detention ponds may be used as a stormwater control system to meet the requirements of this Subparagraph (1)(B)(iii), provided that the stormwater control system fully complies with the requirements of Subparagraph (1)(B). If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of Subparagraph (1)(B).

- (iv) Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of Class SA waters.
- (v) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(C) Stormwater Discharges Prohibited: All development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to Class SA

waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:

- (i) Infiltration of the stormwater runoff from the design storm as described in Subparagraph (1)(B)(iii).
- (ii) Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in Subparagraph (1)(B)(iii). Notwithstanding the other requirements of this Rule, the infiltration mandated in this Subparagraph (1)(C)(ii) does not require a minimum separation from the seasonal high-water table.
- (iii) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of Subparagraph (1)(C).

(D) Limitation on the Density of Development: Development shall be limited to a built upon area of 25 percent or less.

(2) Development Near Class SA Waters: Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of Subparagraphs (1)(A), (B), and (C). The extent of Class SA waters is limited to those waters

that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.

- (3) Other Coastal Development: Development activities within the Coastal Counties except those areas described in Items (1) and (2) of this Paragraph shall meet all of the following requirements:

(A) Low-Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of 24 percent or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

- (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.

- (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(B) High-Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:

- (i) The development has a built upon area of greater than 24 percent.

- (ii) The development uses control systems that are any combination of infiltration systems, wet detention

ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with Rule .1008 of this Section.

- (iii) Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.

- (iv) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(b) Requirements for Limited Residential Development in Coastal Counties: For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than 12 percent, that will add more than 10,000 square feet of built upon area, and that does not require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

- (2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

- (3) Install any other stormwater best management practice that meets the requirements of Rule .1008 of this Section to control and treat the stormwater runoff from all built upon areas of

the site from the first one and one-half inches of rain.

(c) Requirements for Structural Stormwater Controls: Structural stormwater controls required under this Rule shall meet all of the following requirements:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids.
- (2) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in Rule .1008(c) of this Section.
- (5) For structural stormwater controls that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the Division may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in Rule .1008(h) of this Section. No minimum separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

(d) Wetlands: Developments regulated by this Rule that have wetlands inside of, or adjacent to, the development must meet the following requirements:

- (1) Areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.
- (2) Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

(e) Vegetative Buffer: Developments permitted under Paragraph (a) shall contain a 50 foot wide vegetative buffer, as defined in Rule .1002(22) of this Section, for new development activities and a 30 foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404

jurisdictional wetlands that are located landward of the normal waterline.

(f) Exemptions From Vegetative Buffer Requirements: The following activities are exempt from the vegetative buffer requirements of Paragraph (e) of this Rule:

- (1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g).
- (2) Development in a new urban waterfront area that meets the requirements of S.L. 2004-117.
- (3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H).
- (4) Development of upland marinas that have received or are required to secure a CAMA Major Development Permit.

(g) Compliance with Other Rules: In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.

(h) Exclusions: The amended requirements of this Rule shall not apply to any of the following:

- (1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.
- (2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of this Rule that were effective at the time of the original issuance of the following authorizations:
  - (A) State Stormwater Permit issued under the provisions of this Rule.
  - (B) Stormwater Certification issued pursuant to Rule .1000 of this Section prior to 1 December 1995.
  - (C) A CAMA Major Development Permit.
  - (D) 401 Certification that contains an approved Stormwater Management Plan.
  - (E) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
  - (F) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
  - (G) A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:
    - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to

G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.

- (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.
- (iii) A vested right to the development pursuant to common law.
- (H) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.
- (I) Development activities for which a complete Stormwater Permit Application has been accepted by the Division prior to October 1, 2008, shall be regulated by the provisions and requirements of this Rule that were effective at the time that this application was accepted as complete by the Division. For purposes of this Rule, a Stormwater Permit Application is deemed accepted as complete by the Division when the application is assigned a permit number in the Division's Basinwide Information Management System.
- (J) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of this Rule that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this Rule, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.
- (K) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for

municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Rule.

*Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).*

**15A NCAC 02H .1014    STORMWATER  
MANAGEMENT FOR URBANIZING AREAS**

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section .0100 entitled "Point Source Discharges to the Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(b) Other stormwater control requirements are mainly addressed in this Section but may also be addressed in sections dedicated to particular water classifications or circumstances. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules .1014 through .1017 of this Section. For post-construction requirements, a program will be deemed compliant for the areas that satisfy Rule .1017(a)(9) of this Section.

*Authority* G.S. 143-214.1; 143-214.7; 143-215.1;  
143-215.3(a)(1).

## 15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

The definition of any word or phrase for Urbanizing Areas shall be as follows:

- (1) The definitions set out in 40 Code of Federal Regulations 122.2 and 122.26(b) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 02H .0103.
- (4) The definitions set out in Rule .1002 of this Section, except for the definitions of "Development" and "Redevelopment", which are defined below.
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (8) "Division" means the Division of Water Quality in the Department.
- (9) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by G.S. 160A-



19, or a county may exercise the powers authorized by G.S. 153A-18.

- (10) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (11) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.
- (12) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (13) "Sensitive receiving waters" means any of the following:
- (14) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 02B .0101.
- (15) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended.
- (16) Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 02B .0101, have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313.
- (17) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300, et seq.
- (18) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

## **15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS**

### **(a) Development in Unincorporated Areas of Counties.**

- (1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007 if the development is located in:

- (A) An area that is designated as an urbanized area under the most recent federal decennial census.

- (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

- (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

- (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

- (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

- (C) An area delineated pursuant to Item (2) of this Paragraph.

- (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Paragraph (c) of this Rule; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to 15A NCAC 02H .0151(b); and (vi) areas in the county that are subject to any of the stormwater management programs

administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:

- (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212.
- (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214.
- (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215.
- (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216.
- (v) High Quality Waters (HQW) – Rule .1006 of this Section.
- (vi) Outstanding Resource Waters (ORW) – Rule .1007 of this Section.
- (vii) The Coastal Stormwater Program – Rule .1005 of this Section.
- (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235.
- (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258.
- (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.

(E) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

(2) Delineation Process: The Commission shall delineate regulated coverage areas as follows:

(A) Schedule: The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide

water quality management plans as provided in G.S. 143-215.8B(c).

(B) Potential candidate coverage areas: A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Items (2) and (3) of Paragraph (c) that:

- (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
- (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
- (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(C) Identification of candidate coverage areas: The Commission shall identify an area within a potential candidate coverage area described in Subparagraph (2)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

(D) Notice and comment on candidacy: The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.

(E) Delineation of regulated coverage areas: After review of public

comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:

- (i) Adversely impacts water quality.
- (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

(F) Notice of delineation: The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

- (3) Except as provided in this Item (3) of this Paragraph and Paragraph (d) of this Rule, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.

(b) Development in Non-Phase II Incorporated Areas in Certain Counties: Development that cumulatively disturbs one acre or

more of land located in the incorporated areas of a county described in Subparagraphs (2)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.

(c) Designation of Regulated Entities: A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.

- (1) Federal designation: A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations 122.32 (1 July 2003 Edition).

- (2) State designation process: The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as follows:

(A) Designation schedule: The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

(B) Identification of candidate regulated entities: The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

- (i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

- (ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000

- people per square mile or more or more than 400 housing units per square mile.
- (C) Notice and comment on candidacy: The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.
- (D) Designation of regulated entities. – After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
- (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
  - (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.
  - (iii) The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years.
  - (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
  - (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs.
- To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (E) Notice of designation: The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.
- (F) Application schedule: A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan: The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be

submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(d) Delegation: A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Paragraphs (a) and (b) of this Rule may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Rule .1018 of this Section. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Rule .1018 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

## **15A NCAC 02H .1017 POST-CONSTRUCTION PRACTICES**

### **(a) Requirements for Post-Construction Practices:**

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as

"Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

- (A) Low Density Option: A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
- (B) High Density Option: A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:
  - (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
  - (ii) Discharge the storage volume at a rate equal to or

- less than the predevelopment discharge rate for the one-year, 24-hour storm.
  - (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
  - (iv) Meet the General Engineering Design Criteria set out in Rule .1008(c) of this Section.
  - (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.
- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.
- (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures
  - the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
- (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
  - (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
  - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
  - (C) Meet the requirements of Rule .1005(a)(2) of this Section.
- (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:
  - (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
  - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
  - (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

- (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
- (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
- (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212.
- (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214.
- (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215.
- (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216.
- (E) Freshwater High Quality Waters (HQW) – Rule .1006 of this Section.
- (F) Freshwater Outstanding Resource Waters (ORW) – Rule .1007 of this Section.
- (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235.
- (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258.
- (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).
- (11) Nothing in this Paragraph (a) shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices: The post-construction practices required by Paragraph (a) of this act shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (A) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
- (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
- (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
- (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:
- (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
- (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.
- (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a).
- (E) A vested right to the development pursuant to common law.
- (2) Redevelopment as defined in Rule .1015 of this Section.
- (c) Exceptions: The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:
- (1) An exception may be granted if the application meets all of the following criteria:
- (A) Unnecessary hardships would result from strict application of the act.
- (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

- (C) The hardships did not result from actions taken by the petitioner.
- (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
- (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
  - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
  - (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
  - (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Board intends to adopt the rules cited as 21 NCAC 32A .0114; 32B .1370, .1501-.1502; amend the rules cited as 21 NCAC 32B .1301, .1303; 32F .0103; 32M .0109; 32S .0202; 32V .0103; 32W .0102; 32X .0104; and repeal the rules cited as 21 NCAC 32B .0601-.0602, .0801-.0808.*

**Proposed Effective Date:** March 1, 2011

**Public Hearing:**

**Date:** January 14, 2011

**Time:** 9:00 a.m.

**Location:** NC Medical Board, 1203 Front Street, Raleigh, NC 27609

**Reason for Proposed Action:**

*21 NCAC 32A .0114 – The proposed adoption is to establish procedures by which fees tendered would be placed in an escrow account should the Medical Board's authority to expend fees be suspended.*

*21 NCAC 32B .0601-.0602 – The proposed repeals are necessary to complete the reorganization of the Medical Board's licensing rules.*

*21 NCAC 32B .0801-.0808; .1501-.1502 – The purpose of the proposed adoptions and repeals is to reorganize the current licensing rules.*

*21 NCAC 32B .1301 – The proposed amendment will add the Medical Board's definitions related to 21 NCAC 32B .1370.*

*21 NCAC 32B .1303 – The purpose of the proposed amendment is to require a FCVS profile for all international medical graduates.*

*21 NCAC 32B .1370 – The proposed adoption establishes rules for reentering the active practice of medicine.*



**21 NCAC 32F .0103** – The amendment of this rule is a house-keeping matter to change the name of the Board's annual fee from "registration" to "renewal."

**21 NCAC 32M .0109** – The purpose of the proposed amendment is to make the NP prescribing authority consistent with the PA prescribing rules.

**21 NCAC 32S .0202; 32V .0103; 32W .0102** – The purpose of the proposed amendment is to require applicants to provide proof of US citizenship.

**21 NCAC 32X .0104** – The purpose of the proposed amendment is to refine the list of misdemeanor convictions by its licensees that the Board will publish.

**Procedure by which a person can object to the agency on a proposed rule:**

**21 NCAC 32A .0114** - A person may submit objections to the proposed adoption, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "32A .0114 – 1/14/2011" in the subject line.

**21 NCAC 32B .1303** - A person may submit objections to the proposed amendment, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "32B .1303 – 1/14/2011" in the subject line.

**21 NCAC 32M .0109** - A person may submit objections to the proposed amendment, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "32M .0109 – 1/14/2011" in the subject line.

**21 NCAC 32B .0801-.0808, .1501-.1502** - A person may submit objections to the proposed adoptions and repeals, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "Faculty Limited 32B – 1/14/2011" in the subject line.

**21 NCAC 32B .0601-.0602, .1301, .1370; 32F .0103** - A person may submit objections to the proposed adoption, amendments and repeals, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "Licensing Rules 32B – 1/14/2011" in the subject line.

**21 NCAC 32S .0202; 32V .0103; 32W .0102** - A person may submit objections to the proposed amendments, in writing by January 14, 2011, to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or email at rules@ncmedboard.org using "Immigration Status – 1/14/2011" in the subject line.

**21 NCAC 32X .0104** – A person may submit written objections to the proposed amendment by January 14, 2011 to the Rules Coordinator, NC Medical Board, 1203 Front Street, Raleigh, NC 27609 or by email at rules@ncmedboard.org using "21 NCAC 32X .0104 - 1/14/2011" in the subject line.

**Comments may be submitted to:** Rules Coordinator, NC Medical Board, PO Box 20007, Raleigh, NC 27619-0007; phone (919) 326-1100; fax (919) 326-0036; email rules@ncmedboard.org

**Comment period ends:** January 14, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

**SUBCHAPTER 32A - ORGANIZATION**

**21 NCAC 32A .0114      SUSPENSION OF AUTHORITY TO EXPEND FUNDS**

In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 93B-2(d).

**SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE**

**SECTION .0600 - SPECIAL LIMITED LICENSE**

**21 NCAC 32B .0601      APPLICATION AND LIMITATION**

~~An applicant for a special limited license must complete an application form supplied by the Board regarding the applicant's personal, educational, and professional background. The practice of a physician granted a special limited license is limited to the institution listed on the application.~~

Authority G.S. 90-12.

**21 NCAC 32B .0602      CERTIFICATION OF GRADUATION**

~~An applicant for a special limited license must submit a statement from the dean or other official of the applicant's medical school certifying the applicant's date of graduation from medical school. This certification must bear the signature of the~~

~~dean or other official of the medical school and the seal of the medical school. This certification may be contained on the certified photograph, under Rule .0603 of this Section, or on a separate document.~~

*Authority G.S. 90-12.*

## **SECTION .0800 - MEDICAL SCHOOL FACULTY LICENSE**

### **21 NCAC 32B .0801 DEFINITION OF PRACTICE**

~~The license for Medical School Faculty limits the practice of its holder to the confines of the physician's employment as a member of the medical faculty at one of the following North Carolina medical schools:~~

- ~~(1) — Duke University School of Medicine;~~
- ~~(2) — University of North Carolina at Chapel Hill School of Medicine;~~
- ~~(3) — East Carolina University School of Medicine;~~  
~~and~~
- ~~(4) — Bowman Gray School of Medicine.~~

~~This license will not be used to engage in a practice outside the realm of the medical school.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0802 ELIGIBILITY REQUIREMENTS**

~~(a) To be eligible, the applicant shall have received full time appointment as either a lecturer, assistant professor, associate professor or full professor at one of the following medical schools:~~

- ~~(1) — Duke University School of Medicine;~~
- ~~(2) — University of North Carolina at Chapel Hill School of Medicine;~~
- ~~(3) — Bowman Gray School of Medicine;~~
- ~~(4) — East Carolina University School of Medicine.~~

~~(b) The applicant must submit verification and details of the appointment signed by the Dean or Acting Dean of the Medical School in which the applicant is to practice.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0803 APPLICATION**

~~An applicant must complete the Board's application form which will include information regarding personal, educational and professional background.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0804 FEE**

~~A nonrefundable fee of one hundred fifty dollars (\$150.00) is due at the time of application.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0805 CERTIFIED PHOTOGRAPH AND CERTIFICATE OF GRADUATION**

~~An applicant must submit a recent photograph, at least 2 2 inches by 3 1/4 inches, certified on the back as a true likeness of~~

~~the applicant by the dean or other official of the applicant's medical school indicating the applicant's date of graduation from medical school. This certification must bear the signature of the dean or other official of the medical school and the seal of the medical school.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0806 VERIFICATION OF MEDICAL LICENSURE**

~~An applicant must request that reports be submitted to the Board directly from all states in which the applicant has ever been licensed to practice medicine indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probationary terms.~~

~~An AMA Physician Profile is requested of AMA by the Board.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0807 LETTERS OF RECOMMENDATION**

~~An applicant must request that no less than three letters of recommendation be submitted to the Board on his behalf. Two of these letters must be from physicians. One of the letters must be from someone who has known the applicant for a period of ten years.~~

*Authority G.S. 90-12.*

### **21 NCAC 32B .0808 PERSONAL INTERVIEW**

~~An applicant for a medical school faculty license may be required to appear, in person, for an interview with the Executive Director, a Board member, an agent of the Board or the full Board.~~

*Authority G.S. 90-12.*

## **SECTION .1300 - GENERAL**

### **21 NCAC 32B .1301 DEFINITIONS**

The following definitions apply to Rules within this Subchapter:

- (1) ABMS – American Board of Medical Specialties
- (2) ACGME – Accreditation Council for Graduate Medical Education
- (3) AMA – American Medical Association
- (4) AMA Physician's Recognition Award – American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (5) AOA – American Osteopathic Association
- (6) AOIA – American Osteopathic Information Association
- (7) Area(s) of Practice - shall mean the medical or surgical specialty in which a physician or physician assistant has practiced or intends to practice

- ~~(7)~~(8) Board –The North Carolina Medical Board
- ~~(8)~~(9) CACMS – Committee for the Accreditation of Canadian Medical Schools
- ~~(9)~~(10) CAQ – Certificate of Added Qualification conferred by a specialty board recognized by the ABMS, the AOA, CCFP, FRCP or FRCS
- ~~(10)~~(11) CCFP – Certificat of the College of Family Physicians
- ~~(11)~~(12) CFPC – College of Family Physicians of Canada
- ~~(12)~~(13) COCA – Commission on Osteopathic Colleges Accreditation
- (14) Core Competencies – as defined by the ACGME shall mean patient care; medical knowledge; communication; practice-based learning; systems-based care; and professionalism
- ~~(13)~~(15) CME – Continuing Medical Education
- ~~(14)~~(16) COMLEX – Comprehensive Osteopathic Medical Licensure Examination
- ~~(15)~~(17) COMVEX – Comprehensive Osteopathic Medical Variable-Purpose Examination
- ~~(16)~~(18) ECFMG – Educational Commission for Foreign Medical Graduates
- ~~(17)~~(19) FCVS – Federation Credential Verification Service
- ~~(18)~~(20) Fifth Pathway – an avenue for licensure as defined in the AMA's Council on Medical Education Report 1-I-07
- ~~(19)~~(21) FLEX – Federation Licensing Examination
- ~~(20)~~(22) FRCP – Fellowship of the Royal College of Physicians of Canada
- ~~(21)~~(23) FRCS – Fellowship of the Royal College of Surgeons of Canada
- ~~(22)~~(24) FSMB – Federation of State Medical Boards
- ~~(23)~~(25) GME – Graduate Medical Education
- ~~(24)~~(26) HIPDB – Healthcare Integrity and Protection Data Bank
- ~~(25)~~(27) IMG – International Medical Graduate – a physician who has graduated from a medical or osteopathic school not approved by the LCME, the CACMS or COCA
- (28) Intensity of Practice - shall mean the number of hours, the number of years and the responsibilities involved in a person's medical practice
- ~~(26)~~(29) LCME – Liaison Commission on Medical Education
- ~~(27)~~(30) LMCC – Licentiate of the Medical Council of Canada
- ~~(28)~~(31) MCCQE – Medical Council of Canada Qualifying Examination
- (32) Mentoring Physician - shall be a licensed physician with no public disciplinary record in the last 10 years, who should be certified by an American Board of Medical Specialties ("ABMS"), the American Osteopathic Association ("AOA") or equivalent specialty board and who practices in the same or similar

Area of Practice into which the Applicant is reentering

- ~~(29)~~(33) NBME – National Board of Medical Examiners
- ~~(30)~~(34) NBOME – National Board of Osteopathic Medical Examiners
- ~~(34)~~(35) NPDB – National Practitioner Data Bank
- ~~(32)~~(36) RCPSC – Royal College of Physicians and Surgeons of Canada
- (37) Reentry Plan - shall mean an individualized program of assessment, education and re-assessment intended to confirm the Applicant's competence to practice in his or her intended Area of Practice
- (38) Reentry Agreement - shall mean a public, non-disciplinary agreement which incorporates by reference the Reentry Plan
- (39) Reentry Period - shall mean the duration of Reentry Plan
- ~~(33)~~(40) SPEX – Special Purpose Examination
- ~~(34)~~(41) USMLE – United States Medical Licensing Examination

*Authority G.S. 90-6; 90-8.1; 90-14(a)(11a).*

## **21 NCAC 32B .1303 APPLICATION FOR PHYSICIAN LICENSE**

(a) In order to obtain a Physician License, an applicant shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign this form, verifying the information;
- (6) for an applicant who has graduated from a medical or osteopathic school approved by the

- LCME, the CACMS or COCA, meet the requirements set forth in G.S. 90-9.1;
- (7) for an applicant graduating from a medical school not approved by the LCME, meet the requirements set forth in G.S. 90-9.2;
- (8) provide proof of passage of an examination testing general medical knowledge. In addition to the examinations set forth in G.S. 90-10.1 (a state board licensing examination; NBME; USMLE; FLEX, or their successors), the Board accepts the following examinations (or their successors) for licensure:
- (A) COMLEX,
- (B) NBOME, and
- (C) MCCQE;
- (9) submit proof that the applicant has completed graduate medical education as required by G.S. 90-9.1 or 90-9.2, as follows:
- (A) A graduate of a medical school approved by LCME, CACMS or COCA shall have satisfactorily completed at least one year of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
- (B) A graduate of a medical school not approved by LCME shall have satisfactorily completed three years of graduate medical education approved by ACGME, CFPC, RCPSC or AOA.
- (C) An applicant may satisfy the graduate medical education requirements of Paragraphs (a) or (b) of this Rule by showing proof of current certification by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA;
- (10) submit a FCVS ~~profile; profile, if an applicant has a completed FCVS profile;~~
- (A) If applicant is a graduate of a medical school approved by LCME, CACMS or COCA, and applicant previously has completed a FCVS profile;
- (B) If applicant is a graduate of a medical school other than those approved by LCME, COCA or CACMS, creation and submission of a FCVS profile is required;
- (11) If a graduate of a medical school other than those approved by LCME, AOA, COCA or CACMS, shall furnish an original ECFMG certification status report of a currently valid certification of the ECFMG. The ECFMG certification status report requirement shall be waived if:
- (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
- (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
- (12) submit reports from all relevant state medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
- (13) submit an AMA Physician Profile and, if applicant is an osteopathic physician, also submit an AOA Physician Profile;
- (14) if applying on the basis of the USMLE, submit:
- (A) a transcript from the FSMB showing a score of at least 75 on USMLE Step 1, both portions of Step 2 (clinical knowledge and clinical skills) and Step 3;
- (B) proof that the applicant has passed each step within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.
- (15) if applying on the basis of COMLEX, submit:
- (A) a transcript from the NBOME showing a score of at least 75 on COMLEX;
- (B) proof that the applicant has passed COMLEX within three attempts. However, the Board shall waive this requirement if the applicant has been certified or recertified by an ABMS, CCFP, FRCP, FRCS or AOA approved specialty board within the past 10 years.
- (16) if applying on the basis of any other board-approved examination, submit a transcript showing a passing score;
- (17) submit a NPDB / HIPDB report, dated within 60 days of submission of the application;
- (18) submit a FSMB Board Action Data Report;
- (19) submit two completed fingerprint record cards supplied by the Board;
- (20) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
- (21) provide two original references from persons with no family or marital relationship to the applicant. These references must be:
- (A) from physicians who have observed the applicant's work in a clinical

- environment within the past three years;
- (B) on forms supplied by the Board;
  - (C) dated within six months of the submission of the application; and
  - (D) bearing the original signature of the writer.
- (22) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (23) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (b) In addition to the requirements of Paragraph (a) of this Rule, the applicant shall submit proof that the applicant has:
- (1) within the past 10 years taken and passed either:
    - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBOME; USMLE; COMLEX; or MCCQE or their successors;
    - (B) SPEX (with a score of 75 or higher); or
    - (C) COMVEX (with a score of 75 or higher); or
  - (2) within the past 10 years obtained certification or recertification or CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
  - (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or
  - (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.
- (c) All reports must be submitted directly to the Board from the primary source, when possible.
- (d) An applicant may be required to appear in person for an interview with the Board or its agent.
- (e) An application must be completed within one year of submission. If not, the applicant shall be charged another application fee, plus the cost of another criminal background check.

*Authority G.S. 90-8.1; 90-9.1; 90-9.2; 90-13.1.*

## **21 NCAC 32B .1370 REENTRY TO ACTIVE PRACTICE**

- (a) A physician or physician assistant applicant ("Applicant" or "Licensee") who has not actively practiced or who has not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for a license from the Board shall be required to complete a Reentry Agreement as a condition of licensure.
- (b) The Applicant shall identify a Mentoring Physician acceptable to the Board.
- (c) The Applicant shall propose a Reentry Plan containing the components outlined in Paragraphs (g) and (h) of this Rule to the

Board. The Board shall review the proposed Reentry Plan and interview the Applicant.

(d) Factors that may affect the length and scope of the Reentry Plan include:

- (1) The Applicant's amount of time out of practice;
- (2) The Applicant's prior Intensity of Practice;
- (3) The reason for the interruption in practice;
- (4) The Applicant's activities during the interruption in practice, including the amount of practice-relevant continuing medical education;
- (5) The Applicant's previous and intended Area(s) of Practice;
- (6) The skills required of the intended Area(s) of Practice;
- (7) The amount of change in the intended Area(s) of Practice over the time the Applicant has been out of continuous practice;
- (8) The Applicant's number of years of graduate medical education;
- (9) The number of years since completion of graduate medical education;
- (10) As applicable, the date of the most recent ABMS, AOA or equivalent specialty board, or National Commission on Certification of Physician Assistant certification or recertification.

(e) If the Board approves an Applicant's Reentry Plan, it will be incorporated by reference into a Reentry Agreement and executed by the Applicant, the Board and the Mentoring Physician.

(f) After the Reentry Agreement has been executed, and the Applicant has completed all other requirements for licensure, the Applicant shall receive a restricted License. The Licensee may not practice outside of the scope of the Reentry Agreement and its referenced Reentry Plan during the Reentry Period.

(g) The first component of a Reentry Plan is an assessment of the Applicant's current strengths and weaknesses in his or her intended Area of Practice. The process used to perform the assessment should be described by the Applicant and confirmed by the Mentoring Physician. The process may include self-reflection, self-assessment, and/or testing and evaluation by colleagues, educators or others. The Applicant and Mentoring Physician shall evaluate and describe Applicant's strengths and areas of needed improvement in regard to the Core Competencies. The assessment shall continue throughout the Reentry Period as Licensee and the Mentoring Physician practice together.

(h) The second component of the Reentry Plan is education. Education should address the Licensee's areas of needed improvement. Education may consist of:

- (1) a Reentry Period of retraining and education under the guidance of a Mentoring Physician, upon terms as the Board may decide, or
- (2) a Reentry Period of retraining and education under the guidance of a Mentoring Physician consisting of the following:

- (A) Phase I – The Observation Phase. During the Observation Phase, the Licensee will not practice, but will observe the Mentoring Physician in practice.
- (B) Phase II – Direct Supervision Phase. During the Direct Supervision Phase, the Licensee shall practice under the direct supervision of the Mentoring Physician. Guided by the Core Competencies, the Mentoring Physician shall reassess the Licensee's progress in addressing identified areas of needed improvement.
- (C) Phase III – Indirect Supervision Phase. During the Indirect Supervision Phase, the Licensee shall continue to practice with appropriate supervision of the Mentoring Physician. Guided by the Core Competencies, and using review of patient charts and regular meetings, the Mentoring Physician shall reassess the Licensee's progress in addressing the areas of needed improvement.
- (D) No later than 30 days after the end of phase I and II, the Mentoring Physician shall send a report to the Board regarding the Licensee's level of achievement in each of the Core Competencies. At the completion of phase III the Mentoring Physician shall submit a summary report to the Board regarding the Licensee's level of achievement in each of the Core Competencies and affirm the re-entry physician's suitability to resume independent practice.
- (E) If the Mentoring Physician reassesses the Licensee and concludes that the Licensee requires an extended Reentry Period or if additional areas of needed improvement are identified during Phases II and/or III, the Board, the Licensee and the Mentoring Physician may amend the Reentry Agreement.

(i) Under the terms of either Reentry Periods Subparagraph (h)(1) or (h)(2) of this Rule, the Mentoring Physician may terminate his role as the Mentoring Physician upon written notice to the Board. Such written notice shall state the reasons for termination. The Licensee's approval is not required for the Mentoring Physician to terminate his role as Mentoring Physician. Upon receipt of the notice of termination, the Board shall place the Licensee's license on inactive status. Within six months from the effective date of the Mentoring Physician's termination, the Licensee shall provide a substitute Mentoring

Physician, who must be approved by the Board in writing, and resume the Reentry Plan upon such terms as are acceptable to the Board. In such event, an Amended Reentry Agreement must be executed prior to resumption of the Reentry Plan. If Licensee does not resume the Reentry Plan as required herein within six months from the effective date of the Mentoring Physician's termination, then the Board will not return the Licensee to active status unless and until Licensee applies and is approved for reactivation of the license with a new Reentry Agreement and Reentry Plan, which must be in place before Licensee may resume practice as a physician or physician assistant.

(j) Under the terms of either Reentry Periods Subparagraph (h)(1) or (h)(2) of this Rule, the Licensee may terminate the relationship with the Mentoring Physician upon written notice to the Board. Such written notice shall state the reasons for termination. The Mentoring Physician's approval is not required for the Licensee to terminate this relationship. Upon receipt of the notice of termination, the Board shall place the Licensee's license on inactive status. Within six months from the effective date of the Mentoring Physician's termination, the Licensee shall provide a substitute Mentoring Physician, who must be approved by the Board in writing, and resume the Reentry Plan upon such terms as are acceptable to the Board. In such event, an Amended Reentry Agreement must be executed prior to resumption of the Reentry Plan. If Licensee does not resume the Reentry Plan as required herein within six months from the effective date of the Mentoring Physician's termination, then the Board will not return the Licensee to active status unless and until Licensee applies and is approved for reactivation of the license with a new Reentry Agreement and Reentry Plan, which must be in place before Licensee may resume practice as a physician or physician assistant.

(k) The Licensee shall meet with members of the Board at such dates, times and places as directed by the Board to discuss the Licensee's transition back into practice and any other practice-related matters.

(l) Unsatisfactory completion of the Reentry Plan or practicing outside the scope of the Reentry Agreement, as solely determined by the Board, shall result in the automatic inactivation of the Licensee's license, unless the Licensee requests a hearing within 30 days of receiving notice from the Board.

(m) If the Board determines the Licensee has successfully completed the Reentry Plan, the Board shall terminate the Reentry Agreement and notify the Licensee that the license is no longer restricted.

*Authority G.S. 90-8.1; 90-14(a)(11a).*

## **SECTION .1500 – FACULTY LIMITED LICENSE**

### **21 NCAC 32B .1501 SCOPE OF PRACTICE UNDER MEDICAL SCHOOL FACULTY LIMITED LICENSE**

A physician holding a Medical School Faculty Limited License may practice only within the confines of the medical school or its affiliates. "Affiliates" shall mean the primary medical school hospital(s) and clinic(s), as designated by the ACGME.

*Authority G.S. 90-12.3.*

**21 NCAC 32B .1502 APPLICATION FOR MEDICAL SCHOOL FACULTY LIMITED LICENSE**

The Medical School Faculty License is limited to physicians who have expertise which can be used to help educate North Carolina medical students, post-graduate residents and fellows but who do not meet the requirements for Physician licensure.

(1) In order to obtain a Medical School Faculty License, an applicant shall:

- (a) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (b) submit the Board's form, signed by the Dean or his appointed representative, indicating that the applicant has received full-time appointment as either a lecturer, assistant professor, associate professor, or full professor at a medical school in the state of North Carolina.
- (c) submit documentation of a legal name change, if applicable;
- (d) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (e) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education. The applicant's date of graduation from medical school shall be written in the designated space, and the school seal shall be stamped on the form; the dean or other official of the applicant's medical school shall sign this form, verifying the information;
- (f) supply a certified copy of applicant's birth certificate or a certified copy of a valid and unexpired US passport if the applicant was born in the United States. If the applicant does not possess proof of US citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (g) submit proof of satisfactory completion of at least one year of GME approved by ACGME, CFPC, RCPSC, or AOA; or evidence of other education, training or experience, determined by the Board to be equivalent;

- (h) submit reports from all medical or osteopathic boards from which the applicant has ever held a medical or osteopathic license, indicating the status of the applicant's license and whether or not any action has been taken against the license;
  - (i) submit an AMA Physician Profile; and, if applicant is an osteopathic physician, submit an AOA Physician Profile;
  - (j) submit a NPDB report, HIPDB report, dated within 60 days of applicant's oath;
  - (k) submit a FSMB Board Action Data Bank report;
  - (l) submit two completed fingerprint record cards supplied by the Board;
  - (m) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
  - (n) provide two original references from persons with no family or marital relationship to the applicant. These letters must be:
    - (i) from physicians who have observed the applicant's work in a clinical environment within the past three years;
    - (ii) on forms supplied by the Board;
    - (iii) dated within six months of the applicant's oath; and
    - (iv) bearing the original signature of the writer.
  - (o) pay to the Board a non-refundable fee of three hundred fifty dollars (\$350.00), plus the cost of a criminal background check;
  - (p) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.
- (2) All reports must be submitted directly to the Board from the primary source, when possible.
  - (3) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.
  - (4) An application must be completed within one year of the date of the applicant's oath.
  - (5) This license is valid for the shorter of three years or the duration of the holder's appointment to the academic staff of the school.
  - (6) This Rule shall apply prospectively.

*Authority G.S. 90-12.3; 90-13.2.*

## **SUBCHAPTER 32F - ANNUAL REGISTRATION**

### **21 NCAC 32F .0103 FEE**

Each physician shall pay an annual ~~registration~~ renewal fee to the Board in accordance with G.S. 90-15.1; except that every physician who holds a limited volunteer license shall pay an annual ~~registration~~ renewal fee of twenty-five dollars (\$25.00).

*Authority G.S. 90-12; 90-15.1.*

## **SUBCHAPTER 32M - APPROVAL OF NURSE PRACTITIONERS**

### **21 NCAC 32M .0109 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
  - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
  - (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
  - (C) ~~the prescription or order for schedules II, IIN, III and IIIN may not be refilled. the supervising physician(s) must possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.~~
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
  - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and

signed by the nurse practitioner and the physician.

- (4) Refills may be issued for a period not to exceed one ~~year. year except for schedules II, IIN, III and IIIN which may not be refilled.~~
  - (5) Each prescription shall be noted on the patient's chart and include the following information:
    - (A) medication and dosage;
    - (B) amount prescribed;
    - (C) directions for use;
    - (D) number of refills; and
    - (E) signature of nurse practitioner.
  - (6) Prescription Format:
    - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number.
    - (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 90-171.42; 58 Fed. Reg. 31,171 (1993) (to be codified at 21 C.F.R. 1301).*

## **SUBCHAPTER 32S - PHYSICIAN ASSISTANTS**

### **SECTION .0200 - PHYSICIAN ASSISTANT REGISTRATION**

#### **21 NCAC 32S .0202 QUALIFICATIONS AND REQUIREMENTS FOR LICENSE**

(a) Except as otherwise provided in this Subchapter, an individual must obtain a license from the Board before practicing as a physician assistant. The Board may grant a physician assistant license to an applicant who:

- (1) submits a completed application to the Board;
- (2) meets the requirements set forth in G.S. 90-9.3 and has not committed any of the acts listed in G.S. 90-14;
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which



- the Board will use to verify applicant's ability to work lawfully in the United States;
- ~~(3)~~(4) submits to the Board proof that the applicant has completed an accredited Physician Assistant Educational Program; if a physician assistant was licensed in North Carolina after June 1, 1994, he/she must also show successful completion of the Physician Assistant National Certifying Examination;
- ~~(4)~~(5) pays to the Board a non-refundable fee of two hundred dollars (\$200.00) plus the cost of a criminal background check. There is no fee to apply for a physician assistant limited volunteer license;
- ~~(5)~~(6) submits National Practitioner Data Bank (NPDB) and Healthcare Integrity and Protection Data Bank (HIPDB) reports. These reports must be requested by the Applicant and submitted to the Board within 60 days of the request.
- ~~(6)~~(7) submits a Board Action Data Bank Inquiry from the Federation of State Medical Boards (FSMB). This report must be requested by the Applicant and submitted to the Board within 60 days of the request.
- ~~(7)~~(8) submits to the Board two complete original fingerprint record cards, on fingerprint record cards supplied by the Board;
- ~~(8)~~(9) submits to the Board a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- ~~(9)~~(10) discloses whether he/she has ever been suspended from, placed on academic probation, expelled or required to resign from any school, including a PA educational program;
- ~~(10)~~(11) attests that he/she has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension or probation or any other adverse action resulting from a health care licensing board;
- ~~(11)~~(12) certifies that he or she is mentally and physically able to safely practice as a physician assistant and is of good moral character;
- ~~(12)~~(13) provides the Board with three original recommendation forms dated within six months of the application. These recommendations shall come from persons under whom the applicant has worked or trained who are familiar with the applicant's academic competence or clinical skills. At least one reference form must be from a physician and two reference forms must be from peers under whom the applicant has worked or trained. References must be able to evaluate the applicant's academic competence, clinical skills and character as a physician assistant. References shall not be from any

family member or in the case of new graduate applicants, references shall not be from fellow students of the applicant's Educational Program;

- ~~(13)~~(14) if two years or more have passed since graduation from a Physician Assistant Educational Program, documents that he/she has successfully completed at least 100 hours of continuing medical education (CME) during the preceding two years, at least 40 hours of which must be American Academy of Physician Assistants Category I CME; and
- ~~(14)~~(15) supplies any other information the Board deems necessary to evaluate the applicant's qualifications.

(b) An applicant may be required to appear in person for an interview with the Board.

*Authority G.S. 90-3; 90-9.3; 90-11; 90-18(c)(13); 90-18.1.*

## **SUBCHAPTER 32V - PERFUSIONIST REGULATIONS**

### **21 NCAC 32V .0103 QUALIFICATIONS FOR LICENSE**

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Committee before the individual may practice as a licensed perfusionist. The Committee may grant a license or a provisional license to an applicant who has met the following criteria:

- (1) satisfies the requirements of G.S. 90-686;
- (2) is not disqualified for any reason set out in G.S. 90-691; ~~and~~
- (3) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States; and

~~(3)~~(4) submits to the Committee any information the Committee deems necessary to evaluate the application; and

(b) An applicant may be required to appear, in person, for an interview with the Committee.

*Authority G.S. 90-685(1)(3) and (5); 90-686.*

## **SUBCHAPTER 32W - ANESTHESIOLOGIST ASSISTANT REGULATIONS**

### **21 NCAC 32W .0102 QUALIFICATIONS FOR LICENSE**

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before practicing as an Anesthesiologist Assistant. The Board may grant an Anesthesiologist Assistant license to an applicant who has met all the following criteria:

- (1) submits a completed license application on forms provided by the Board;
- (2) supplies a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (2)(3) pays the license fee established by Rule .0113 in this Subchapter;
- (3)(4) submits to the Board proof of completion of a training program for Anesthesiologist Assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its preceding or successor organization;
- (4)(5) submits to the Board proof of current certification by the National Commission for Certification of Anesthesiologist Assistants (NCCAA) or its successor organization, including passage of the Certifying Examination for Anesthesiologist Assistants administered by the NCCAA within 12 months after completing training;
- (5)(6) certifies that he or she is mentally and physically able to safely practice as an Anesthesiologist Assistant;
- (6)(7) has no license, certificate, or registration as an Anesthesiologist Assistant currently under discipline, revocation, suspension, or probation;
- (7)(8) has good moral character; and
- (8)(9) submits to the Board any other information the Board deems necessary to determine if the applicant meets the requirements of the rules in this Subchapter.

(b) The Board may deny any application for licensure for any enumerated reason contained in G.S. 90-14 or for any violation of the Rules of this Subchapter.

(c) An applicant may be required to appear, in person, for an interview with the Board, or its representatives upon completion of all credentials.

*Authority G.S. 90-9.4; 90-18(c)(20); 90-18.5.*

#### **SUBCHAPTER 32X - PRACTITIONER INFORMATION**

##### **21 NCAC 32X .0104 PUBLISHING CERTAIN MISDEMEANOR CONVICTIONS**

~~The Board shall publish misdemeanor convictions which involve offenses against a person, offenses of moral turpitude, offenses involving the use of drugs or alcohol, and violations of public health and safety codes. Such misdemeanor convictions shall be published for a period of 10 years from the date of conviction.~~

(a) The Board shall publish certain misdemeanor convictions involving offenses against a person including manslaughter,

assault, battery, sexual crimes, hazing, false imprisonment, stalking, abuse and neglect.

(b) The Board shall publish misdemeanor convictions involving moral turpitude such as fraud, arson, blackmail, burglary, embezzlement, extortion, false pretenses, forgery, larceny, malicious destruction of property, receiving stolen goods with guilty knowledge, robbery, theft, transporting stolen goods with guilty knowledge, bribery, counterfeiting, tax fraud, mail fraud, perjury, harboring a fugitive from justice with guilty knowledge, tax evasion, abandonment of a minor child, bigamy, gross indecency, incest, solicitation, and prostitution; attempting, aiding and abetting, or serving as an accessory in the commission of a crime involving moral turpitude; and taking part in or attempting to take part in a conspiracy involving moral turpitude where the underlying crime would not involve moral turpitude.

(c) The Board shall publish all misdemeanor convictions involving drugs or alcohol where the conviction was entered after the licensee's enrollment in medical school or a Physician Assistant education program.

(d) The Board shall publish misdemeanor convictions involving violations of public health and safety codes.

(e) The Board shall publish misdemeanor convictions for failure to file state and federal tax returns.

(f) The Board shall publish misdemeanor convictions set forth above for 10 years from the date of conviction.

*Authority G.S. 90-5.2; 90-14.3.*

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#### **CHAPTER 40 - BOARD OF OPTICIANS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Opticians intends to adopt the rule cited as 21 NCAC 40 .0422, amend the rules cited as 21 NCAC 40 .0104, .0109, .0112, .0202, .0206-.0207, .0209-.0210, .0213-.0214, .0301-.0303, .0319-.0320, .0323 and repeal the rules cited as 21 NCAC 40 .0307, .0318.*

**Proposed Effective Date:** April 1, 2011

**Public Hearing:**

**Date:** December 3, 2010

**Time:** 2:00 p.m.

**Location:** NC Medical Society Conference Room, 222 N. Person Street, Raleigh, NC 27611

**Reason for Proposed Action:**

**21 NCAC 40 .0104** – Clarifies how information on licensure or examination can be obtained, and what information is required on those applications.

**21 NCAC 40 .0109**– Clarifies current election procedures; specifies deadline for election closure; and includes Governor's final appointment authority for Board seats.

**21 NCAC 40 .0112** – Corrects omission of training establishment as one of the certificates and forms used by the Board.

**21 NCAC 40 .0202** –Establishes definition of optical businesses to encompass both in- and out-of-state businesses (including internet sites; proposes changes to the business registration process, so that both the optical business, and the optician-in-charge of the business must each register; establishes processes for customer acknowledgements/notifications during online transactions.

**21 NCAC 40 .0206** – Clarifies Board's intention to advise licensees of changes in laws/rules that would require licensees' attendance at continuing education (CE) course on the subject; establishes required information for CE providers' submissions; establishes means for electronic submission of CE attendance.

**21 NCAC 40 .0207** – Clarifies method, and gives deadline, for notifying Board of contact and employment information for all licensees and trainees.

**21 NCAC 40 .0209** – Clarifies that all registration certificates (including business and individual) be displayed in a business.

**21 NCAC 40 .0210** – Clarifies definition of an eye doctor's prescription, and the activities performed by opticians post-examination. Establishes that opticians' measurements are not part of the prescription, and are not required to be released to customers.

**21 NCAC 40 .0213** – Establishes non-inclusive examples of gross negligence in opticianry.

**21 NCAC 40 .0214** – Establishes that complaints can be registered against both individuals and businesses, and the procedure followed for investigation of complaints.

**21 NCAC 40 .0302** – Establishes payment means for fees; proposes that fees will be retained if false information is submitted during application process.

**21 NCAC 40 .0303** – Specifies number of Exams held annually; clarifies passing criteria.

**21 NCAC 40 .0307** – Repealed – combined into .0303.

**21 NCAC 40 .0318** – Repealed – combined into .0303.

**21 NCAC 40 .0319** – Clarifies from whom applicants can obtain employment affidavits; defines full-time employment; proposes timeline for applicants to register for in-state internship or Exam participation.

**21 NCAC 40 .0320** – Establishes means for obtaining license and registration renewal forms; specifies deadlines for requesting mailed applications; requires applicants to provide information related to certain criminal activity

**21 NCAC 40 .0323** – Establishes consequences for submitting false information during an application process.

**21 NCAC 40 .0422** – Proposes process by which a party to a Board hearing can request a continuance.

**Procedure by which a person can object to the agency on a proposed rule:** Persons may submit objections to these rules by contacting Sue M. Kornegay, Director, NC State Board of Opticians, P.O. Box 25336, Raleigh, NC 27611, telephone (919) 733-9321.

**Comments may be submitted to:** Written Comments: Sue M. Kornegay, NC State Board of Opticians, PO Box 25336, Raleigh, NC 27611, Phone 919-733-9321, Fax (919)733-0040, E-Mail ncopticians@bellsouth.net

**Comment period ends:** January 14, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (>\$3,000,000)
- ☒ None

**SECTION .0100 - LOCATION**

**21 NCAC 40 .0104 INFORMATION AND APPLICATION**

(a) Any person desiring to become a North Carolina licensed ~~optician~~ optician, ~~upon request, will be provided appropriate information on the requirements for licensure, including may obtain information on licensure and an application form prepared by the Board, which by download from the Board webpage.~~ Board-administered application forms must be completed in order to be considered for licensure by waiver of the examination, or to sit for the licensure examination.

(b) Any person not able to download licensure information, or the licensure or examination application, may make request of the Board office for mailing of the materials.

(c) The application for licensure or examination shall:

- (1) include all fees required by G.S. 90-246.
- (2) require information, request that the applicant provide information, including but not limited to the applicant's age, qualifications, a current photograph, and a statement an affirmation regarding whether the applicant has violated G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code, or has been charged with or convicted of a crime. Each application must be signed under oath a felony or misdemeanor.
- (3) request that the applicant provide information as to whether the applicant has been a party to a lawsuit involving fraud, deceit, or misrepresentation; malpractice, unethical conduct, gross negligence, or gross misconduct.
- (4) require the applicant's age.
- (5) provide evidence of qualifications to comply with G.S. 90-237, and

- (6) provide a current photograph.

*Authority G.S. 90-237; 90-239; 90-240; 90-249(6); 90-249.1(a)(8).*

**21 NCAC 40 .0109 ELECTION OF MEMBERS**

(a) ~~Nominees for optician~~Optician/licensee appointments to the Board shall be selected by election. ~~election and gubernatorial appointment.~~ By April 1 of each year, any licensed optician desiring ~~his~~their name to be placed in nomination shall forward a petition endorsed by five licensees to the Board. ~~By April 10 of each year, the Board shall mail a list of those seeking nomination to each licensee in the state together with a notice of the date and place of election.~~

~~(b) Ballots will be prepared by the Board of Opticians and will be distributed at the meeting to those opticians who are present and eligible to vote. Any optician who is eligible to vote and wishes to do so but will not be in attendance at the election meeting may request a written ballot from the Board office no later than April 20. The absentee ballot and a return official envelope shall be mailed to each eligible voting optician who requests one, together with a notice designating the latest day the return ballot must be received to be valid.~~

(b) By April 10 of each year, the Board of Opticians shall prepare and distribute by mail to each North Carolina licensee eligible to vote:

- (1) a notice of the election, its dates and method of participation,
- (2) the name of each nominee,
- (3) biographical information on each nominee,
- (4) a ballot,
- (5) a return envelope.

~~(c) The Board members present at the election meeting, who are not nominees, shall constitute an election committee and will handle and count the ballots.~~

(c) The return envelope containing the ballot shall be postmarked no later than April 30. The enclosed ballot will not be valid unless the optician's signature, license number, and correct mailing address are on the left top corner of the return envelope.

(d) The Board Chair shall appoint an Election Committee of at least three Board members, who shall not be nominees. The Election Committee shall review all ballots that have been determined valid based on this Rule, and count all the valid ballots.

~~(d)(e) Based upon the canvass by the Election Committee, the Board Chair shall submit to the Governor A-a list of three-all nominees for each vacancy, which shall be listed in order of the election results, including the percentage of from highest to lowest votes and percentages received received, will then be submitted to the Governor for appointment. for each nominee.~~

(f) The Governor shall complete the appointment process based on G.S. 90-238.

*Authority G.S. 90-238.*

**21 NCAC 40 .0112 FORMS**

(a) The Board has application forms for the following purposes:

- (1) admission to sit for examination,

- (2) registration of an optical place of business,
- (3) registration of apprentices,
- (4) registration of interns,
- (5) registration of a training establishment, and
- (6) licensure of out-of-state individuals.

(b) The Board has certificate forms for the purposes of:

- (1) registration of an optical place of business,
- (2) registration of a training establishment,
- ~~(2)(3)~~(3) apprenticeship registration,
- ~~(3)(4)~~(4) internship registration, and
- ~~(4)(5)~~(5) licensure.

(c) The Board has notification forms for the following purposes:

- (1) licensure renewal,
- (2) annual renewal of registration of apprenticeship, ~~and~~
- (3) annual business ~~registration, registration, and~~
- (4) annual renewal of training establishment.

(d) The Board has the following miscellaneous forms:

- (1) documentation of trainee's time served under each trainer,
- ~~(1)(2)~~(2) completion of apprenticeship, and
- ~~(2)(3)~~(3) completion of internship.

*Authority G.S. 90-249.*

**SECTION .0200 - CONDUCT OF REGISTRANTS**

**21 NCAC 40 .0202 REGISTRATION OF PLACE OF BUSINESS**

~~(e)(a)~~(a) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation, change of ownership or change of licensed optician in charge. ~~The A~~ registration fee shall be paid for each registration.

~~(a)(b)~~(b) As used in ~~this Rule, these Rules,~~ "optical place of business" means the principal office as well as:

- (1) Each branch office of such business; or
- (2) Any business registered with the N.C. Secretary of State, or any business paying fees or taxes to the N.C. Department of Revenue for the preparation, manufacture, dispensing, or sale of eyeglasses or contact lenses in North Carolina; or
- (3) Any out-of-state business that prepares, manufactures, dispenses, or sells eyeglasses or contact lenses to a citizen in North Carolina.

~~(b)(c)~~(c) Every optical place of business shall have a registered licensed optician in charge, who shall serve as the ~~registered~~ licensee in charge of only one optical place of business.

(d) Registration of an optical place of business automatically expires on the first day of July of each year, and ~~it-an optical~~ place of business shall not engage in business until it is registered for the next annual period.

(e) Electronic optical businesses, including internet sites, whether located in- or out-of-state, as a condition of registration, shall permit the Board complete access to site transmission/transaction files.

- (1) E-businesses shall, as a part of the order process, inform the customer regarding the

importance of fitting/final adjustment after receipt of prescription eyewear, and inform the customer as to the importance of their follow-up with an eyecare practitioner for the final adjustment. The order process shall require customer acknowledgement of the information, and a statement that if the customer does not follow-up with an eyecare practitioner, no practitioner shall be held responsible for any damages or injury resulting from the customer's failure to follow-up.

(2) E-businesses shall, as a part of a contact lens order process, comply with G.S. 90-236.1 by informing a customer of the requirement of follow-up with the prescribing physician after receipt of the lenses. The order process shall require customer acknowledgement of the information, and a statement that if the customer does not follow-up with the prescribing physician, neither the prescribing physician nor the dispensing optician shall be held responsible for any damages or injury resulting from the customer's failure to follow-up.

(3) Copies of orders processed by e-businesses shall be included in the customers' shipments, so that verification of prescriptions and ancillary measurements may be performed in follow-up.

(e)(f) Compliance with business ~~Registration~~ registration requirements is the responsibility of both the business and the licensed optician in charge and the owner-charge. Any licensed optician in charge of an optical place of business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1. ~~An injunction closing an unregistered optical place of business may also be obtained.~~

(g) If an optical place of business violates the registration requirements, or is unregistered, the Board may seek a restraining order and injunction, as provided by G.S. 90-254.

(h) An optical place of business registered in compliance with this Rule is eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253.

## 21 NCAC 40 .0206 CONTINUING EDUCATION

(a) The optician shall keep the vision health and visual-welfare of the client uppermost at all times, promote optimal public health for North Carolina's citizens, ~~promote the best care of the visual needs of mankind and~~ strive continuously to develop educational and technical proficiency, and inform ~~himself~~ themselves as to new developments within ~~his~~ their profession. In keeping with this pronouncement, a licensed optician shall:

- (1) maintain adequate equipment and instruments in ~~their~~ his office at all times to assure proper and complete service to the public;
- (2) assist ~~their~~ his clients ~~client~~ in whatever manner possible in obtaining further care

when, in ~~their~~ his opinion, additional care is needed;

- (3) maintain adequate and available records;
- (4) treat all information concerning ~~their~~ his clients as "privileged" and not to be communicated to others except when ~~so~~ authorized by a prevailing law or rule, or with express consent of the client;
- (5) take annual courses of study in subjects related and essential to the practice of opticianry for the purpose of enhancing ~~their~~ his scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of ~~North Carolina Laws~~ laws and Rules-rules governing the practice of opticianry.

(b) Each North Carolina-licensed optician shall take a total of ~~not less than at least~~ eight hours of continuing education ~~courses of study~~ each calendar year as follows:

- (1) ~~four-three~~ three hours of study shall be essential to the practice of contact lens fitting; in lieu thereof, ~~three-two~~ two hours of study shall be essential to contact lens fitting and one hour of study may be on optical business management and/or consumer protection;
- (2) ~~four-five~~ five hours of study shall be essential to eyeglass fitting and dispensing. ~~In dispensing;~~ in lieu thereof, ~~three-four~~ four hours of a study shall be essential to eyeglass fitting and dispensing and one hour of study may be on ~~the North Carolina Opticianry Laws-laws and Rules-rules~~ the North Carolina Laws-laws and Rules-rules affecting North Carolina opticians, or ethics;
- (3) if there has been an amendment or change to ~~the~~ the North Carolina opticianry ~~Laws-laws and Rules-rules~~ Laws-laws and Rules-rules during the previous year, all ~~North Carolina Licensed-licensed~~ North Carolina Licensed-licensed opticians practicing opticianry in ~~North Carolina the~~ the state will be required to receive one hour of continuing education on the ~~Laws-laws and Rules-rules~~ Laws-laws and Rules-rules relating to such amendment or change. Licensees will receive Board notification when amendments/changes are made that would require each licensee's attendance at law/rule continuing education.

(4)(e) Any ~~North Carolina~~ licensed optician who is not practicing opticianry in ~~North Carolina the~~ the state shall annually obtain a total of ~~not less than at least~~ eight hours of ~~study; study;~~ study; ~~four-three~~ three hours shall be essential to the practice of contact lens fitting, and ~~four~~ five hours shall be essential to eyeglass fitting and dispensing. One of the eight hours may be on optical business management and/or consumer protection. ~~The All hours must shall be approved—currently approved by the American Board of Opticianry and—and/or the National Contact Lens Examiners.~~

(5)(d) The hours of study set forth in this Rule ~~.0206(b)~~ may not be waived, except upon

presentation of satisfactory evidence of illness rendering the licensee's attendance ~~impossible~~. impossible, or by presentation of active-duty orders for the licensee serving in a branch of the US armed forces.

(c) ~~Courses of study must be previously approved and designated by the North Carolina State Board of Opticians. Additionally, attendance at any course or courses for the requisite period must be certified to said Board, and shall be submitted by each registered optician at the time he makes application to the Board for his renewal of license and payment of his renewal fee. Such certification shall show the title of the course or courses taken, as well as when and where they were taken. In order for a course to be approved, the course must be open to all North Carolina licensees. Course content and speaker qualifications may be monitored by the Board. Board, meeting the following criteria:~~

- (1) Courses must be directly related to the practice of opticianry as defined in G.S. 90-235 and 90-236. The education of opticians must be the primary/customary objective of the education provider.
- (2) Each course must be made available to all NC licensed opticians.
- (3) Course submissions must be completed and submitted to the Board office no later than 45 days prior to the date the course is to be presented. The following information is required for course submission and consideration:
  - (a) Location and scheduled time for course presentation;
  - (b) Title of course;
  - (c) Instructor's name, address and qualifications. Instructors should be qualified by education and experience to provide quality instruction in the submitted course subject;
  - (d) Course description, including course length, instructional objectives, or course outline;
  - (e) Indication of course's national approval status (American Board of Opticianry and/or National Contact Lens Examiners);
  - (f) Name and address of provider agency, and primary contact information;
  - (g) Description of the provider's attendance certification process; and,
  - (h) Agreement to provide electronic attendance roster to Board, and certified attendance documentation to attendees.
- (4) Course content shall be generic in nature and presented in an objective manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology are

encouraged for approval consideration, but shall not include a specific brand/manufacturer of the technology in the title or content. Product-specific "info-mercials" and sales pitches will not be approved as credited continuing education.

- (5) Courses are to consist of a minimum 50 minutes' education for each hour credit.
- (6) Instructors may not present more than four consecutive hours of continuing education.

(d) Each course shall be submitted for approval separately and completely each time credit is sought.

(e) All approved courses shall allow complimentary on-site review by representatives from the Board.

(f) The sponsor of the approved courses shall certify opticians' attendance for the requisite period.

- (1) Provider agencies shall submit to the Board an electronic attendance roster, including names and credit hours received.
- (2) Opticians/attendees shall be provided certified attendance documentation by the provider agency, shall retain documentation for a minimum two-year period, and shall present it to Board as required during the license renewal process.

Authority G.S. 90-249.

## **21 NCAC 40 .0207 LOCATION OF LICENSEE, INTERN OR APPRENTICE**

~~Any dispensing optician, intern or apprentice must notify the Board of his home address and of the address where he is physically engaged in practice prior to performing acts regulated by the Board. Failure to register may result in denial of license, refusal to accept training experience, refusal to grant permission to sit for the examination, or suspension or revocation of license. It is the responsibility of the optician, apprentice, or intern to advise the Board of each change in home or business address. Notification from the Board will be deemed to have been received if mailed to either the home or business address of the licensee, intern, or apprentice as shown on the records of the Board.~~

- (a) Prior to performing acts regulated by the Board, each dispensing optician, intern or apprentice shall notify the Board of their employment status and the name and physical address of their employment. Changes in employment status or employment address shall be reported to the Board within 10 days.
- (b) Each dispensing optician, apprentice, or and intern to shall report to the Board, within 30 days, of each any change in their home address.
- (c) Failure to notify the Board in a timely manner may result in denial of license, suspension or revocation of license, refusal to accept training experience, or refusal to grant permission to sit for the licensing examination.
- (d) Notification from the Board will be deemed to have been received if mailed to either the home or business address of the dispensing optician, intern, or apprentice provided by the individual and shown in the records of the Board.

*Authority G.S. 90-243; 90-249(a)(4),(8),(11); 90-249(b).*

**21 NCAC 40 .0209      DISPLAY OF REGISTRATION AND LICENSE**

(a) Each registered optical place of business and/or training establishment shall display its registration certificate in a conspicuous and public part of the premises.

(b) Each optician registered as optician-in-charge of a registered optical place of business shall display their registration certificate in a conspicuous and public part of the place of business wherein they are registered.

~~(b)(c)~~ (c) Each apprentice, and intern and place of business shall display the their registration certificate in a conspicuous and public part of the office or training establishment, establishment wherein they are engaged as a trainee.

~~(a)(d)~~ (d) Every-Each optician to whom a license has been granted shall display his-their license and current renewal seal in a conspicuous and public part of the office or establishment wherein he-is they are engaged as a dispensing optician.

*Authority G.S. 90-244.*

**21 NCAC 40 .0210      PRESCRIPTION AND INTERPRETATION**

A prescription is a written direction from an ophthalmologist or optometrist for eyeglasses, contact lenses, or other ophthalmic appliances. The ~~prescriber~~ prescribing physician retains discretion in determining the number and type of measurements which will be placed upon the prescription and determines whether the patient is medically or physiologically suited for, or has need for eyeglasses, and/or contact lenses.

(1) The optician shalltakes take the measurements necessary to fill the prescription and shall determines the makeup of the lenses, supplementing but not contradicting the prescription. Measurements taken by opticians are not considered part of the patient's prescription, and are not required to be released as part of a prescription. The optical place of business, and the licensed optician in charge of the business, retains discretion as to the release of the ancillary measurements and any administrative processes associated with their release.

(2) In the event of a question regarding interpretation of the prescription, the question will-optician shall be discussed-discuss the prescription with the prescriberprescribing physician, and his-their response shall be promptly recorded in writing by the optician.

*Authority G.S. 90-235; 90-236; 90-236.1.*

**21 NCAC 40 .0213      GROSS NEGLIGENCE**

~~It shall be evidence of gross negligence for any optician to engage in dispensing contact lenses or to supervise an apprentice in dispensing contact lenses without either first having passed a licensing examination, as required by G.S. 90-237 and 90-240(b), that tested the applicant's knowledge of and skills in~~

~~dispensing contact lenses or having qualified without examination pursuant to G.S. 90-241(a) and Rule .0319 of these Rules.~~

In taking disciplinary action under G.S. 90-249.1(a)(7), "gross negligence" shall include but not be limited to:

- (1) Any action prohibited by G.S. 90-249.1(a)(1) - (4);
- (2) Dispensing while substantially impaired by alcohol or drugs;
- (3) Dispensing eyewear that has not been verified against the patient's prescription;
- (4) Dispensing contact lenses on or before the expiration date in an amount more than the sufficient quantity of replacement contact lenses needed through the prescription's expiration date;
- (5) Dispensing eyewear without a final fitting, excluding minor adjustment or repairs, as provided in Rule .0211;
- (6) Failure to refer a patient to the prescribing physician for issues noted relating to eye health;
- (7) Failure to refer a patient back to the prescribing physician because the eyeglasses which were fabricated in accordance with the prescription present visual difficulties; or
- (8) Wanton conduct done with conscious or reckless disregard for the rights and safety of the patient.

*Authority G.S. 90-237; 90-240; 90-249.*

**21 NCAC 40 .0214      COMPLAINTS; PRELIMINARY DETERMINATIONS**

(a) Complaints may be lodged against any dispensing optician or Board registrant, including registered and non-registered businesses, and shall be submitted to the Board in written form, with complainant's name, address, and appropriate contact information contained therein.

~~(a)(b)~~ (b) A complaint shall be handled initially by the Board's Administrative Director or another member of the Board's staff designated by the Administrative Director, who may dismiss it as unfounded or trivial.

~~(b)(c)~~ (c) Unless the complaint is dismissed pursuant to Paragraph (a) (b) of this Rule, the Administrative Director or staff designee shall notify the accused of the complaint in writing by written correspondence. Correspondence from the Board will be deemed to have been received if mailed to either the home or business address of the dispensing optician or Board registrant provided by the individual and shown in the records of the Board, or by available public record for non-registered businesses. Such notice shall be sent by certified mail, return receipt requested; shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint; and The correspondence shall contain a request require a written response that the accused submit an answer in writing within 20 days from the date of the Board's notification to the accused. the notice of the complaint is received by the accused.

(d) The Chair of the Board shall appoint a Disciplinary Committee of no less than two licensee Board members, who shall hear the Director's initial review of complaints and, if determined by the Director to be more than unfounded or trivial, shall hear the complaint, evidence and investigative findings and make preliminary determinations and recommendations to the Board regarding actions to be taken.

~~(e)(e)~~ If the accused admits to the circumstances and accusations, ~~the charges~~, and if, in the opinion of the ~~Administrative Director or staff designee~~, the charges do not merit review by the Board's ~~disciplinary~~ Disciplinary ~~committee~~ Committee, the ~~Administrative Director or staff designee~~ shall issue a letter of reprimand on behalf of the Board.

~~(f)(f)~~ If the accused admits ~~the charges~~, to the circumstances and accusations, and if, in the opinion of the ~~Administrative Director or staff designee~~, Director, the charges merit review by the Board's ~~disciplinary~~ Disciplinary ~~committee~~ Committee, the ~~Administrative Director or staff designee~~ shall refer the complaint ~~complaint~~, evidence and investigative findings to the ~~committee~~ Committee. After reviewing the charges, the ~~committee~~ Committee shall make a preliminary determination and recommendation to the Board regarding actions from ~~make a preliminary determination of the charges and shall recommend to the Board which of the actions listed in Paragraph (f)(h) of this Rule should to be taken.~~

~~(e)(g)~~ If the accused does not respond to or denies the charges, circumstances and accusations, the Board's ~~Administrative Director or staff designee~~ shall investigate the allegations contained in the complaint, and the ~~Administrative Director or staff designee~~ may dismiss the complaint as unfounded or trivial, or may refer the complaint, evidence and investigative findings to the Board's ~~disciplinary~~ Disciplinary ~~committee~~ Committee for review. From such review, the ~~committee~~ Committee shall make a preliminary determination and recommendation to the Board regarding actions from ~~make a preliminary determination of the charges and shall recommend to the Board which of the actions listed in Paragraph (f)(h) of this Rule should to be taken.~~

~~(f)(h)~~ In accordance with Paragraphs ~~(d)(f)~~ and ~~(e)(g)~~ of this Rule, the ~~disciplinary~~ Disciplinary ~~committee~~ Committee shall review the complaint, ~~and evidence~~, evidence and investigative findings and shall make a preliminary determination, determination and shall ~~recommend~~ recommendation to the Board ~~that one which of the following actions be taken:~~

- (1) the charges be dismissed as unfounded or trivial;
- (2) a Board reprimand be issued to the accused, in a case of admission of ~~guilt; guilt~~, a letter of reprimand be issued to the accused by the Board;
- (3) a compromise be accepted from the accused, which may ~~include~~ include, among other things, a Board reprimand, probation, loss of registrant's training time, revocation of registration and a civil penalty, penalty; or a combination thereof;
- (4) the case be presented to the Board, excluding Board members who participated in the preliminary determination, on the Disciplinary Committee, for a contested case hearing.

~~(g)(i)~~ The Board shall not be required to follow the recommendations of the ~~disciplinary~~ Disciplinary ~~committee~~ Committee.

~~(h)(j)~~ The Board may issue reprimands and impose probation. Probation ~~cessation~~ shall be conditioned upon the licensee's optician or registrant's compliance with all provisions ~~not violating any provision~~ of G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code, Code for the period imposed, with suspension, revocation, or refusal to renew or reinstate a ~~license~~ license, or loss of registrant's training time or revocation of registration upon failure to comply with the conditions.

Authority G.S. 90-239; 90-249(8); 90-249.1.

## SECTION .0300 - QUALIFICATIONS: APPLICATIONS: AND LICENSING

### 21 NCAC 40 .0301 APPLICATION PHOTOGRAPH REQUIREMENT

An applicant for licensure or Examination ~~examination~~ must attach to ~~the an~~ application form a recent passport-size recognizable photograph of the applicant's face. ~~not less than three quarters of an inch wide. The Photographs~~ photographs will be kept in retained as a part of applicants' ~~the files of the North Carolina State Board of Opticians~~ for the purpose of identification.

Authority G.S. 90-249(a)(6).

### 21 NCAC 40 .0302 LICENSURE EXAMINATION FEES

~~No examination fee shall be returned due to the withdrawal of the applicant or failure to take the examination after the fee has been accepted by the Board. The Board may, however, apply said fee on a future examination, providing proper application for such examination is made.~~

(a) The fee for licensure Examination participation shall be remitted to the Board by cash, certified check or money order.

(b) The full fee shall be paid for each Examination date in which an applicant participates; there shall be no prorating of the fee.

(c) Licensure Examination fees shall not be returned due to the withdrawal of the applicant or failure to take the Examination after the fee has been accepted by the Board. The Board shall, however, apply a remitted and accepted fee to a future Examination, upon receipt of an updated and properly executed Examination application. If, during its review of an application, the Board determines that information submitted is false, misleading or deceptive, the Board shall deny the application but retain any fees paid.

Authority G.S. 90-245; 90-246.

### 21 NCAC 40 .0303 LICENSURE EXAMINATION AND RE-EXAMINATION

The exam shall consist of a written part and a practical part. No license will be issued until a passing score has been achieved on both parts within three years. If the two parts are taken at



~~different exam sessions, an examination fee must be paid for each session.~~

~~(a) A candidate who has met the qualifications as defined in G.S. 90-237, and either G.S. 90-240 or 90-241(b) shall be admitted to the Licensure Examination upon the Board's receipt of a properly executed application and the Examination fee.~~

~~(b) The Examination shall be administered a maximum of twice yearly, at a time and location specified by the Board.~~

~~(c) Exam applications obtained by procedures outlined in Rule .0104 must be properly executed and received by the Board no later than 60 days prior to the Board-specified date of an Examination.~~

~~(d) The Licensure Exam shall consist of written and practical components. An optician's license shall not be issued until a passing score has been achieved on all components within three years from the date one component is successfully completed.~~

~~(e) A participant who is unsuccessful in passing an Exam component may retake the failed components upon timely receipt of an updated and properly executed Exam Retake Application and remittance of the Examination fee.~~

~~(f) A participant who is unsuccessful in passing an Exam component may see the failed portion of their Examination by registering for a Board-proctored Exam Review.~~

*Authority G.S. 90-240; 90-249; 93B-8.*

#### **21 NCAC 40 .0307 TIME AND PLACE OF EXAMINATION**

~~Examinations will be held twice each year as announced. Applications must be duly made and filed with the Board 60 days prior to the date of the examination. The fee to sit for licensure examination, as set forth in Rule .0108, must be made in cash, certified check, or money order.~~

*Authority G.S. 90-240; 90-241.*

#### **21 NCAC 40 .0318 TERMS OF EXAMINATION AND RE-EXAMINATION**

~~A candidate who has met the qualifications prescribed by law, has submitted a properly executed application, and has paid the examination fee may sit for the licensure examination. If he fails, he may re-take the failed subjects upon payment of the examination fee and upon submission of a letter of intent to take the examination. When the Board finds that information submitted in connection with an application for examination is false, misleading or deceptive, the Board shall deny the application. An applicant who fails the examination may call or write the secretary and make an appointment to see the failed portion of the examination.~~

*Authority G.S. 90-237; 90-240; 90-249.*

#### **21 NCAC 40 .0319 APPLICANTS FROM OTHER STATES**

~~(a) An applicant seeking licensure in North Carolina under G.S. 90-241(a) shall tender submit an application to the Board accompanied by affidavits from two prior employers (preferably from supervisors or authorized human resources representatives) for the immediate four preceding years; and two persons with~~

~~whom the applicant has been acquainted and can attest to their character~~~~worked as an optician for the immediate four preceding~~~~previous four years.~~ In addition, the applicant shall furnish affidavits from two ~~licensed refractionists either ophthalmologists or optometrists~~ licensed refractionists (either ophthalmologists or optometrists) in the other state from which the applicant claims licensure credit, that for whom the applicant has practiced the profession of opticianry for the immediate four years in another state immediately prior to the application.

~~(b) An applicant seeking admission to an examination under G.S. 90-241(b) shall tender submit an application to the Board accompanied by affidavits from two persons under whom or with whom the applicant lawfully worked in the practice of opticianry in the other state, either in one or multiple places of business. The application and the affidavits shall describe the tasks performed by the applicant in the other state and the dates the tasks were performed.~~

~~(c) For purposes of G.S. 90-241 and this Rule, "engaging in the practice of opticianry" is defined as full-time employment, that is not less than 35 hours per week.~~

~~(e)(d) Applications An application submitted under G.S. 90-241(a) must 90-241(a) shall be filed with received in the Board office not more than 90 days following the termination of the applicant's out-of-state opticianry work for which the applicant claims credit.~~

~~(e) Once the Board's decision regarding a G.S. 90-241 application has been rendered, applicants shall apply for internship in accordance with G.S. 90-237(4) within 90 days of the Board's decision. If the Board does not waive the examination requirements, the applicant shall also apply to take the Licensure Examination within 90 days, or submit the application prior to the deadline for the next Exam (whichever is sooner). If the applicant fails to apply for internship or examination within 90 days, the Board's approval shall expire, and the applicant shall reapply and submit a new application fee.~~

*Authority G.S. 90-237; 90-239; 90-241; 90-249(12).*

#### **21 NCAC 40 .0320 APPLICATIONS FOR RENEWAL OF REGISTRATIONS OR LICENSE**

~~Each registrant is sent an application to renew licensure yearly. The application must be returned prior to renewal.~~

~~(a) Applications for renewal may be obtained from the Board webpage.~~

~~(b) Any person not able to download required applications may make request of the Board office for mailing of the materials.~~

~~(c) NC-licensed opticians may upon request, but no later than December 1 of each year, request a mailed license renewal form from the Board office.~~

~~(d) Registrants of the Board may upon request, but no later than June 1 of each year, request a mailed registration renewal form from the Board office.~~

~~(e) Applications for renewals shall:~~

~~(1) Include all renewal fees required by G.S. 90-246;~~

~~(2) Request that the applicant provide information, including an affirmation, regarding whether the applicant has been charged with a felony or misdemeanor;~~

- (3) Request that the applicant provide information as to whether the applicant has been a party to a lawsuit involving fraud, deceit, or misrepresentation; malpractice; unethical conduct; gross negligence; or gross misconduct.

Authority G.S. 90-244(b).

**21 NCAC 40 .0323 AFFIDAVIT OF APPLICANT**

The Board shall have the right to bar any candidate from admission to the licensure examination if the candidate submits false information under oath to the Board and bar from training privileges any optician, ophthalmologist, or optometrist who submits false information under oath in connection with licensure, apprenticeship or internship.

(a) Applicants for any Board process (training, Examination, and/or licensure application) shall attest to the completeness and accuracy of the information contained in applications.

(b) The Board may decide to conduct a criminal background check as a part of its application review. Application fees are inclusive of costs involved for such investigations, and no additional charges shall be assessed against the applicant.

(c) If an applicant submits incomplete, false, or misleading information, the Board shall have the right to bar any candidate from admission to examination, apprenticeship, internship, business and/or training establishment registrations, or licensure.

(d) If any optician, ophthalmologist, or optometrist submits incomplete, false or misleading information, then the Board may bar them from training.

Authority G.S. 90-243; 90-249.

**21 NCAC 40 .0422 MOTIONS FOR CONTINUANCE**

(a) The Chair or presiding officer may grant motions for a continuance of a hearing upon a showing of good cause. In determining whether good cause exists, the Chair or presiding officer may consider the ability of the party requesting a continuance to:

- (1) Proceed effectively without a continuance;
- (2) Obtain legal counsel, and whether efforts to obtain counsel have been diligent;
- (3) Obtain consent of the other party in the hearing;
- (4) Have key witnesses that are unavailable for the hearing;
- (5) Have witnesses who have been served with a subpoena unavailable for the hearing.

(b) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(c) A motion for a continuance which is filed less than seven calendar days from the date of the hearing shall be denied, unless the reason for the motion could not have been ascertained earlier.

(d) Motions for continuance filed on the day of the hearing shall be ruled on by the Chair or presiding officer.

Authority G.S. 90-239.

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**CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Respiratory Care Board intends to amend the rule cited as 21 NCAC 61 .0302.*

**Proposed Effective Date:** June 1, 2011

**Public Hearing:**

**Date:** January 18, 2011

**Time:** 3:00 p.m.

**Location:** NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609

**Reason for Proposed Action:** *To clarify the requirement that a licensee must maintain the respiratory care credentials issued by the National Board for Respiratory Care (NBRC) in order to maintain their license.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to the Board on a proposed rule by sending a written objection addressed to Floyd Boyer, RCP Executive Director, NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919)878-5595, fax (919)878-5565, email fboyer@ncrcb.org.*

**Comments may be submitted to:** *Floyd Boyer, RCP Executive Director, NC Respiratory Care Board, 1100 Navaho Drive, Suite 242, Raleigh, NC 27609, phone (919)878-5595, fax (919)878-5565, email fboyer@ncrcb.org*

**Comment period ends:** March 4, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.*

**Fiscal Impact:**

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

**SECTION .0300 –LICENSING****21 NCAC 61 .0302 LICENSE RENEWAL**

(a) Any licensee desiring the renewal of a license shall apply for renewal and shall submit the fee established in this Chapter.

(b) Any person whose license is lapsed or expired and who engages in the practice of respiratory care as defined in G.S. 90-648(10) will be subject to the penalties prescribed in G.S. 90-659.

(c) Each applicant for renewal shall provide proof of completion of continuing education requirements as established in this Chapter.

(d) The licensee shall maintain current respiratory care credentials as issued by the National Board for Respiratory Care and shall provide proof of the credentials to the Board upon renewal and upon request.

~~(d)~~(e) Each applicant for renewal shall provide a copy of current certification in Basic Life Support (BLS) which includes Adult, Child and Infant Cardiopulmonary Resuscitation (CPR), the Heimlich Maneuver, and Automatic External Defibrillator (AED) use by the American Heart Association, the American

Red Cross or the American Safety and Health Institute. The board shall accept a copy of the applicant's BLS Instructor certificate or Advanced Cardiac Life Support (ACLS) certificate in lieu of the BLS certificate.

~~(e)~~(f) Licenses lapsed in excess of 24 months shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

~~(f)~~(g) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in 21 NCAC 61 .0401. A copy of military orders or the extension approval by the Internal Revenue Service must be furnished to the Board. If approved, continuing education credits acquired during this extended time period shall not be utilized for future renewal purposes, but may be used for the current renewal.

*Authority G.S. 90-652(1),(2),(4) and (13).*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

## TITLE 13 – DEPARTMENT OF LABOR

**Rule-making Agency:** Department of Labor

**Rule Citation:** 13 NCAC 07F .0901-.0927

**Effective Date:** November 8, 2010

**Date Approved by the Rules Review Commission:** October 21, 2010

**Reason for Action:** As published in the August 9, 2010 Federal register, the U.S. Department of Labor is revising the Cranes and Derricks Standards and related sections of the Construction Standard (29 CFR 1926) to update and specify industry work practices necessary to protect employees during the use of cranes and derricks in construction. Since North Carolina is a state plan state which must remain at least as effective as the U.S. Department of Labor, the North Carolina Department of Labor is proposing to repeal 13 NCAC 07F .0901-.0927 as they will be adopting the federal regulation promulgated by the U.S. Department of Labor effective November 8, 2010.

## CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

### SUBCHAPTER 07F - STANDARDS

#### SECTION .0900 - CRANES AND DERRICKS STANDARDS

##### 13 NCAC 07F .0901 SCOPE

~~(a) This Section applies to power-operated equipment used in construction that can hoist, lower and horizontally move a suspended load. Such equipment includes:~~

- ~~(1) A crane on a monorail;~~
- ~~(2) Articulating cranes (such as knuckle boom cranes), excluding those listed in Subparagraph (b)(16) of this Rule;~~
- ~~(3) Cranes on barges;~~
- ~~(4) Crawler cranes;~~
- ~~(5) Dedicated pile drivers;~~
- ~~(6) Derricks;~~
- ~~(7) Floating cranes;~~
- ~~(8) Industrial cranes (such as carry deck cranes);~~
- ~~(9) Locomotive cranes;~~
- ~~(10) Mobile cranes (such as wheel mounted, rough-terrain, all terrain, commercial truck mounted, and boom truck cranes);~~

- ~~(11) Multi purpose machines when configured to hoist and lower (by means of a winch of hook) and horizontally move a suspended load;~~
- ~~(12) Overhead and gantry cranes;~~
- ~~(13) Pedestal cranes;~~
- ~~(14) Portal cranes;~~
- ~~(15) Service/mechanic trucks with a hoisting device;~~
- ~~(16) Side boom tractors;~~
- ~~(17) Straddle cranes;~~
- ~~(18) Tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); and~~
- ~~(19) Variations of such equipment.~~

However, items listed in Paragraph (c) of this Rule are excluded from the scope of this Section:

~~(b) Attachments. This Section applies to equipment included in Paragraph (a) of this Rule when used with attachments. Such attachments, whether crane attached or suspended include:~~

- ~~(1) Augers or drills;~~
- ~~(2) Clamshell buckets;~~
- ~~(3) Concrete buckets;~~
- ~~(4) Drag lines;~~
- ~~(5) Grapples;~~
- ~~(6) Hooks;~~
- ~~(7) Magnets;~~
- ~~(8) Orange peel buckets;~~
- ~~(9) Personnel platforms; and~~
- ~~(10) Pile driving equipment.~~

~~(c) Exclusions. This Section does not cover:~~

- ~~(1) Machinery included in Paragraph (a) of this Rule while it has been converted or adapted for a non hoisting/lifting use. Such conversions/adaptations include power shovels, excavators and concrete pumps.~~
- ~~(2) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.~~
- ~~(3) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.~~
- ~~(4) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks).~~
- ~~(5) Machinery originally designed as vehicle-mounted aerial devices (for lifting personnel) and self propelled elevating work platforms.~~
- ~~(6) Telescopic/hydraulic gantry systems.~~
- ~~(7) Stacker cranes.~~
- ~~(8) Powered industrial trucks (forklifts).~~

- (9) ~~Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.~~
- (10) ~~Machinery that hoists by using a come-a-long or chainfall.~~
- (11) ~~Dedicated drilling rigs.~~
- (12) ~~Gin poles used for the erection of communication towers.~~
- (13) ~~Tree trimming and tree removal work.~~
- (14) ~~Anchor handling with a vessel or barge using an affixed A frame.~~
- (15) ~~Roustabouts.~~
- (16) ~~Articulating cranes with a fixed fork assembly mounted for purposes of handling or hoisting material.~~

(d) ~~All Rules of this Section apply to the equipment covered by this Section unless specified otherwise.~~

(e) ~~The duties of controlling entities under this Section include the duties specified in 13 NCAC 07F .0912(a)(3), 13 NCAC 07F .0912(a)(5) and 13 NCAC 07F .0916(n)(2).~~

(f) ~~Where provisions of this Section direct an operator, crewmember, or other employee to take certain actions, the employer shall establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.~~

*History Note: Authority G.S. 95-131;  
Temporary Adoption Eff. October 1, 2009;  
Eff. September 1, 2010;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0902 INCORPORATION BY REFERENCE**

(a) ~~The provisions of Title 29, Part 1926, Subpart N of the Code of Federal Regulations promulgated as of November 15, 2007, and exclusive of subsequent amendments, are incorporated by reference except as follows:~~

- (1) ~~29 CFR 1926.550, "Cranes and Derricks," is not incorporated;~~
- (2) ~~29 CFR 1926.552, "Material hoists, personnel hoists, and elevators," is incorporated to the extent that it addresses elevators;~~
- (3) ~~29 CFR 1926.553, "Base mounted drum hoists," is not incorporated; and~~
- (4) ~~29 CFR 1926.554, "Overhead hoists," is not incorporated.~~

(b) ~~The following standards are incorporated by reference and do not include subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists.~~

- (1) ~~The American Society of Mechanical Engineers (hereinafter referenced as ANSI/ASME, ANSI or ASME) standards referenced below. Copies of the following applicable ASME Codes are available for inspection at the North Carolina Department of Labor or may be obtained from the American Society of Mechanical Engineers, via U.S. Mail at 22 Law Drive, Box 2300, Fairfield,~~

~~New Jersey 07007 2300, via telephone at (800) 843-2763, or via the internet at www.asme.org. The costs are as follows:~~

- (A) ~~ANSI/ASME B30.14 (2004) Side Boom Tractors (\$45.00);~~
- (B) ~~ANSI/ASME B30.2 (2005) Overhead and Gantry Cranes (\$58.00);~~
- (C) ~~ANSI/ASME B30.3 (2004) Construction Tower Cranes (\$50.00);~~
- (D) ~~ANSI/ASME B30.5 (2004) Safety Standards for Cableways, Cranes, Derricks, Hoists, Hooks, Jacks and Slings (\$80.00); and~~
- (E) ~~ANSI/ASME B30.7 (2006) Base Mounted Drum Hoists (\$50.00).~~

(2) ~~The American Welding Society (hereinafter referenced as ANSI/AWS or AWS). Copies of the following applicable AWS Codes are available for inspection at the North Carolina Department of Labor or may be obtained from the American Welding Society, via U.S. Mail at 2671 W. 81<sup>st</sup> Street, Hialeah, Florida 33016, via telephone at (305) 826-6193, or via the internet at www.awspubs.com. The costs are as follows:~~

- (A) ~~ANSI/AWS D1.1 (2006) Structural Welding Code Steel (\$392.00); and~~
- (B) ~~ANSI/AWS D14.3 (2005) Specification for Welding, Earthmoving, Construction, and Agricultural Equipment (\$88.00).~~

(3) ~~The European Committee for Standardization (hereinafter referenced as CEN). A copy of CEN EN 13000 (2004) Cranes Mobile Cranes are available for inspection at the North Carolina Department of Labor or may be obtained from The British Standards Institution, 389 Chiswick High Road, London, W4 4AL, United Kingdom, via telephone at +44(0)20 8996 9001, or via the internet at www.bsigroup.com. The cost is one hundred and eighty dollars (\$180.00).~~

(4) ~~The Engineering Society for Advancing Mobility Land Sea Air and Space (hereinafter referred to as SAE). Copies of the following applicable codes are available for inspection at the North Carolina Department of Labor or may be obtained from SAE International via U.S. Mail at 400 Commonwealth Drive, Warrendale, Pennsylvania, 15096-0001, via telephone at (724) 776-4970, or via the internet at www.sae.org. The costs are as follows:~~

- (A) ~~SAE J1063 Cantilevered Boom Crane Structures Method of Test (1993) (\$61.00);~~

- ~~(B) SAE J185 Access Systems For Off Road Machines (2003) (\$61.00); and~~
- ~~(C) SAE J987 Lattice Boom Cranes Method of Test (2003) (\$61.00).~~
- ~~(5) The Power Crane Shovel Association Standard (PCSA) No. 2. A copy of the applicable standard is available for inspection at the North Carolina Department of Labor or may be obtained from The Association of Equipment Manufacturers via U.S. Mail at 6737 W. Washington Street, Suite 2400, Milwaukee, WI 53214 5647, via telephone at (414) 272 0943, or via the internet at www.shop.aem.org. The cost is three dollars (\$3.00).~~
- ~~(6) The German Institute for Standardization (DIN). A copy of the applicable standard is available for inspection at the North Carolina Department of Labor or may be obtained from DIN Deutsches Institut für Normung e. V., Burggrafenstraße 6, 10787 Berlin, Germany, via telephone at +49 30 2601 0, or via the internet at www.din.de. The cost is EUR 152,50.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0903 DEFINITIONS**

In addition to the definitions set forth in 29 CFR Part 1910 and 29 CFR Part 1926, the following definitions apply throughout this Section:

- ~~(1) Assembly/Disassembly means the assembly and disassembly of equipment covered under this Section. With regard to tower cranes, "erecting and climbing" replaces the term "assembly," and "dismantling" replaces the term "disassembly."~~
- ~~(2) Assembly/Disassembly Supervisor ("A/D Supervisor") means an individual who meets this Section's requirements for an A/D supervisor, irrespective of the person's formal job title or whether the person is non-management or management personnel.~~
- ~~(3) Attachment means any device that expands the range or tasks that can be done by the equipment. Examples include an auger, drill, magnet, pile driver, and boom attached personnel platform.~~
- ~~(4) Audible Signal means a signal made by a distinct sound or series of sounds. Examples include sounds made by a bell, horn, or whistle.~~
- ~~(5) Bird Caging means the twisting of fiber or wire rope in an isolated area in the opposite direction of the rope lay, thereby causing it to take on the appearance of a bird cage.~~

- ~~(6) Blocking (also referred to as "cribbing") means wood or other material used to support equipment or a component and distribute loads to the ground. Blocking is typically used to support latticed boom sections during assembly/disassembly and under outrigger floats.~~
- ~~(7) Boatswain's Chair means a single point adjustable suspension scaffold consisting of a seat or sling (which may be incorporated into a full body harness) designed to support one employee in a sitting position.~~
- ~~(8) Boom (equipment other than tower crane) means an inclined spar, strut, or other structural member which supports the upper hoisting tackle on a crane or derrick. Typically, the length and vertical angle of the boom can be varied to achieve increased height or height and reach when lifting loads. Booms can usually be grouped into general categories of hydraulically extendible, cantilevered type, latticed section, cable supported type or articulating type.~~
- ~~(9) Boom: if the "boom" (i.e., principle horizontal structure) is fixed, it is referred to as a jib; if it is moveable up and down, it is referred to as a boom.~~
- ~~(10) Boom Angle Indicator means a device which measures the angle of the boom relative to horizontal.~~
- ~~(11) Boom Hoist Limiting Device means a device that disengages boom hoist power when the boom reaches a predetermined operating angle. It also sets brakes or closes valves to prevent the boom from lowering after power is disengaged. This includes a boom hoist disengaging device, boom hoist shut off, boom hoist disconnect, boom hoist hydraulic relief, boom hoist kick outs, automatic boom stop device, or derricking limiter.~~
- ~~(12) Boom Length Indicator means the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments.~~
- ~~(13) Boom Stop means a device that restricts the boom from moving a certain maximum angle and toppling over backward. This includes boom stops, belly straps with struts/standoff, telescoping boom stops, attachment boom stops, and backstops.~~
- ~~(14) Boom Suspension Systems means a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle.~~
- ~~(15) Center of Gravity means the point in an object around which its weight is evenly distributed, such that if a support is placed under that point, the object could balance on the support.~~

- (16) ~~Certified Welder means a welder who meets certification requirements applicable to the task being performed, in accordance with the American Welding Society or the American Society of Mechanical Engineers.~~
- (17) ~~Climbing means the process in which a tower crane is raised to a new working height, either by adding additional tower sections to the top of the crane (top climbing), or by a system in which the entire crane is raised inside the structure (inside climbing).~~
- (18) ~~Come A Long means a mechanical device typically consisting of a chain or cable attached at each end that is use to facilitate movement of materials through leverage.~~
- (19) ~~Competent Person means a person who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization from his employer to take prompt corrective measures to eliminate them.~~
- (20) ~~Controlled Load Lowering means lowering a load by means of a mechanical hoist drum device that allows a hoisted load to be lowered with maximum control using the gear train or hydraulic components of the hoist mechanism. Controlled load lowering requires the use of the hoist drive motor, rather than the load hoist brake, to lower the load.~~
- (21) ~~Controlling Entity means a prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the construction of the projects, including its planning, quality and completion.~~
- (22) ~~Counterweight means a weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads.~~
- (23) ~~Crane Level Indicator means a device for determining true horizontal.~~
- (24) ~~Crane, Articulating means a crane whose boom consists of a series of folding, pin-connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.~~
- (25) ~~Crane, Assist means a crane used to assist in assembling or disassembling a crane.~~
- (26) ~~Crane, Crawler means equipment that has a type of base mounting which incorporates a continuous belt of sprocket driven track.~~
- (27) ~~Crane, Floating (or Floating Derrick) means equipment designed by the manufacturer (or employer) for marine use by permanent attachment to a barge, pontoons, vessel or other means of flotation.~~
- (28) ~~Crane, Land (or Land Derrick) means equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of flotation.~~
- (29) ~~Crane, Locomotive means a crane mounted on a base or car equipped for travel on a railroad track.~~
- (30) ~~Crane, Mobile means a lifting device incorporating a cable suspended latticed boom or hydraulic telescopic boom designed to be moved between operating locations by transport over the road. These are referred to in Europe as a crane mounted on a truck carrier.~~
- (31) ~~Crane, Overhead and Gantry includes overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.~~
- (32) ~~Crane, Portal means a type of crane consisting of a rotating upperstructure, hoist machinery, and boom mounted on top of a structural gantry which may be fixed in one location or have travel capability. The gantry legs or columns usually have portal openings in between to allow passage of traffic beneath the gantry.~~
- (33) ~~Crane, Side Boom means a track type or wheel type tractor having a boom mounted on the side of the tractor, used for lifting, lowering, or transporting a load suspended on the load hook. The boom or hook can be lifted or lowered in a vertical direction only.~~
- (34) ~~Crane, Tower means a type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib) suspended from the working boom. While the working boom may be fixed horizontally or have luffing capability, it can always rotate about the tower center to swing loads. The tower base may be fixed in one location or ballasted and moveable between locations.~~
- (35) ~~Critical lift means a crane lifting operation involving an exceptional level of risk due to factors such as load weight, lifting height, procedural complications, or proximity to situational hazards. Critical lifts are often identified by conditions exceeding a specified percentage of the crane's rated capacity (75%); however, any more complex issues may be involved.~~
- (36) ~~Crossover Points means the locations on a wire rope which is spooled on a drum where one layer of rope climbs up on and crosses over the previous layer. This takes place at each flange of the drum as the rope is spooled on the drum, reaches the flange, and begins to wrap back in the opposite direction.~~

- (37) ~~Dedicated Channel means a line of communication assigned by the employer who controls the communication system to only one signal person and crane/derrick or to a coordinated group of cranes/derricks/signal person(s).~~
- (38) ~~Dedicated Pile Driver means a machine that is designed to function exclusively as a pile-driver. These machines typically have the ability to both hoist the material that will be pile driven and to pile drive that material.~~
- (39) ~~Dedicated Spotter (power lines) means a person who meets the requirements of 13 NCAC 07F .0905 (signal person qualifications) and whose sole responsibility is to watch the separation between the power line and the equipment, the load line and the load (including rigging and lifting accessories), and ensure through communication with the operator that the applicable minimum approach distance is not breached.~~
- (40) ~~Directly Under the Load means a part or all of an employee is directly beneath the load.~~
- (41) ~~Dismantling includes partial dismantling (such as dismantling to shorten a boom or substitute a different component).~~
- (42) ~~Drum Rotation Indicator means a device on a crane or hoist which indicates in which direction and at what relative speed a particular hoist drum is turning.~~
- (43) ~~Electrical Contact means when a person, object, or equipment makes contact or comes in close proximity with an energized conductor or equipment that allows the passage of current.~~
- (44) ~~Employer Made Equipment means equipment designed and built by an employer for its own use.~~
- (45) ~~Encroachment means when any part of the crane, load line or load (including rigging and lifting accessories) breaches a minimum clearance distance that this Section requires to be maintained from a power line.~~
- (46) ~~Equipment Criteria means instructions, recommendations, limitations and specifications.~~
- (47) ~~Fall Protection Equipment means guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.~~
- (48) ~~Fall Restraint System means a fall protection system that prevents the user from falling any distance. The system is comprised of either a body belt or body harness, along with an anchorage, connectors and other necessary equipment. The other components typically include a lanyard, and may also include a lifeline and other devices.~~
- (49) ~~Fall Zone means the area (including the area directly beneath the load) in which it is reasonably foreseeable that partially or completely suspended materials could fall in the event of an accident.~~
- (50) ~~Flange Points means a point of contact between rope and drum flange where the rope changes layers.~~
- (51) ~~Free Fall (of the load line) means when only the brake is used to regulate the descent of the load line (the drive mechanism is not used to drive the load down faster or retard its lowering).~~
- (52) ~~Free Surface Effect means uncontrolled transverse movement of liquids in compartments which reduce a vessel's transverse stability.~~
- (53) ~~Functional testing means the testing of a crane, typically done with a light load or no load, to verify the proper operation of a crane's primary function, i.e. hoisting, braking, booming, swinging, etc. A functional test is contrasted to testing the crane's structural integrity with heavy loads.~~
- (54) ~~Hoist means a mechanical device for lifting and lowering loads by winding rope onto or off of a drum.~~
- (55) ~~Hoisting means the act of raising, lowering or otherwise moving a load in the air with equipment covered by this Section. As used in this Section, "hoisting" can be done by means other than wire rope/hoist drum equipment.~~
- (56) ~~Insulating Link/Device means an insulating device approved by a Nationally Recognized Testing Laboratory, as that term is defined in 29 CFR 1910.7(b).~~
- (57) ~~Jib Stop (a.k.a. Jib Backstop) is similar to a boom stop but is for a fixed or luffing jib.~~
- (58) ~~List means the angle of inclination about the longitudinal axis of a barge, pontoons, vessel or other means of flotation.~~
- (59) ~~Load means the weight of the object being lifted or lowered, including the weight of the load attaching equipment such as the load block, ropes, slings, shackles, and any other ancillary attachment.~~
- (60) ~~Load Moment Indicator (also referred to as Rated Capacity Indicator) means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e. load X radius. It compares this lifting condition to the equipment's rated capacity, and indicates to the operator the percentage of capacity at which the equipment is working. Lights, bells, or buzzers may be incorporated as a warning of an approaching overload condition.~~
- (61) ~~Load Moment Limiter (also referred to as Rated Capacity Limiter) means a system~~



- which aids the equipment operator by sensing the overturning moment on the equipment, i.e. load X radius. It compares this lifting condition to the equipment's rated capacity, and when the rated capacity is reached, it shuts off power to those equipment functions which can increase the severity of loading on the equipment, e.g., hoisting, telescoping out, or luffing out. Typically, those functions which decrease the severity of loading on the equipment remain operational, e.g., lowering, telescoping in, or luffing in.
- (62) ~~Luffing Jib Limiting Device is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib.~~
- (63) ~~Marine Hoisted Personnel Transfer Device means a device, such as a "transfer net," that is designed to protect the employees being hoisted during a marine transfer and to facilitate rapid entry into and exit from the device. Such devices do not include boatswain's chairs when hoisted by equipment covered by this Section.~~
- (64) ~~Marine Worksite means a construction worksite located in, on or above the water.~~
- (65) ~~Moving Point To Point means the times during which an employee is in the process of going to or from a work station.~~
- (66) ~~Multi Purpose Machine means a machine that is designed to be configured in various ways, at least one of which allows it to hoist (by means of a winch or hook) and horizontally move a suspended load. For example, a machine that can rotate and can be configured with removable tongs (for use as a forklift) or with a winch pack, a jib with a hook at the end, or a jib used in conjunction with a winch. When configured with the tongs, it is not covered by this Section. When configured with a winch pack, a jib with a hook at the end, or a jib used in conjunction with a winch, it is covered by this Section.~~
- (67) ~~Nationally Recognized Accrediting Agency means an organization that is accredited by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) to establish standards for and assess the formal activities of testing organizations applying for or continuing their accreditation.~~
- (68) ~~Nonconductive means that, because of the nature and condition of the materials, used, and the conditions of use (including environmental conditions and condition of the material), the object in question has the property of not becoming energized (that is, it has high dielectric properties offering a high resistance to the passage of current under the conditions of use).~~
- (69) ~~Operational Aids means devices that assist the operator in the safe operation of the crane by providing information or automatically taking control of a crane function. These include the devices listed in 13 NCAC 07F .0917 ("listed operational aids").~~
- (70) ~~Operational Controls means levers, switches, pedals and other devices for controlling equipment operation.~~
- (71) ~~Pendants includes both wire and bar types. Wire type pendants mean a fixed length of wire rope with mechanical fittings at both ends for pinning segments of wire rope together. Bar type pendants mean that instead of wire rope, a bar is used. Pendants are typically used in a latticed boom crane system to easily change the length of the boom suspension system without completely changing the rope on the drum when the boom length is increased or decreased.~~
- (72) ~~Personal Fall Arrest System means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, and a body harness and may include a lanyard, deceleration device, lifeline, or a combination of these.~~
- (73) ~~Power Lines means electrical distribution and electrical transmission lines.~~
- (74) ~~Procedures include instructions, diagrams, recommendations, warnings, specifications, protocols, and limitations.~~
- (75) ~~Proximity Alarm means a device that provides a warning of proximity to a power line that has been approved by a Nationally Recognized Testing Laboratory, as that term is defined in 29 CFR 1910.7(b).~~
- (76) ~~Qualified Engineer means an engineer that is licensed as a professional engineer with the North Carolina Board of Examiners for Engineers and Surveyors.~~
- (77) ~~Qualified Evaluator (not a third party) means a person employed by the signal person's employer who has demonstrated to his employer that he/she is competent in accurately assessing whether individuals meet the Qualification Requirements in this Section for a signal person.~~
- (78) ~~Qualified Evaluator (third party) means an independent entity that has demonstrated to the employer its competence to accurately assess whether individuals meet the Qualification Requirements in this Section for a signal person.~~
- (79) ~~Qualified Person means a person who, by possession of a degree, certificate, or professional standing, or who by knowledge, training and experience, successfully demonstrated to his employer an ability to~~

- solve/resolve problems relating to the subject matter, the work, or the project.
- (80) ~~Qualified Rigger means a rigger who meets the criteria for a qualified person.~~
- (81) ~~Range Control Warning Device means a device that can be set by an equipment operator to warn that the boom or jib tip is at a plane or multiple planes.~~
- (82) ~~Rated Capacity means the maximum working load permitted by the manufacturer under specified working conditions. Such working conditions typically include a specific combination of factors such as equipment configuration, radii, boom length, and other parameters of use.~~
- (83) ~~Repetitive Pickup Points means when an operation involves the rope being used on a single layer and being spooled repetitively over a portion of the drum.~~
- (84) ~~Rotation Resistant Rope means a type of wire rope construction which reduces the tendency of a rope to rotate about its axis under load. Usually, this consists of an inner system of core strands laid in one direction covered by an outer system of strands laid in the opposite direction.~~
- (85) ~~Running Wire Rope means a wire rope that moves over sheaves or drums.~~
- (86) ~~Runway means a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the crane being used to lift and travel with the crane suspended platform. An existing surface may be used as long as it meets these criteria.~~
- (87) ~~Special Hazard Warnings means warnings of site specific hazards (for example, proximity of power lines).~~
- (88) ~~Stability (flotation device) means the tendency of a barge, pontoons, vessel or other means of flotation to return to an upright position after having been inclined by an external force.~~
- (89) ~~Standard Method means the hand signals established in ASME B30.3 2004 and ASME B30.5 2004.~~
- (90) ~~Standing Wire Rope means a supporting wire rope which maintains a constant distance between the points of attachment to the two components connected by the wire rope.~~
- (91) ~~Tagline means a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations.~~
- (92) ~~Tender means an individual responsible for monitoring and communicating with a diver.~~
- (93) ~~Tilt Up or Tilt Down Operation means raising or lowering a load from the horizontal to vertical or vertical to horizontal.~~
- (94) ~~Travel Bogie (also referred to as Bogie) means an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels.~~
- (95) ~~Trim means the angle of inclination about the transverse axis of a barge, pontoons, vessel or other means of flotation.~~
- (96) ~~Two Blocking means a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component.~~
- (97) ~~Unavailable Procedures means procedures that are no longer available from the manufacturer, or have never been available from the manufacturer.~~
- (98) ~~Upperworks (also referred to as Superstructure or Upperstructure) means the revolving frame of equipment on which the engine and operating machinery are mounted along with the operator's cab. The counterweight is typically supported on the rear of the upperstructure and the boom or other front end attachment is mounted on the front.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0904 OPERATOR QUALIFICATION AND CERTIFICATION**

(a) ~~The employer shall ensure that, prior to operating any equipment covered under 13 NCAC 07F .0901, the operator is either qualified or certified to operate the equipment in accordance with one of the Options in Paragraphs (b) through (e) of this Rule, or is operating the equipment during a training period in accordance with Paragraph (f) of this Rule. Exceptions: operator qualification or certification under this Rule is not required for operators of equipment with a rated hoisting/lifting capacity of 2,000 pounds or less (see 13 NCAC 07F .0910), derricks (see 13 NCAC 07F .0922), or sideboom cranes (see 13 NCAC 07F .0926).~~

(b) ~~Option (1): Certification by an accredited crane/derrick operator testing organization.~~

(1) ~~For a testing organization to be considered accredited to certify operators under this Section, it shall:~~

(A) ~~Be accredited by a nationally recognized accrediting agency based on that agency's determination that industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel have been met.~~

- (B) ~~Administer written and practical tests that:~~
  - (i) ~~Assess the operator applicant regarding the knowledge and skills ~~listed in Subparagraphs (i)(1) and (i)(2) of this Rule.~~~~
  - (ii) ~~Provide different levels of certification based on equipment capacity and type.~~
- (C) ~~Have procedures for operators to re-apply and be re-tested in the event an operator applicant fails a test or is decertified.~~
- (D) ~~Have testing procedures for re-certification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in Subparagraphs (i)(1) and (i)(2) of this Rule.~~
- (E) ~~Have its accreditation reviewed by the national recognized accrediting agency at least every three years.~~
- (2) ~~A certification issued under this Option is:~~
  - (A) ~~Portable.~~
  - (B) ~~Valid for five years.~~
- (c) ~~Option (2): Qualification by an audited employer program. The employer's qualification of its employee shall meet the following requirements:~~
  - (1) ~~The employee shall pass written and practical tests either:~~
    - (A) ~~Developed by an accredited crane/derrick operator testing organization (see Paragraph (b) of this Rule); or~~
    - (B) ~~Approved by an auditor in accordance with the following requirements:~~
      - (i) ~~The auditor is certified to evaluate such tests by an accredited crane/derrick operator testing organization (see Paragraph (b) of this Rule).~~
      - (ii) ~~The auditor is not an employee of the employer.~~
      - (iii) ~~The approval is based on the auditor's determination that the written and practical tests meet test development criteria approved by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and are valid and reliable in assessing the operator applicants regarding the knowledge and skills ~~listed in Subparagraphs (i)(1) and (i)(2) of this Rule.~~~~
- (2) ~~Administration of tests:~~
  - (A) ~~The written and practical tests shall be administered under circumstances determined by the auditor as meeting test administration standards approved by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).~~
  - (B) ~~The auditor shall be certified to evaluate the administration of the written and practical tests by an accredited crane/derrick operator testing organization (see Paragraph (b) of this Rule).~~
  - (C) ~~The audit shall be conducted in accordance with Generally Accepted Auditing Standards (GAAS) established by the American Institute of Certified Public Accountants (AICPA).~~
- (3) ~~The employer program shall be audited within 3 months of the beginning of the program and every three years thereafter.~~
- (4) ~~The employer program shall have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in Subparagraphs (i)(1) and (i)(2) of this Rule. The re-qualification procedures shall be audited in accordance with Subparagraphs (c)(1) and (c)(2) of this Rule.~~
- (5) ~~Deficiencies. If the auditor determines that there is a deficiency in the program, the employer shall ensure that:~~
  - (A) ~~No operator is qualified until the auditor confirms that the deficiency has been corrected.~~
  - (B) ~~The program is audited again within 180 days of the confirmation that the deficiency was corrected.~~
  - (C) ~~The auditor files a documented report of the deficiency to the Deputy Commissioner for Occupational Safety and Health or his designee within 15 days of the auditor's determination that there is a deficiency.~~
  - (D) ~~Records of the audits of the employer's program are maintained by the auditor for three years and are made available by the auditor to the Deputy Commissioner for Occupational Safety and Health or his designee upon request.~~
- (6) ~~A qualification under this Paragraph is:~~

- (A) — Not portable.
- (B) — Valid for five years.
- (d) Option (3): Qualification by the U.S. military:
  - (1) — For purposes of this Rule, an operator is considered qualified if he/she has a current operator qualification issued by the U.S. military for operation of the equipment.
  - (2) — A qualification under this Paragraph is:
    - (A) — Not portable.
    - (B) — Valid for the period of time stipulated by the issuing entity.
- (e) Option (4): Licensing by a government entity:
  - (1) — For purposes of this Rule, a government licensing department/office that issues operator licenses for operating equipment covered by this Section is considered a government accredited crane/derrick operator testing organization if the criteria in Subparagraph (e)(2) of this Rule are met.
  - (2) — Licensing criteria:
    - (A) — The requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding the knowledge and skills listed in Subparagraphs (i)(1) and (i)(2) of this Rule.
    - (B) — The testing meets the criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel approved by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).
    - (C) — The government authority that oversees the licensing department/office, has determined that the requirements in Parts (e)(2)(A) and (e)(2)(B) of this Rule have been met.
    - (D) — The licensing department/office has testing procedures for re licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in Subparagraphs (i)(1) and (i)(2) of this Rule.
  - (3) — A license issued by a government accredited crane/derrick operator testing organization that meets the requirements of this Option:
    - (A) — Meets the operator qualification requirements of this Rule for operation of equipment only with the jurisdiction of the government entity.
    - (B) — Is valid for the period of time stipulated by the licensing department/office, but no longer than five years.
- (f) Pre qualification/certification training period:
  - (1) — An employee who is not qualified or certified under this Section is permitted to operate equipment where the requirements of Subparagraph (f)(2) of this Rule are met.
  - (2) — An employee who has not passed both the written nor practical tests required under this Rule may operate equipment as part of his/her training where the following requirements are met:
    - (A) — The employee ("trainee/apprentice") is provided with sufficient training prior to operating the equipment to enable the trainee to operate the equipment safely under limitations established by this Section (including continuous supervision) and any additional limitation established by the employer.
    - (B) — The tasks performed by the trainee/apprentice while operating the equipment are within the trainee's ability.
    - (C) — Supervisor. While operating the equipment, the trainee/apprentice is continuously supervised by an individual ("operator's supervisor") who meets the following requirements:
      - (i) — The operator's supervisor is an employee or agent of the trainee's/apprentice's employer.
      - (ii) — The operator's supervisor is either a certified operator under this Rule, or has passed the written portion of a certification test under one of the Options in Paragraphs (b) through (e) of this Rule, and is familiar with the proper use of the equipment's controls.
      - (iii) — While supervising the trainee/apprentice, the operator's supervisor performs no tasks that detract from the supervisor's ability to supervise the trainee/apprentice.
      - (iv) — For equipment other than tower cranes: the operator's supervisor and the trainee/apprentice shall be in direct line of sight of each other. In addition, they shall communicate verbally or by hand signals. For tower cranes: the operator's

supervisor and the trainee/apprentice shall be in direct communication with each other.

(D) Continuous supervision. The trainee/apprentice is supervised by the operator's supervisor at all times, except for breaks where the following are met:

- (i) The break lasts no longer than 15 minutes and there is no more than one break per hour.
- (ii) Immediately prior to the break the operator's supervisor informs the trainee/apprentice of the specific tasks that the trainee/apprentice is to perform and limitations that he/she is to adhere to during the operator supervisor's break.
- (iii) The specific tasks that the trainee/apprentice will perform during the operator supervisor's break are within the trainee's/apprentice's abilities.

(E) The trainee/apprentice does not operate the equipment in any of the following circumstances:

- (i) If any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone (see 13 NCAC 07F .0913(b)(1)(A)), could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that exceeds 350 kV.
- (ii) If the equipment is used to hoist personnel.
- (iii) In multiple equipment lifts.
- (iv) If the equipment is used over a shaft, cofferdam, or in a tank farm.
- (v) For multiple lift rigging, except where the operator's supervisor determines that the trainee's/apprentice's skills are sufficient for this high skill work.

(g) Under this Rule, a testing entity may provide training as well as testing services as long as the criteria of the applicable

accrediting agency (in the Option selected) for an organization providing both services are met.

(h) Written tests under this Rule may be administered verbally, with answers given verbally, where the operator candidate:

- (1) Passes a written demonstration of literacy relevant to the work.
- (2) Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification.

(i) Certification criteria. Qualifications and certifications shall be based on the following:

- (1) A determination through a written test that:
  - (A) The individual knows the information necessary for safe operation of the specific type of equipment the individual will operate, including the following:
    - (i) The controls and operational/performance characteristics.
    - (ii) Use of, and the ability to calculate (manually or with a calculator), load/capacity information on a variety of configurations of the equipment.
    - (iii) Procedures for preventing and responding to power line contact.
    - (iv) Technical knowledge similar to the subject matter criteria listed in 13 NCAC 07F .0927. Use of the requirements in 13 NCAC 07F .0927 meets the requirements of this provision.
    - (v) Technical knowledge applicable to:
      - (I) The suitability of the supporting ground and surface to handle expected loads.
      - (II) Site hazards.
      - (III) Site access.
  - (B) The individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in Part (i)(1)(A) of this Rule.

(2) A determination through a practical test that the individual has the skills necessary for safe

operation of the equipment, including the following:

- (A) ~~Ability to recognize, from visual and audible observation, the items listed in 13 NCAC 07F .0915(d) (shift inspection);~~
- (B) ~~Operational and maneuvering skills;~~
- (C) ~~Application of load chart information;~~
- (D) ~~Application of safe shut-down and securing procedures.~~

**(j) Definitions:**

- (1) ~~"Portable." Any employer of an operator with a certification that is portable under this Section meets the requirements of Paragraph (a) of this Rule with respect to that operator.~~
- (2) ~~"Not portable." Where an operator has a qualification that is not portable under this Rule, the qualification meets the requirements of Paragraph (a) of this Rule only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.~~

**(k) Phase in:**

- (1) ~~As of the effective date of this Rule, until two years after the effective date of this Rule, the following requirements apply:~~
  - (A) ~~Operators of equipment covered by this Section shall be competent to operate the equipment safely.~~
  - (B) ~~Where an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employee shall be provided with the necessary training prior to operating the equipment. The employer shall ensure that the operator is evaluated to confirm that he/she understands the information provided in the training.~~
- (2) ~~The effective date of Paragraphs (a) through (j) of this Rule is two years after the effective date of this Rule.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

**13 NCAC 07F .0905 SIGNAL PERSON QUALIFICATION**

(a) ~~The employer of the signal person shall ensure that each signal person meets the qualification requirements contained in Paragraph (c) of this Rule prior to giving any signals. This requirement shall be met by using either Option (1) or Option (2).~~

- (1) ~~Option (1) Third party qualified evaluator. The signal person has documentation from a third party qualified evaluator showing that the signal person meets the qualification~~

~~requirements contained in Paragraph (c) of this Rule.~~

- (2) ~~Option (2) Employer's qualified evaluator. The employer has its qualified evaluator assess the individual and determine that the individual meets the qualification requirements contained in Paragraph (c) of this Rule and provides documentation of that determination. An assessment by an employer's qualified evaluator under this Option is not portable.~~
- (3) ~~The documentation for whichever Option is used shall be available while the signal person is employed by the employer.~~

~~(b) If an employer determines that a signal person qualified under Paragraph (c) of this Rule no longer has the understanding and skill required to safely perform the work, the employer shall not allow the individual to continue working as a signal person until re-training is provided and a re-assessment is made in accordance with Paragraph (a) of this Rule that confirms that the individual meets the qualification requirements.~~

~~(c) Qualification Requirements. Each signal person shall:~~

- (1) ~~Know and understand the type of signals used. If hand signals are used, the signal person shall know and understand the standard method for hand signals.~~
- (2) ~~Be competent in the application of the type of signals used.~~
- (3) ~~Have a basic understanding of equipment operation and limitations, including the crane dynamics involved in swinging and stopping loads and boom deflection from hoisting loads.~~
- (4) ~~Know and understand the relevant requirements of 13 NCAC 07F .0905 and 13 NCAC 07F .0919.~~
- (5) ~~Demonstrate that he/she meets the requirements in 13 NCAC 07F .0905(c)(1) through (c)(4) through a verbal or written test, and through a practical test.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

**13 NCAC 07F .0906 MAINTENANCE AND REPAIR EMPLOYEE QUALIFICATION**

(a) ~~Maintenance, inspection and repair personnel may operate the equipment only where the following requirements are met:~~

- (1) ~~The operation is limited to those functions necessary to perform maintenance, inspect or verify the performance of the equipment.~~
- (2) ~~The personnel either:~~
  - (A) ~~Operate the equipment under the direct supervision of an operator who meets the requirements of 13 NCAC 07F .0904 (Operator Qualification and Certification), or~~
  - (B) ~~Are familiar with the operation, safe limitations, characteristics and~~

hazards associated with the type of equipment.

~~(b) Maintenance and repair personnel shall meet the definition of a qualified person with respect to the equipment and maintenance/repair tasks performed.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0907 TRAINING**

~~(a) The employer shall provide training as follows:~~

- ~~(1) Overhead power lines. Employees specified in 13 NCAC 07F .0913(b)(7) shall be trained in accordance with the requirements of that rule.~~
- ~~(2) Signal persons. Employees who will be assigned to work as signal persons shall be trained in accordance with the requirements of 13 NCAC 07F .0905(e).~~
- ~~(3) Operators.~~
  - ~~(A) Operators shall be trained in accordance with the requirements of 13 NCAC 07F .0904(i). Retraining shall be provided if necessary for re-qualification or re-certification or if the operator does not pass a qualification or certification test.~~
  - ~~(B) Operators shall be trained in the following practices:~~
    - ~~(i) On friction equipment, whenever moving a boom off a support, the operator shall first raise the boom a short distance (sufficient to take the load of the boom) to determine if the boom hoist brake needs to be adjusted. On other types of equipment, the same practice is applicable, except that typically there is no means of adjusting the brake; if the brake does not hold, a repair is necessary.~~
    - ~~(ii) Where available, the manufacturer's emergency procedures for halting unintended equipment movement.~~
- ~~(4) Competent persons and qualified persons. Competent persons and qualified persons shall be trained regarding the requirements of this Section applicable to their respective roles.~~
- ~~(5) Crush/pinch points. Employees who work with the equipment shall be instructed to keep clear of holes, and crush/pinch points and the hazards addressed in 13 NCAC 07F .0916(n) (work area control).~~

~~(6) Tag out. Operators and other employees authorized to start/energize equipment or operate equipment controls (such as maintenance and repair employees), shall be trained in the tag out procedures in 13 NCAC 07F .0916(g).~~

~~(7) Training administration.~~

- ~~(A) The employer shall ensure that employees required to be trained under this Section are evaluated to confirm that they understand the information provided in the training.~~
- ~~(B) Refresher training in relevant topics shall be provided when, based on the conduct of the employee or an evaluation of the employee's knowledge, there is an indication that retraining is necessary.~~

~~(b) Training records.~~

- ~~(1) The employer shall certify that each employee has been trained by preparing a certification record which includes:~~
  - ~~(A) The identity of the person trained;~~
  - ~~(B) The signature of the employer or the qualified person who conducted the training; and~~
  - ~~(C) The date that training was completed.~~
- ~~(2) The most current certification record shall be kept available for review by the Deputy Commissioner of Labor for Occupational Safety and Health or his designee, upon request.~~
- ~~(3) An employer may accept training records or certificates for previous training if the employer verifies that all training and knowledge is current and applicable to the new employee's job duties.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0908 FALL PROTECTION**

~~(a) Application.~~

- ~~(1) Paragraphs (b), (c)(2), (d) and (e) of this Rule apply to all equipment covered by this Section except tower cranes.~~
- ~~(2) Paragraphs (c)(1), (f) and (h) of this Rule apply to all equipment covered by this Section.~~
- ~~(3) Paragraph (g) of this Rule applies only to tower cranes.~~

~~(b) Boom walkways.~~

- ~~(1) Equipment manufactured more than one year after the effective date of this Rule with lattice booms shall be equipped with walkways on the boom(s) if the vertical profile of the boom (from cord centerline to cord centerline) is six or more feet.~~
- ~~(2) Boom walkway criteria.~~

- (A) ~~The walkways shall be at least 12 inches wide.~~
- (B) ~~Guardrails, railings and other permanent fall protection attachments along walkways are:~~
  - (i) ~~Not required.~~
  - (ii) ~~Prohibited on booms supported by pendant ropes or bars if the guardrails/railings/attachments could be snagged by the ropes or bars.~~
  - (iii) ~~Prohibited if of the removable type (designed to be installed and removed each time the boom is assembled/disassembled).~~
  - (iv) ~~Where not prohibited, guardrails or railings may be of any height up to, but not more than, 45 inches.~~
- (e) ~~Steps, handholds, grabrails, guardrails and railings:~~
  - (1) ~~The employer shall maintain originally equipped steps, handholds, ladders and guardrails/railings/grabrails in good condition.~~
  - (2) ~~Equipment manufactured more than one year after the effective date of this rule shall be equipped so as to provide safe access and egress between the ground and the operator work station(s), including the forward and rear positions, by the provision of devices such as steps, handholds, ladders, and guardrails/railings/grabrails. These shall meet the following criteria:~~
    - (A) ~~Steps, ladders and guardrails/railings/grabrails shall meet the requirements of SAE J185-2003, except where infeasible.~~
    - (B) ~~Walking/stepping surfaces, except for crawler treads, shall have slip-resistant features/properties (such as diamond plate metal, strategically placed grip tape, expanded metal, or slip resistant paint).~~
- (d) ~~For non-assembly/disassembly work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than six feet above a lower level as follows:~~
  - (1) ~~When moving point to point:~~
    - (A) ~~On non-lattice booms (whether horizontal or not horizontal).~~
    - (B) ~~On lattice booms that are not horizontal.~~
  - (2) ~~While at a work station on any part of the equipment (including the boom, of any type), except when the employee is at or near draw works (when the equipment is running), in the cab, or on the deck.~~
- (e) ~~For assembly/disassembly work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level, except when the employee is at or near draw works (when the equipment is running), in the cab, or on the deck.~~
- (f) ~~Anchorage criteria:~~
  - (1) ~~Anchorage for fall arrest and positioning device systems:~~
    - (A) ~~Personal fall arrest systems and positioning systems shall be anchored to any apparently substantial part of the equipment unless a competent person, from a visual inspection, without an engineering analysis, would conclude that the applicable criteria in 29 CFR 1926.502 would not be met.~~
    - (B) ~~Attachable anchor devices (portable anchor devices that are attached to the equipment) shall meet the applicable anchorage criteria in 29 CFR 1926.502.~~
  - (2) ~~Anchorage for restraint systems. Restraint systems shall be anchored to any part of the equipment that is capable of withstanding twice the maximum load that an employee may impose on it during reasonably anticipated conditions of use.~~
- (g) ~~Tower cranes:~~
  - (1) ~~For non erecting/dismantling work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than six feet above a lower level, except when the employee is at or near draw works (when the equipment is running), in a cab, or on the deck.~~
  - (2) ~~For erecting/dismantling work, the employer shall provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than 15 feet above a lower level.~~
- (h) ~~Anchoring to the load line. A fall arrest system may be anchored to the crane/derrick's hook (or other part of the load line) where the following requirements are met:~~
  - (1) ~~A qualified person has determined that the set-up and rated capacity of the crane/derrick (including the hook, load line and rigging) meets or exceeds the requirements in 29 CFR 1926.502(d)(15).~~
  - (2) ~~The equipment operator is at the work site and informed that the equipment is being used for this purpose.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*



**13 NCAC 07F .0909 DESIGN, CONSTRUCTION AND TESTING**

The following requirements apply to equipment that has a manufacturer rated hoisting/lifting capacity of more than 2,000 pounds:

- (1) Equipment manufactured prior to the effective date of this Rule shall meet the applicable requirements for design, construction, and testing as prescribed in ANSI B30.5-1968, Safety Code for Crawler, Locomotive, and Truck Cranes, Power Crane Shovel Association (PCSA) Standard No. 2, the requirements in Item (2) of this Rule, or the applicable German Institute For Standardization (DIN) standards that were in effect at the time of manufacture.
- (2) Mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the following portions of ANSI/ASME B30.5-2004, Safety Code for Mobile and Locomotive Cranes, as applicable:
  - (a) In section 5 1.1.1 ("Load Ratings—Where Stability Governs Lifting Performance"), Paragraphs (a) through (d) (including Subparagraphs).
  - (b) In section 5 1.1.2 ("Load Ratings—Where Structural Competence Governs Lifting Performance"), Paragraph (b).
  - (c) Section 5 1.2 ("Stability (Backward and Forward)").
  - (d) In section 5 1.3.1 ("Boom Hoist Mechanism"), Paragraphs (a), (b)(1), and (b)(2), except that when using rotation resistant rope, 13 NCAC 07F .0914 applies.
  - (e) In section 5 1.3.2 ("Load Hoist Mechanism"), Paragraphs (a)(2) through (a)(4) (including Subparagraphs), (b) (including Subparagraphs), (c) (first sentence only) and (d).
  - (f) Section 5 1.3.3 ("Telescoping Boom").
  - (g) Section 5 1.4 ("Swing Mechanism").
  - (h) In section 5 1.5 ("Crane Travel"), all provisions except 5 1.5.3 (d).
  - (i) In section 5 1.6 ("Controls"), all provisions except 5 1.6.1 (e).
  - (j) Section 5 1.7.4 ("Sheaves").
  - (k) Section 5 1.7.5 ("Sheave sizes").
  - (l) In section 5 1.9.1 ("Booms"), Paragraph (f).
  - (m) Section 5 1.9.3 ("Outriggers").
  - (n) Section 5 1.9.4 ("Locomotive Crane Equipment").

- (o) Section 5 1.9.7 ("Clutch and Brake Protection").
- (p) In section 5 1.9.11 (Miscellaneous Equipment"), Paragraphs (a), (c), (e), and (f).

- (3) Prototype testing: mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the prototype testing requirements in Test Option A or Test Option B.

Note: Prototype testing of crawler, locomotive and truck cranes manufactured prior to the effective date of the Section must conform to Item (1) of this Rule.

- (a) Test Option A.
  - (i) The following applies to equipment with the cantilevered booms (such as hydraulic boom cranes): All the tests listed in SAE J1063-1993, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J1063-1993, Table 2, shall be met.
  - (ii) The following applies to equipment with pendant supported lattice booms: All the tests listed in SAE J987-2003, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J987-2003, Table 2, shall be met.
- (b) Test Option B. The testing and verification requirements of CEN's EN 13000 (2004) shall be met. In applying the CEN standard, the following additional requirements shall be met:
  - (i) The following applies to equipment with cantilevered booms (such as hydraulic boom cranes): The analysis methodology (computer modeling) shall demonstrate that all load cases listed in the SAE J1063-1993 meet the strength margins listed in SAE J1063-1993, Table 2.
  - (ii) The following applies to equipment with pendant supported lattice booms: The analysis methodology

- (computer modeling) shall demonstrate that all load cases listed in SAE J987-2003 meet the strength margins listed in SAE J987-2003, Table 2.
- (iii) ~~Analysis Verification: The physical testing requirements under SAE J1063-1993 and SAE J987-2003 shall be met unless the reliability of the analysis methodology (computer modeling) has been demonstrated by a documented history of certification through strain gauge measuring or strain gauge measuring in combination with other physical testing.~~
- (4) ~~All equipment covered by this Section shall meet the following requirements:~~
- (a) ~~Rated Capacity and Related Information: The information available in the cab (see 13 NCAC 07F .0916(c)) regarding "rated capacity" and related information shall include the following information:~~
- (i) ~~A complete range of the manufacturer's equipment rated capacities, as follows:~~
- (A) ~~At all manufacturer's approved operating radii, boom angles, work areas, boom lengths, and configurations, jib lengths and angles (or offset).~~
- (B) ~~Alternate ratings for use and nonuse of option equipment which affects rated capacities, such as outriggers and extra counterweights.~~
- (ii) ~~A work area chart for which capacities are listed in the load chart. (Note: an example of this type of chart is in ANSI/ASME B 30.5-2004, Section 5-1.1.3, Figure 11).~~
- (iii) ~~The work area figure and load chart shall indicate the~~
- ~~areas where no load is to be handled.~~
- (iv) ~~Manufacturer recommended reeving for the hoist lines shall be shown.~~
- (v) ~~Manufacturer recommended parts of hoist reeving, size, and type of wire rope for various equipment loads.~~
- (vi) ~~Manufacturer recommended boom hoist reeving diagram, where applicable; size, type, and length of rope wire.~~
- (vii) ~~Tire pressure (where applicable).~~
- (vii) ~~Caution or warnings relative to limitations on equipment and operating procedures, including an indication of the least stable direction.~~
- (ix) ~~Position of the gantry and requirements for intermediate boom suspension (where applicable).~~
- (x) ~~Instructions for the boom erection and conditions under which the boom, or boom and jib combinations, may be raised or lowered.~~
- (xi) ~~Whether the hoist holding mechanism is automatically or manually controlled; whether free fall is available, or any combination of these.~~
- (xii) ~~The maximum telescopic travel length of each boom telescopic section.~~
- (xiii) ~~Whether sections are telescoped manually or with power.~~
- (xiv) ~~The sequence and procedure for extending and retracting the telescopic boom section.~~
- (xv) ~~Maximum loads permitted during the boom extending operation, and any limiting conditions or cautions.~~
- (xvi) ~~Hydraulic relief valve settings specified by the manufacturer.~~
- (b) ~~Load Hooks (including latched and unlatched types), ball assemblies and load blocks shall be of sufficient weight to overhaul the line from the highest hook position for boom or boom and jib lengths and the number of parts of the line in use.~~

- (e) ~~Hook and ball assemblies and load blocks shall be marked with their rated capacity and weight.~~
- (d) ~~Latching Hooks:~~
  - (i) ~~Hooks shall be equipped with latches, except where the requirements of the Sub-Item (4)(d)(ii) of this Rule are met.~~
  - (ii) ~~Hooks without latches, or with latches removed or disabled, shall not be used unless:~~
    - (A) ~~A qualified person has determined that it is safer to hoist and place the load without latches (or with the latches removed/tied-back);~~
    - (B) ~~Routes for the loads are pre planned to ensure that no employee is required to work in the fall zone except for employees necessary for the hooking or unhooking of the load; and~~
    - (C) ~~The latch shall close the throat opening and be designed to retain slings or other lifting devices/accessories in the hook when the rigging apparatus is slack.~~
- (e) ~~Posted Warnings. Posted Warnings required by this Section as well as those originally supplied with the equipment by the manufacturer shall be maintained in legible condition.~~
- (f) ~~An accessible fire extinguisher shall be on the equipment.~~
- (g) ~~Cabs. Equipment with cabs shall meet the following requirements:~~
  - (i) ~~Cabs shall be designed with a form of adjustable ventilation and method for clearing the windshield for maintaining visibility and air circulation. Examples of means for adjustable ventilation include air conditioner or window that can be opened (for ventilation and air circulation); examples of means for maintaining visibility include heater (for preventing windshield icing), defroster, fan, windshield wiper.~~
  - (ii) ~~Cab doors (swinging, sliding) shall be designed to prevent inadvertent opening or closing while traveling or operating the machine. Swinging doors adjacent to the operator shall open outward. Sliding operator doors shall open rearward.~~
  - (iii) ~~Windows:~~
    - (A) ~~The cab shall have windows in front and on both sides of the operator. Forward vertical visibility shall be sufficient to give the operator a view of the boom point at all times.~~
    - (B) ~~Windows may have sections designed to be opened or readily removed. Windows with sections designed to be opened shall be designed so that they can be secured to prevent inadvertent closure.~~
    - (C) ~~Windows shall be of safety glass or material with similar optical and safety properties that introduce no visible distortion or otherwise obscure visibility that interferes with the safe operation of the equipment.~~
  - (iv) ~~A clear passageway shall be provided from the operator's station to an exit door on the operator's side.~~
  - (v) ~~Areas of the cab roof that serve as a workstation for rigging, maintenance or~~

~~other—equipment related tasks shall be capable of supporting 250 pounds without permanent distortion.~~

- ~~(h) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, and other parts or components that reciprocate, rotate or otherwise move shall be guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.~~
- ~~(i) All exhaust pipes, turbochargers, and charge air coolers shall be insulated or guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.~~
- ~~(j) Hydraulic and pneumatic lines shall be protected from damage to the extent feasible.~~
- ~~(k) The equipment shall be designed so that exhaust fumes are not discharged in the cab and are discharged in a direction away from the operator.~~
- ~~(l) Friction mechanisms. Where friction mechanisms (such as brakes and clutches) are used to control the boom hoist or load line hoist, they shall be:
 
  - ~~(i) Of a size and thermal capacity sufficient to control loads with the minimum recommended reeving.~~
  - ~~(ii) Adjustable to permit compensation for lining wear to maintain proper operation.~~~~
- ~~(m) Hydraulic load hoists. Hydraulic drums shall have an integrally mounted holding device or internal static brake to prevent load hoist movement in the event of hydraulic failure.~~
- ~~(5) The employer's obligations under Items (1) through (3) and Sub Items (4)(g) through (4)(m) of this Rule are met where the equipment has not changed (except in accordance with 13 NCAC 07F .0911) and it can refer to documentation from the manufacturer showing that the equipment has been designed, constructed and tested in accordance with those Items.~~

**13 NCAC 07F .0910 EQUIPMENT WITH A RATED HOISTING/LIFTING CAPACITY OF 2,000 POUNDS OR LESS**

~~For equipment with a maximum manufacturer rated hoisting/lifting capacity of 2,000 pounds or less:~~

- ~~(1) The following Rules of this Section apply: .0901 (Scope); .0903 (Definitions); .0908 (Fall Protection); .0911 (Equipment Modifications); .0912(a) (Ground conditions); .0913 (Power line safety); .0914 (Wire rope); .0916(e) (Authority to Stop Operation); .0916(v) (Free fall/Controlled Load Lowering); .0916(cc) (Multiple Crane Lifts); .0919 (Signals); .0921 (Tower Cranes); .0922 (Derricks); .0923 (Floating Cranes & Land Cranes on Barges); .0924 (Overhead and Gantry Cranes).~~
- ~~(2) Assembly/disassembly.
 
  - ~~(a) 13 NCAC 07F .0912(b), concerning the selection of manufacturer or employer procedures during assembly/disassembly, applies.~~
  - ~~(b) Components and Configuration.
 
    - ~~(i) The selection of components and configuration of the equipment that affect the capacity or safe operation of the equipment shall be in accordance with:
 
      - ~~(A) Manufacturer instructions, recommendations, limitations, and specifications. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall approve, in writing, the selection and configuration of components; or~~
      - ~~(B) Modifications that meet the requirements of 13 NCAC 07F .0911 (Equipment Modifications).~~~~
    - ~~(ii) Post assembly inspection. Upon completion of assembly, the equipment shall be inspected to ensure compliance with Sub Item (2)(b)(i) of this Rule (see 13 NCAC 07F .0915(e) for post assembly inspection requirements).~~~~~~

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 Eff. October 1, 2009;  
 Amended Eff. June 1, 2010;  
 Temporary Repeal Eff. November 8, 2010.*

- (e) ~~Manufacturer prohibitions. The employer shall comply with applicable manufacturer prohibitions.~~
- (3) ~~Operation Procedures~~
  - (a) ~~The employer shall comply with all manufacturer procedures applicable to the operational functions of the equipment, including its use with attachments.~~
  - (b) ~~Unavailable operation procedures.~~
    - (i) ~~Where the manufacturer procedures are unavailable, the employer shall develop and ensure compliance with all procedures necessary for the safe operation of the equipment and attachments.~~
    - (ii) ~~Procedures for the operational controls shall be developed by a qualified person.~~
    - (iii) ~~Procedures related to the capacity of the equipment shall be developed and signed by a qualified engineer familiar with the equipment.~~
  - (c) ~~Accessibility.~~
    - (i) ~~The load chart shall be available to the operator at the control station.~~
    - (ii) ~~Procedures applicable to the operation of the equipment, recommended operating speeds, special hazard warnings, instructions and operators manual, shall be readily available for use by the operator.~~
    - (iii) ~~Where rated capacities are available at the control station only in electronic form: in the event of a failure which makes the load capacities inaccessible, the operator shall immediately cease operations or follow safe shut down procedures until the rated capacities (in electronic or other form) are available.~~
- (4) ~~Safety devices and operational aids.~~
  - (a) ~~Originally equipped safety devices and operational aids shall be maintained in accordance with manufacturer procedures.~~
  - (b) ~~Anti two blocking. Equipment covered by this Section manufactured more than one year after the effective~~

date of this Rule shall have either an anti two block device that meets the requirements of 13 NCAC 07F .0917(d)(3), or shall be designed so that, in the event of a two block situation, no damage will occur and there will be no load failure (such as where the power unit will stall in the event of a two block).

- (5) ~~Operator qualifications. The employer shall ensure that, prior to operating the equipment, the operator is trained on the safe operation of the type of equipment the operator will be using.~~
- (6) ~~Signal person qualifications. The employer shall ensure that signal persons are trained in the proper use of signals applicable to the use of the equipment.~~
- (7) ~~Keeping clear of the load. 13 NCAC 07F .0916(t) applies, except for Part (t)(3)(C) (qualified rigger).~~
- (8) ~~Inspections. The equipment shall be inspected in accordance with manufacturer procedures.~~
- (9) ~~Hoisting personnel. Hoisting personnel using equipment covered by this Section is prohibited.~~
- (10) ~~Design. The equipment shall be designed by a qualified engineer.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### 13 NCAC 07F .0911 EQUIPMENT MODIFICATIONS

(a) ~~Modifications or additions which affect the capacity or safe operation of the equipment are prohibited except where the requirements of Subparagraphs (a)(1), (a)(2), or (a)(3) of this Rule are met.~~

- (1) ~~Manufacturer review and approval.~~
  - (A) ~~The manufacturer approves the modifications/additions in writing.~~
  - (B) ~~The load charts, procedures, instruction manuals and instruction plates/tags/decals are modified as necessary to accord with the modification/addition.~~
  - (C) ~~The original safety factor of the equipment is not reduced.~~
- (2) ~~Manufacturer refusal to review request. The manufacturer is provided a description of the proposed modification/addition, is asked to approve the modification/addition, but it declines to review the technical merits of the proposal or fails, within 30 days, to acknowledge the request or initiate the review, and all of the following are met:~~
  - (A) ~~A qualified engineer who is a qualified person with respect to the equipment involved:~~

- (i) Approves the modification/addition and specifies the equipment configurations to which that approval applies, and
- (ii) Modifies load charts, procedures, instruction manuals and instruction plates/tags/decals as necessary to accord with the modification/addition.

(B) The original safety factor of the equipment is not reduced.

- (3) Unavailable manufacturer. The manufacturer is unavailable and the requirements of Parts (a)(2)(A) and (a)(2)(B) of this Rule are met.

(b) Modifications or additions which affect the capacity or safe operation of the equipment are prohibited where the manufacturer, after a review of the technical safety merits of the proposed modification/addition, rejects the proposal and explains the reasons for the rejection in a written response. If the manufacturer rejects the proposal but does not explain the reasons for the rejection in writing, the employer may treat this as a manufacturer refusal to review the request under Subparagraph (a)(2) of this Rule.

(c) The provisions in Paragraphs (a) and (b) of this Rule do not apply to modifications made or approved by the U.S. military.

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Eff. October 1, 2009;  
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### 13 NCAC 07F .0912 ASSEMBLY AND DISASSEMBLY OF EQUIPMENT

#### (a) Ground Conditions.

- (1) As used in this Rule, the following definitions apply:
  - (A) "Ground Conditions" means the ability of the ground to support the equipment (including slope, compaction and firmness).
  - (B) "Supporting Materials" means blocking, mats, cribbing, marsh buggies (in marshes/wetlands), or similar supporting materials or devices.
- (2) The equipment shall not be assembled or used unless ground conditions are firm, drained (except for marshes/wetlands), and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the equipment manufacturer's specifications for adequate support and degree of level of the equipment are met.
- (3) The controlling entity shall:
  - (A) Ensure that the ground preparations necessary to meet the requirements in Subparagraph (a)(2) of this Rule are provided.

(B) Inform the user of the equipment and the operator of the location of hazards beneath the equipment to set up area (such as voids, tanks, utilities) that are identified in documents (such as site drawings, as-built drawings, and soil analyses) if they are available to the controlling entity.

- (4) If there is no controlling entity for the project, the requirements in Part (a)(3)(A) of this Rule shall be met by the employer that has authority at the site to make or arrange for ground preparations needed to meet Subparagraph (a)(2) of this Rule.

(5) If the A/D supervisor or the operator determines that ground conditions do not meet the requirements in Subparagraph (a)(2) of this Rule, that person's employer shall have a discussion with the controlling entity regarding the ground preparations that are needed so that, with the use of suitable supporting materials/devices (if necessary), the requirements in Subparagraph (a)(2) of this Rule can be met.

(b) When assembling and disassembling equipment (or attachments), the employer shall comply with either:

- (1) Manufacturer procedures applicable to assembly and disassembly; or
  - (2) Employer procedures for assembly and disassembly.
- (A) When using employer procedures instead of manufacturer procedures for assembling or disassembling, the employer shall ensure that the procedures are designed to:

- (i) Prevent unintended dangerous movement, and to prevent collapse, of all parts of the equipment.
- (ii) Provide support and stability of all parts of the equipment during the assembly/disassembly process.
- (iii) Position employees involved in the assembly/disassembly operation so that their exposure to unintended movement or collapse of part or all of the equipment is minimized.

(B) Qualified person. Employer procedures shall be developed by a qualified person.

(c) Supervision Competent Qualified Person:

- (1) Assembly/disassembly shall be supervised by a person who meets the criteria for both a competent person and a qualified person, or by

a competent person who is assisted by one or more qualified persons ("A/D supervisor").

- (2) ~~Where the assembly/disassembly is being performed by only one person, that person shall meet the criteria for both a competent person and a qualified person. For purposes of this Section, that person is considered the A/D supervisor.~~

(d) ~~Knowledge or Procedures.~~ The A/D supervisor shall understand the applicable assembly/disassembly procedures.

(e) ~~Review of Procedures.~~ The A/D supervisor shall review the applicable assembly/disassembly procedures immediately prior to the commencement of assembly/disassembly unless the A/D supervisor has applied them to the same type and configuration of equipment (including accessories, if any) so that they are already known and understood.

(f) ~~Crew Instructions.~~

- (1) ~~Before commencing assembly/disassembly operations, the A/D supervisor shall determine that the crew members understand the following:~~
  - (A) ~~Their tasks;~~
  - (B) ~~The hazards associated with their tasks; and~~
  - (C) ~~The hazardous positions/locations that they need to avoid.~~

- (2) ~~During assembly/disassembly operations, before a crew member takes on a different task, or when adding new personnel during the operations, the requirements in Parts (f)(1)(A) through (f)(1)(C) of this Rule shall be met with respect to the crew member's understanding regarding that task.~~

(g) ~~Protecting Assembly/Disassembly Crew Members Out of Operator View.~~

- (1) ~~Before a crew member goes to a location that is out of view of the operator and is either in, on or under the equipment, or near the equipment (or load) where the crew member could be injured by movement of the equipment (or load), the crew member shall inform the operator that he or she is going to that location.~~
- (2) ~~Where the operator knows that a crew member went to a location covered by Subparagraph (g)(1) of this Rule, the operator shall not move any part of the equipment (or load) until the operator:~~
  - (A) ~~Gives a warning that is understood by the crew member as a signal that the equipment (or load) is about to be moved and allows time for the crew member to get to a safe position; or~~
  - (B) ~~Is informed in accordance with a pre-arranged system of communication that the crew member is in a safe position.~~

(h) ~~Working Under the Boom, Jib or Other Components.~~

- (1) ~~When pins (or similar devices) are being removed, employees shall not be under the boom, jib or other components, except where the requirements of Subparagraph (h)(2) of this Rule are met.~~

- (2) ~~Exception.~~ Where the employer demonstrates that site constraints require one or more employees to be under the boom, jib or other components when pins (or similar devices) are being removed, the A/D supervisor shall implement procedures that minimize the risk of unintended dangerous movement and minimize the duration and extent of exposure under the boom.

(i) ~~Capacity Limits.~~ During all phases of assembly/disassembly, rated capacity limits for loads imposed on the equipment, equipment components (including rigging), lifting lugs and equipment accessories shall not be exceeded for the equipment being assembled/disassembled.

(j) ~~Addressing Specific Hazards.~~ The A/D supervisor supervising the assembly/disassembly operation shall address the hazards associated with the operation with methods to protect the employees from them, as follows:

- (1) ~~Site and Ground Bearing Conditions.~~ Site and ground bearing conditions shall be adequate for safe assembly/disassembly operations and to support the equipment during assembly/disassembly (see Paragraph (a) of this Rule for ground condition requirements).

- (2) ~~Blocking Material.~~ The size, amount, condition and method of stacking blocking shall be sufficient to sustain the loads and maintain stability.

- (3) ~~Proper Location of Blocking.~~ When used to support lattice booms or components, blocking shall be appropriately placed to:
  - (A) ~~Protect the structural integrity of the equipment; and~~
  - (B) ~~Prevent dangerous movement and collapse.~~

- (4) ~~Verifying Assist Crane Loads.~~ When using an assist crane, the loads that will be imposed on the assist crane at each phase of assembly/disassembly shall be verified in accordance with 13 NCAC 07F .0916(m)(3) (Rated Capacity) before assembly/disassembly begins in order to prevent exceeding rated capacity limits for the assist crane.

- (5) ~~Boom and Jib Pick Points.~~ The point(s) of attachment of rigging to a boom (or boom sections or jib or jib sections) shall be suitable for preventing structural damage and facilitating safe handling of these components.

- (6) ~~Center of Gravity.~~
  - (A) ~~The center of gravity of the load shall be identified if that is necessary for the method of use for maintaining stability.~~

~~(B) Where there is insufficient information to accurately identify the center of gravity, measures designed to prevent unintended dangerous movement resulting from an inaccurate identification of the center of gravity shall be used.~~

~~(7) Stability Upon Pin Removal. The boom sections, boom suspension systems (such as gantry A frames and jib struts) or components shall be rigged or supported to maintain stability upon the removal of the pins.~~

~~(8) Snagging. Suspension ropes and pendants shall not be allowed to catch on the boom or jib connection pins or cotter pins (including keepers and locking pins).~~

~~(9) Struck by Counterweights. The potential for unexpected movement from inadequately supported counterweights and from hoisting counterweights shall be considered.~~

~~(10) Boom Hoist Brake Failure. Where reliance is placed on the boom hoist brake to prevent boom movement during assembly/disassembly, the brake shall be tested to determine if it is sufficient to prevent boom movement. If it is not sufficient, a boom hoist pawl, other locking device/back up braking device, or another method of preventing dangerous movement of the boom (such as blocking or using an assist crane) from a boom hoist brake failure shall be used.~~

~~(11) Loss of Backward Stability. Backward stability shall be considered before swinging the upperworks, travel, and when attaching or removing equipment components.~~

~~(12) Wind Speed and Weather. Wind speed and weather shall be considered so that the safe assembly/disassembly of the equipment is not compromised.~~

~~(k) Cantilevered Boom Sections. Manufacturer limitations on the maximum amount of boom supported only by cantilevering shall not be exceeded. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall determine this limitation in writing, which shall not be exceeded.~~

~~(l) Weight of Components. The weight of the components shall be readily available.~~

~~(m) Components and Configuration.~~

~~(1) The selection of components and configuration of the equipment that affect the capacity or safe operation of the equipment shall be in accordance with:~~

~~(A) Manufacturer instructions, limitation, and specifications. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall approve, in writing, the selection and configuration of components; or~~

~~(B) Modifications that meet the requirements of 13 NCAC 07F .0911 (Equipment Modifications).~~

~~(2) Post Assembly Inspection. Upon completion of assembly, the equipment shall be inspected to ensure compliance with Subparagraph (m)(1) of this Rule (see section 13 NCAC 07F .0915(e) for post assembly inspection requirements).~~

~~(n) Manufacturer Prohibitions. The employer shall comply with applicable manufacturer prohibitions.~~

~~(o) Shipping Pins. Reusable shipping pins, straps, links, and similar equipment shall be removed and stowed in accordance with manufacturer instructions. Once they are removed, they must either be stowed or otherwise stored during pile driving operations.~~

~~(p) Pile Driving. Equipment used for pile driving shall not have a jib attached during pile driving operations.~~

~~(q) Outriggers. When the load to be handled and the operation radius require the use of outriggers, or at any time when outriggers are used, the following requirements shall be met:~~

~~(1) The outriggers shall be either fully extended or, if manufacturer procedures permit, deployed as specified in the load chart.~~

~~(2) The outriggers shall be set to remove the equipment weight from the wheels, except for locomotive cranes (see Subparagraph (q)(6) of this Rule for use of outriggers on locomotive cranes).~~

~~(3) When outrigger floats are used, they shall be attached to the outriggers.~~

~~(4) Each outrigger shall be visible to the operator or to a signal person during extension and setting.~~

~~(5) Outrigger blocking shall:~~

~~(A) Meet the requirements in Subparagraphs (j)(2) and (j)(3) of this Rule.~~

~~(B) Be placed only under the outrigger float/pad of the outrigger jack or, where the outrigger is designed without a jack, under the outer bearing surface of the extended outrigger beam.~~

~~(6) For locomotive cranes, when using outriggers to handle loads, the manufacturer's procedures shall be followed. When lifting loads without using outriggers, the manufacturer's procedures shall be met regarding truck wedges or screws.~~

~~(r) Dismantling (including dismantling for changing the length of booms and jibs).~~

~~(1) None of the pins in the pendants shall be removed (partly or completely) when the pendants are in tension.~~

~~(2) None of the pins (top and bottom) on boom sections located between the pendant attachment points and the crane/derrick body~~



shall be removed (partly or completely) when the pendants are in tension.

- (3) ~~None of the pins (top and bottom) on boom sections located between the uppermost boom section and the crane/derrick body shall be removed (partly or completely) when the boom is being supported by the uppermost boom section resting on the ground (or other support).~~
- (4) ~~None of the top pins on boom sections located on the cantilevered portion of the boom being removed (the portion being removed ahead of the pendant attachment points) shall be removed (partly or completely) until the cantilevered section to be removed is fully supported.~~

*History Note:* Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### 13 NCAC 07F .0913 POWER LINE SAFETY

#### (a) ~~Assembly and Disassembly of Equipment.~~

- (1) ~~Before assembling or disassembling equipment, the employer shall determine if any part of the equipment, load line or load (including rigging and lifting accessories) could get, in the direction or area of assembly, closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV during the assembly/disassembly process. If so, the employer shall meet the requirements in Option (1), Option (2), or Option (3), as follows:~~
  - (A) ~~Option (1) Deenergize and ground. Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.~~
  - (B) ~~Option (2) Clearance. Ensure that no part of the equipment, load line or load (including rigging and lifting accessories), gets closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV by implementing the measures specified in Subparagraph (a)(2) of this Rule.~~
  - (C) ~~Option (3) Table A clearance.~~
    - (i) ~~Determine the line's voltage and the minimum approach distance permitted under Table A of this Rule.~~
    - (ii) ~~Determine if any part of the equipment, load line or load (including rigging and lifting accessories), could get closer than the minimum approach~~

distance of the power line permitted under Table A of this Rule. If so, then the employer shall follow the requirements in Subparagraph (a)(2) of this Rule to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum approach distance.

- (2) ~~Preventing encroachment/electrocution. Where encroachment precautions are required under Option (2), or Option (3), the following requirements shall be met:~~

- (A) ~~The employer shall conduct a planning meeting with the A/D supervisor, operator, assembly/disassembly crew and the other workers who will be in the assembly/disassembly area to review the location of the power line(s) and the steps that will be implemented to prevent encroachment/electrocution.~~
- (B) ~~If tag lines are used, they shall be non-conductive.~~
- (C) ~~At least one of the following additional measures shall be in place:~~
  - (i) ~~The employer shall use a dedicated spotter who is in continuous contact with the equipment operator. The dedicated spotter shall:~~
    - (I) ~~Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line-of sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter.)~~
    - (II) ~~Be positioned to effectively gauge the clearance distance.~~
    - (III) ~~Where necessary, use equipment that enables the~~

- dedicated spotter to communicate directly with the operator, in accordance with 13 NCAC 07F .0919(m) (radio, telephone, or other electronic transmission of signals).
- (IV) Give timely information to the operator so that the required clearance distance can be maintained.
- (ii) A proximity alarm set to give the operator sufficient warning to prevent encroachment.
- (iii) A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device shall be set to give the operator sufficient warning to prevent encroachment.
- (iv) A device that automatically limits range of movement, set to prevent encroachment.
- (v) An elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high visibility markings.
- (3) Assembly/disassembly below power lines prohibited. No part of a crane/derrick, load line or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.
- (4) Assembly/disassembly inside Table A clearance prohibited. No part of a crane/derrick, load line or load (including rigging and lifting accessories), whether partially or fully assembled, is allowed closer than the minimum approach distance under Table A of a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line.
- (5) Voltage information. Where Option (3) is used, the utility owner/operator of power lines shall provide the requested voltage information within two working days of the employer's request.
- (6) Power lines presumed energized. The employer shall assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.
- (7) Posting of electrocution warnings. There shall be at least one electrocution hazard warning conspicuously posted in the cab so that it is in view of the operator and (except for overhead gantry and tower cranes) at least two on the outside of the equipment.
- (b) Operation of Equipment.
- (1) Hazard assessments and precautions inside the work zone. Before beginning equipment operations, the employer shall:
- (A) Identify the work zone.
- (i) Define a work zone by demarcating boundaries (such as with flags, or a device such as a range limit device or range control warning device) and prohibit the operator from operating the equipment past those boundaries, or
- (ii) Define the work zone as the area 360 degrees around the equipment, up to the equipment's maximum working radius.
- (B) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone, could get closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that exceeds 350 kV. If so, the employer shall meet the requirements in Option (1), Option (2), or Option (3) as follows:
- (i) Option (1) Deenergize and ground. Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.
- (ii) Option (2) Clearance. Ensure that no part of the equipment, load line or load (including rigging and lifting accessories), gets closer than 20 feet of a power line that is up to 350 kV or closer than 50 feet of a power line that

- exceeds 350 kV by implementing the measures specified in Subparagraph (b)(2) of this Rule.
- (iii) Option (3) Table A clearance:
- (I) Determine the line's voltage and the minimum approach distance permitted under Table A of this Rule.
- (II) Determine if any part of the equipment, load line or load (including rigging and lifting accessories), while operating up to the equipment's maximum working radius in the work zone, could get closer than the minimum approach distance of the power line permitted under Table A of this Rule. If so, then the employer shall follow the requirements in Subparagraph (b)(2) of this Rule to ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer to the line than the minimum approach distance.
- (2) Preventing encroachment/electrocution. Where encroachment precautions are required under Option (2), or Option (3), the following requirements shall be met:
- (A) The employer shall conduct a planning meeting with the operator and the other workers who will be in the area of the equipment or load to review the location of the power line(s), and the steps that will be implemented to prevent encroachment/electrocution.
- (B) If tag lines are used, they shall be non-conductive.
- (C) The employer shall erect and maintain an elevated warning line, barricade, or line of signs, in view of the operator, equipped with flags or similar high visibility markings, at 20 feet from a power line that is up to 350 kV or 50 feet from a power line that exceeds 350 kV (if using Option (2)) or at the minimum approach distance under Table A of this Rule (if using Option (3)).
- (D) The employer shall implement at least one of the following measures:
- (i) A proximity alarm set to give the operator sufficient warning to prevent encroachment.
- (ii) A dedicated spotter who is in continuous contact with the operator. Where this measure is selected, the dedicated spotter shall:
- (I) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line-of-sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).
- (II) Be positioned to effectively gauge the clearance distance.
- (III) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.
- (IV) Give timely information to the operator so that the required clearance distance can be maintained.

- (iii) ~~A device that automatically warns the operator when to stop movement, such as a range control warning device. Such a device shall be set to give the operator sufficient warning to prevent encroachment.~~
  - (iv) ~~A device that automatically limits range of movement, set to prevent encroachment.~~
  - (v) ~~An insulating link/device installed at a point between the end of the load line (or below) and the load.~~
- (E) ~~The requirements of Part (b)(2)(D) of this Rule do not apply to work covered by 29 CFR 1926, Subpart V.~~
- (3) ~~Voltage information. Where Option (3) is used, the employer shall not proceed with work until the voltage information requested from the operators of power lines has been received.~~
- (4) ~~Operations below power lines.~~
  - (A) ~~No part of the equipment, load line or load (including rigging and lifting accessories) is allowed below a power line unless the employer has confirmed that the utility owner/operator has deenergized and (at the worksite) visibly grounded the power line, except where one of the exceptions in Part (b)(4)(B) of this Rule apply.~~
  - (B) ~~Exceptions. Part (b)(4)(A) of this Rule is inapplicable where the employer demonstrates that one of the following applies:~~
    - (i) ~~The work is covered by 29 CFR 1926, Subpart V.~~
    - (ii) ~~For equipment with non-extensible booms: The uppermost part of the equipment, with the boom at true vertical, would be more than 20 feet below the plane of a power line that is up to 350 kV, 50 feet below the plane of a power line that exceeds 350 kV or more than the Table A minimum clearance distance below the plane of the power line.~~
    - (iii) ~~For equipment with articulating or extensible booms: The uppermost part of the equipment, with the boom in the fully extended position, at true vertical,~~
      - would be more than 20 feet below the plane of a power line that is up to 350 kV, 50 feet below the plane of a power line that exceeds 350 kV or more than the Table A minimum clearance distance below the plane of the power line.
- (iv) ~~The employer demonstrates that compliance with Part (b)(4)(A) of this Rule is infeasible and meets the requirements of Paragraph (e) of this Rule.~~
- (5) ~~Power lines presumed energized. The employer shall assume that all power lines are energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.~~
- (6) ~~When working near transmitter/communication towers where the equipment is close enough for an electrical charge to be induced in the equipment or materials being handled, the transmitter shall be deenergized or the following precautions shall be taken when necessary to dissipate induced voltages:~~
  - (A) ~~The equipment shall be provided with an electrical ground.~~
  - (B) ~~Non conductive rigging or an insulating link/device shall be used.~~
- (7) ~~Training.~~
  - (A) ~~Operators and crew assigned to work with the equipment shall be trained on the following:~~
    - (i) ~~The procedures to be followed in the event of electrical contact with a power line. Such training shall include:~~
      - (I) ~~Information regarding the danger of electrocution from the operator simultaneously touching the equipment and the ground.~~
      - (II) ~~The importance to the operator's safety of remaining inside the cab except where there is an imminent danger of fire, explosion, or other emergency~~

- ~~that — necessitates leaving the cab.~~
- ~~(III) — The safest means of evacuating — from equipment that may be energized.~~
- ~~(IV) — The danger of the potentially energized — zone around — the equipment.~~
- ~~(V) — The need for crew in the area to avoid approaching — or touching — the equipment.~~
- ~~(VI) — Safe — clearance distance — from power lines.~~
- ~~(ii) — Power lines are presumed to be energized unless the utility — owner/operator confirms that the power line has been and continues to be deenergized, — and — visibly grounded at the worksite.~~
- ~~(iii) — Power lines are presumed to be uninsulated unless the utility owner/operator or a qualified engineer who is a qualified person with respect to — electrical — power transmission and distribution confirms that a power line is insulated.~~
- ~~(iv) — The limitations of an insulating — link/device, proximity alarm, and range control (and similar) device, if used.~~
- ~~(B) — Employees working as dedicated spotters shall be trained to enable them to effectively perform their task, including training on the applicable requirements of this Rule.~~
- ~~(8) — Devices originally designed by the manufacturer for use as a safety device (see 13 NCAC 07F .0918), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this Section, shall meet the manufacturer's procedures for use and conditions of use.~~
- ~~(c) Operation of Equipment Inside the Table A Zone.~~
- ~~(1) — Equipment operations in which any part of the equipment, load line or load (including rigging and lifting accessories) is closer than the minimum approach distance under Table A of an energized power line is prohibited, except~~
- ~~where the employer demonstrates that the following requirements are met:~~
- ~~(A) — The employer determines that it is infeasible to do the work without breaching the minimum approach distance under Table A of this Rule.~~
- ~~(B) — The employer determines that, after consultation with the utility owner/operator, it is infeasible to deenergize and ground the power line or relocate the power line.~~
- ~~(C) — Minimum clearance distance.~~
- ~~(i) — The — power — line owner/operator or qualified engineer who is a qualified person with respect to electrical — power transmission and distribution determines the minimum clearance distance that shall be maintained to prevent electrical contact in light of the on site conditions. The factors that shall be considered in making this determination — include conditions — affecting atmospheric conductivity; time necessary to bring the equipment, load line and load (including rigging and lifting accessories) to a complete stop; — wind conditions; degree of sway in the power line; lighting conditions, — and — other conditions affecting the ability to prevent electrical contact.~~
- ~~(ii) — Subpart (c)(1)(C)(i) of this Rule does not apply to work covered by 29 CFR 1926, Subpart V; instead, for such work, the minimum clearance distances specified in 29 CFR 1926.950, Table V-1 apply. — Employers covered by 29 CFR 1926, Subpart V may work closer than the distances in 29 CFR 1926.950, Table V-1 where both the requirements of this Rule — and — 29 CFR 1926.952(c)(2)(iii) or (iv) are met.~~
- ~~(D) — A planning meeting with the employer and power line operator (or qualified engineer who is a qualified person with respect to electrical~~

power transmission and distribution) is held to determine the procedures that will be followed to prevent electrical contact and electrocution. These procedures shall include:

- (i) If the power line is equipped with a device that automatically reenergizes the circuit in the event of a power line contact, the employer shall ensure that the automatic reclosing feature of the circuit interrupting device is made inoperative before work begins.
- (ii) A dedicated spotter who is in continuous contact with the operator. The dedicated spotter shall:
  - (I) Be equipped with a visual aid to assist in identifying the minimum clearance distance. Examples of a visual aid include a visible line painted on the ground; a visible line of stanchions; a set of visible line of sight landmarks (such as a fence post behind the dedicated spotter and a building corner ahead of the dedicated spotter).
  - (II) Be positioned to effectively gauge the clearance distance.
  - (III) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.
  - (IV) Give timely information to the operator so that the required clearance distance can be maintained.
- (iii) An elevated warning line, or barricade (not attached to the crane), in view of the operator (either directly or

through video equipment), equipped with flags or similar high-visibility markings, to prevent electrical contact. However, this provision does not apply to work covered by 29 CFR 1926, Subpart V.

- (iv) Insulating link/device.
  - (I) An insulating link/device installed at a point between the end of the load line (or below) and the load.
  - (II) For work covered by 29 CFR 1926, Subpart V, the requirement in Subsubpart (e)(1)(D)(iv)(I) of this Rule applies only when working inside the 29 CFR 1926.950 Table V-1 clearance distances.
- (v) Non conductive rigging if the rigging may be within the Table A distance during the operation.
- (vi) If the equipment is equipped with a device that automatically limits range of movement, it shall be used and set to prevent any part of the equipment, load line or load (including rigging and lifting accessories) from breaching the minimum approach distance established under Part (e)(1)(C) of this Rule.
- (vii) If a tag line is used, it shall be of the non conductive type.
- (viii) Barricades forming a perimeter at least 10 feet away from the equipment to prevent personnel not authorized by the employer from entering the work area. In areas where obstacles prevent the barricade from being at least 10 feet away, the barricade shall be as far from the equipment as feasible.
- (ix) Workers other than the operator shall be prohibited

- from touching the load line above the insulating link/device and crane.
- (x) Only personnel essential to the operation shall be permitted to be in the area of the crane and load.
  - (xi) The equipment shall be grounded.
  - (xii) Insulating line hose or cover up shall be installed by the utility owner/operator except where such devices are unavailable for the line voltages involved.
- (E) The procedures developed to comply with Part (c)(1)(D) of this Rule are documented and immediately available on site.
  - (F) The employer ensures that the equipment user, the operator and the other workers who will be in the area of the equipment or load meet with the utility owner/operator to review the procedures that will be implemented to prevent breaching the minimum approach distance established in Part (c)(1)(C) of this Rule and prevent electrocution.
  - (G) The procedures developed to comply with Part (c)(1)(D) of this Rule are implemented.
  - (H) All employers of employees involved in the work shall identify one person who will direct the implementation of the procedures. The person identified in accordance with this paragraph shall direct the implementation of the procedures and shall have the authority to stop work at any time to ensure safety.
  - (I) If a problem occurs implementing the procedures being used to comply with Part (c)(1)(D) of this Rule, or indicating that those procedures are inadequate to prevent electrocution, the employer shall safely stop operations and either develop new procedures to comply with Part (c)(1)(D) of this Rule or have the utility owner/operator deenergize and visibly ground or relocate the power line before resuming work.
  - (J) Devices originally designed by the manufacturer for use as a safety device (see 13 NCAC 07F .0918), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this Section, shall meet the manufacturer's procedures for use and conditions of use.
- (d) Equipment While Traveling.
- (1) This Paragraph establishes procedures and criteria that must be met for equipment traveling under a power line on the construction site with no load.
  - (2) The employer shall ensure that:
    - (A) The boom/mast and boom/mast support system are lowered sufficiently to meet the requirements of this Paragraph.
    - (B) The clearances specified in Table B of this Rule are maintained.
    - (C) The effects of speed and terrain on equipment movement (including movement of the boom/mast) are considered so that those effects do not cause the minimum clearance distances specified in Table B of this Rule to be breached.
    - (D) Dedicated spotter. If any part of the equipment while traveling will get closer than 20 feet of the power line, the employer shall ensure that a dedicated spotter who is in continuous contact with the operator is used. The dedicated spotter shall:
      - (i) Be positioned to effectively gauge the clearance distance.
      - (ii) Where necessary, use equipment that enables the dedicated spotter to communicate directly with the operator.
      - (iii) Give timely information to the operator so that the required clearance distance can be maintained.
    - (E) Additional precautions for traveling in poor visibility. When traveling at night, or in conditions of poor visibility, in addition to the measures specified in Parts (d)(2)(A) through (d)(2)(D) of this Rule, the employer shall ensure that:
      - (i) The power lines are illuminated or another means of identifying the location of the lines shall be used.
      - (ii) A safe path of travel is identified and used.

Table A—Minimum Clearance Distances Voltage (nominal, kV, alternating current)	Minimum clearance distance (feet)
Up to 50	10
Over 50 to 200	15
Over 200 to 350	20
Over 350 to 500	25
Over 500 to 750	35
Over 750 to 1,000	45
Over 1,000	(as established by a qualified engineer or by the owner or operator of the power line who is a qualified person with respect to electrical power transmission and distribution)
Note: The value that follows "to" is up to and includes the value. For example, over 50 to 200 means up to and including 200 kV.	

Table B—Minimum Clearance Distances While Traveling  
With No Load and Boom/Mast Lowered

Voltage (nominal, kV, alternating current)	While Traveling—Minimum Clearance Distance (feet)
Up to 0.75	4 (while traveling/boom lowered)
Over .75 to 50	6 (while traveling/boom lowered)
Over 50 to 345	10 (while traveling/boom lowered)
Over 345 to 750	16 (while traveling/boom lowered)
Over 750 to 1,000	20 (while traveling/boom lowered)
Over 1,000	(as established by the power line owner/operator or qualified engineer who is a qualified person with respect to electrical power transmission and distribution.)

*History Note: Authority G.S. 95-131;  
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### 13 NCAC 07F .0914 WIRE ROPE

#### (a) Selection and Installation Criteria:

- (1) Selection of replacement wire rope shall be in accordance with the requirements of this Rule and the recommendations of the wire rope manufacturer, the equipment manufacturer, or a qualified person.
- (2) Boom hoist reeving.
  - (A) Fiber core ropes shall not be used for boom hoist reeving, except for derricks.
  - (B) Rotation resistant ropes shall be used for boom hoist reeving only where the requirements of Subparagraph (a)(3) of this Rule are met.
- (3) Rotation resistant ropes.
  - (A) Definitions.
    - (i) Type I rotation resistant wire rope ("Type I"). Type I rotation resistant rope is stranded rope constructed to have little or no tendency to rotate or, if guided, transmits

- little or no torque. It has at least 15 outer strands and comprises an assembly of at least three layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.
- (ii) Type II rotation resistant wire rope ("Type II"). Type II rotation resistant rope is stranded rope constructed to have resistance to rotation. It has at least 10 outer strands and comprises an assembly of two or more layers of strands laid helically over a center in two or three operations. The direction of lay of the outer strands is opposite to that of the underlying layer.



- (iii) ~~Type III rotation resistant wire rope ("Type III"). Type III rotation resistant rope is stranded rope constructed to have limited resistance to rotation. It has no more than nine outer strands, and comprises an assembly of two layers of strands laid helically over a center in two operations. The direction of lay of the outer strands is opposite to that of the underlying layer.~~
- (B) ~~Requirements.~~
  - (i) ~~Types II and III with an operation design factor of less than five shall not be used for duty cycle or repetitive lifts.~~
  - (ii) ~~Rotation resistant ropes (including Types I, II and III) shall have an operating design factor of no less than three point five.~~
  - (iii) ~~Type I shall have an operating design factor of no less than five, except where the wire rope manufacturer and the equipment manufacturer approves the design factor, in writing.~~
  - (iv) ~~Types II and III shall have an operating design factor of no less than five, except where the requirements of Subparagraph (a)(3)(C) of this Rule are met.~~
- (C) ~~When Types II and III with an operation design factor of less than five are used (for non duty cycle, non-repetitive lifts), the following requirements shall be met for each lifting operation:~~
  - (i) ~~A qualified person shall inspect the rope in accordance with Subparagraph (b)(1) of this Rule. The rope shall be used only if the qualified person determines that there are no deficiencies constituting a hazard. In making this determination, more than one broken wire in any one rope lay shall be considered a hazard.~~
  - (ii) ~~Operations shall be conducted in such a manner~~
- ~~and at such speeds as to minimize dynamic effects.~~
- (iii) ~~Each lift made under these provisions shall be recorded in the monthly and annual inspection documents. Such prior uses shall be considered by the qualified person in determining whether to use the rope again.~~
- (D) ~~Additional requirements for rotation resistant ropes for boom hoist reeving.~~
  - (i) ~~Rotation resistant ropes shall not be used for boom hoist reeving, except where the requirements of Subpart (a)(3)(D)(ii) of this Rule are met.~~
  - (ii) ~~Rotation resistant ropes may be used as boom hoist reeving when load hoists are used as boom hoists for attachments such as luffing attachments or boom and mast attachment systems. Under these conditions, the following requirements shall be met:~~
    - (I) ~~The drum shall provide a first layer rope pitch diameter of not less than 18 times the nominal diameter of the rope used.~~
    - (II) ~~The requirements in 13 NCAC 07F .0916(v)(1) (irrespective of the date of manufacture of the equipment), and 13 NCAC 07F .0916(v)(2).~~
    - (III) ~~The requirements of ANSI/ASME B30.5-2004, Section 5 1.3.2(a), (a)(2) through (a)(4), (b) through (d), except that the minimum pitch diameter for sheaves used in multiple rope reeving is 18 times the nominal diameter of the rope~~

used instead of the value of 16 specified in Section 5-1.3.2(d).

(IV) All sheaves used in the boom hoist reeving system shall have a rope pitch diameter of not less than 18 times the nominal diameter of the rope used.

(V) The operating design factor for the boom hoist reeving system shall be not less than five.

(VI) The operating design factor for these ropes shall be the total minimum breaking force of all parts of rope in the system divided by the load imposed on the rope system when supporting the static weights of the structure and the load within the equipment's rated capacity.

(VII) When provided, a power controlled lowering system shall be capable of handling rated capacities and speeds as specified by the manufacturer.

(4) Wire rope clips used in conjunction with wedge sockets shall be attached to the unloaded dead end of the rope only, except that the use of devices specifically designed for dead ending rope in a wedge socket is permitted.

(5) Socketing shall be done in the manner specified by the manufacturer of the wire rope or fitting.

(6) Prior to cutting a wire rope, seizings shall be placed on each side of the point to be cut. The length and number of seizings shall be in accordance with the wire rope manufacturer's instructions.

(b) Inspection of Wire Ropes:

(1) Shift inspection:

(A) A competent person shall complete a visual inspection prior to commencement of crane operations during each shift. The inspection shall consist of observation of wire ropes (running and standing) that are reasonably likely to be in use during the shift for apparent deficiencies, including those listed in Part (b)(1)(B) of this Rule. Untwisting (opening) of wire rope or booming down is not required as part of this inspection.

(B) Apparent deficiencies:

(i) Category I. Apparent deficiencies in this category include the following:

(I) Distortion of the wire rope structure such as kinking, crushing, unstranding, birdcaging, signs of core failure or steel core protrusion between the outer strands.

(II) Corrosion.

(III) Electric arc (from a source other than power lines) or heat damage.

(IV) Improperly applied end connections.

(V) Corroded, cracked, bent, or worn end connections (such as from severe service).

(ii) Category II. Apparent deficiencies in this category are:

(I) Visibly broken wires in running wire ropes: six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay, where a rope lay is the length along the rope in which one strand makes a complete revolution around the rope;

(II) Visibly broken wires in rotation

- ~~resistant ropes: two randomly distributed broken wires in six rope diameters or four randomly distributed broken wires in 30 rope diameters;~~
- ~~(III) Visibly broken wires in pendants or standing wire ropes: more than two broken wires in one rope lay located in rope beyond end connections or more than one broken wire in a rope lay located at an end connection; and~~
- ~~(IV) A diameter reduction of more than five percent from nominal diameter.~~
- ~~(iii) Category III. Apparent deficiencies in this category include the following:~~
- ~~(I) In rotation resistant wire rope, core protrusion or other distortion indicating core failure.~~
- ~~(II) Electrical contact with a power line.~~
- ~~(III) A broken strand.~~
- ~~(C) Critical Review Items. The competent person shall ensure that the following items are reviewed:~~
- ~~(i) Rotation resistant wire rope in use.~~
- ~~(ii) Wire rope being used for boom hoists and luffing hoists, particularly at reverse bends.~~
- ~~(iii) Wire rope at flange points, crossover points and repetitive pickup points on drums.~~
- ~~(iv) Wire rope adjacent to end connections.~~
- ~~(v) Wire rope at and on equalizer sheaves.~~
- ~~(D) Removal from service:~~
- ~~(i) If a deficiency in Category I is identified, an immediate determination shall be made~~
- ~~by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, operations involving use of the wire rope in question shall be prohibited until:~~
- ~~(I) The wire rope is replaced, or~~
- ~~(II) If the deficiency (other than power line contact) is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited. Repair of wire rope that contacted an energized power line is also prohibited.~~
- ~~(ii) If a deficiency in Category II is identified, the employer shall comply with Option A or Option B, as follows:~~
- ~~(I) Option A. Consider the deficiency to constitute a safety hazard where it meets the wire rope manufacturer's established criterion for removal from service or meets a different criterion that the wire rope manufacturer has approved in writing for that specific wire rope. If the deficiency is considered a safety hazard, operations involving use of the wire rope in question shall be prohibited until the wire rope is replaced, or the~~

- ~~damage is removed  
in accordance with  
all of the  
requirements and  
restrictions in  
Subsubpart  
(b)(1)(D)(i)(II) of  
this Rule.~~
- ~~(II) Option B. Institute  
the alternative  
measures specified  
in Subpart  
(b)(1)(D)(iii) of this  
Rule.~~
- ~~(iii) Alternative measures for a  
Category II deficiency. The  
wire rope may continue to be  
used if the employer ensures  
that the following measures  
are implemented:~~
- ~~(I) A qualified person  
assesses the  
deficiency in light  
of the load and  
other conditions of  
use and determines  
it is safe to continue  
to use the wire rope  
as long as the  
conditions  
established under  
this paragraph are  
met.~~
- ~~(II) A qualified person  
establishes the  
parameters for the  
use of the  
equipment with the  
deficiency,  
including a reduced  
maximum rated  
capacity.~~
- ~~(III) A qualified person  
establishes a  
specific number of  
broken wires,  
broken strands, or  
diameter reduction  
that, when reached,  
will require the  
equipment to be  
taken out of service  
until the wire rope  
is replaced or the  
damage is removed  
in accordance with  
all of the  
requirements and  
restrictions in~~
- ~~Subsubpart  
(b)(1)(D)(i)(II) of  
this Rule.~~
- ~~(IV) A qualified person  
sets a time limit,  
not to exceed 30  
days from the date  
the deficiency is  
first identified, by  
which the wire rope  
shall be replaced, or  
the damage  
removed in  
accordance with all  
of the requirements  
and restrictions in  
Subsubpart  
(b)(1)(D)(i)(II) of  
this Rule.~~
- ~~(V) The workers who  
will conduct the  
shift inspections are  
informed of this  
deficiency and the  
measures taken  
under this  
Paragraph.~~
- ~~(VI) The qualified  
person's findings  
and procedures in  
Subsubparts  
(b)(1)(D)(iii)(I)  
through  
(b)(1)(D)(iii)(IV) of  
this Rule are  
documented. The  
document shall  
contain the date, the  
name of the  
qualified person  
and the findings  
required by this  
Rule.~~
- ~~(iv) If a deficiency in Category  
III is identified, operations  
involving use of the wire  
rope in question shall be  
prohibited until:~~
- ~~(I) The wire rope is  
replaced, or~~
- ~~(II) If the deficiency  
(other than power  
line contact) is  
localized, the  
problem is  
corrected by  
severing the wire  
rope in two; the  
undamaged portion~~

- ~~may continue to be used. Joining lengths of wire rope by splicing is prohibited. Repair of wire rope that contacted an energized power line is also prohibited.~~
- (v) ~~Where a wire rope is required to be removed from service under this Section, either the equipment (as a whole) or the hoist with that wire rope shall be tagged out, in accordance with 13 NCAC 07F .0916(g)(1), until the wire rope is repaired or replaced.~~
- (2) ~~Monthly inspection:~~
- ~~(A) Each month an inspection shall be conducted in accordance with Subparagraph (b)(1) of this Rule (shift inspection).~~
- ~~(B) Wire ropes on equipment shall not be used until an inspection under this paragraph demonstrates that no corrective action under Part (b)(1)(D) of this Rule is required.~~
- ~~(C) The inspection shall be documented according to 13 NCAC 07F .0915(e)(3) (monthly inspection documentation).~~
- (3) ~~Annual/comprehensive:~~
- ~~(A) At least every 12 months, wire ropes in use on equipment shall be inspected by a qualified person in accordance with Subparagraph (b)(1) of this Rule (shift inspection).~~
- ~~(B) In addition, at least every 12 months, the wire ropes in use on equipment shall be inspected by a qualified person, as follows:~~
- ~~(i) The inspection shall be for deficiencies of the types listed in Part (b)(1)(B) of this Rule.~~
- ~~(ii) The inspection shall be complete and thorough, covering the surface of the entire length of the wire ropes, with attention given to:~~
- ~~(I) Critical review items listed in Part (b)(1)(C) of this Rule.~~
- ~~(II) Those sections that are normally hidden during shift and monthly inspections.~~
- ~~(III) Wire rope in contact with saddles, equalizer sheaves or other sheaves where rope travel is limited.~~
- ~~(IV) Wire rope subject to reverse bends.~~
- ~~(V) Wire rope passing over sheaves.~~
- ~~(VI) Wire rope at or near terminal ends.~~
- ~~(iii) Exception: In the event an inspection under Part (b)(3)(B) of this Rule is not feasible due to existing set-up and configuration of the equipment (such as where an assist crane is needed) or due to site conditions (such as a dense urban setting), such inspections shall be conducted as soon as it becomes feasible, but no longer than an additional six months for running ropes and, for standing ropes, at the time of disassembly.~~
- ~~(C) If a deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a safety hazard.~~
- ~~(i) If the deficiency is determined to constitute a safety hazard, operations involving the use of the wire rope in question shall be prohibited until:~~
- ~~(I) The wire rope is replaced, or~~
- ~~(II) If the deficiency is localized, the problem is corrected by severing the wire rope in two; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited.~~

- (ii) ~~If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.~~
- (D) ~~The inspection shall be documented according to 13 NCAC 07F .0915(f)(7) (annual/comprehensive inspection documentation).~~
- (4) ~~Rope lubricants that are of the type that hinder inspection shall not be used.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0915 INSPECTIONS**

#### **(a) Modified equipment.**

- (1) ~~Equipment that has had modifications or additions which affect the safe operation of the equipment (such as modifications or additions involving a safety device or operator aid, critical part of a control system, power plant, braking system, load sustaining structural components, load hook, or in use operating mechanism) or capacity shall be inspected by a qualified person after such modifications/additions have been completed, prior to initial use. The inspection shall meet the following requirements:~~
  - (A) ~~The inspection shall ensure that the modifications or additions have been done in accordance with the approval obtained pursuant to 13 NCAC 07F .0911 (Equipment Modifications).~~
  - (B) ~~The inspection shall include functional testing.~~
- (2) ~~Equipment shall not be used until an inspection under this Paragraph demonstrates that the requirements of Part (a)(1)(A) of this Rule have been met.~~

#### **(b) Repaired/adjusted equipment.**

- (1) ~~Equipment that has had a repair or adjustment that relates to safe operation (such as a repair or adjustment to a safety device or operator aid, or to a critical part of a control system, power plant, braking system, load sustaining structural components, load hook, or in use operating mechanism), shall be inspected by a qualified person after such a repair or adjustment has been completed, prior to initial use. The inspection shall meet the following requirements:~~
  - (A) ~~The qualified person shall determine if the repair/adjustment meets~~

~~manufacturer equipment criteria (where applicable and available).~~

- (B) ~~Where manufacturer equipment criteria are unavailable or inapplicable, the qualified person shall:~~

- (i) ~~Determine if a qualified engineer is needed to develop criteria for the repair/adjustment. If a qualified engineer is not needed, the employer shall ensure that the criteria are developed by the qualified person. If a qualified engineer is needed, the employer shall ensure that they are developed by a qualified engineer.~~

- (ii) ~~Determine if the repair/adjustment meets the criteria developed in accordance with Subpart (b)(1)(B)(i) of this Rule.~~

- (iii) ~~The inspection shall include functional testing~~

- (iv) ~~Equipment shall not be used until an inspection under this Paragraph demonstrates that the repair/adjustment meets the requirements of Part (b)(1)(A) of this Rule (or, where applicable, Part (b)(1)(B) of this Rule).~~

#### **(c) Post assembly.**

- (1) ~~Upon completion of assembly, the equipment shall be inspected by a qualified person to ensure that it is configured in accordance with manufacturer equipment criteria.~~

- (2) ~~Where manufacturer equipment criteria are unavailable, a qualified person shall:~~

- (A) ~~Determine if a qualified engineer familiar with the type of equipment involved is needed to develop criteria for the equipment configuration. If a qualified engineer is not needed, the employer shall ensure that the criteria are developed by the qualified person. If a qualified engineer is needed, the employer shall ensure that they are developed by a qualified engineer.~~

- (B) ~~Determine if the equipment meets the criteria developed in accordance with Part (c)(2)(A) of this Rule.~~

- (3) ~~Equipment shall not be used until an inspection under this paragraph demonstrates that the equipment is configured in accordance with the applicable criteria.~~

#### **(d) Each shift.**

- (1) ~~A competent person shall complete a visual inspection prior to commencement of crane operations during each shift. The inspection shall consist of observation for apparent deficiencies. Disassembly is not required as part of this inspection unless the results of the visual inspection or trial operation indicate that further investigation necessitating disassembly is needed. Determinations made in conducting the inspection shall be reassessed in light of observations made during operation. The inspection shall include the following:~~
  - (A) ~~Control mechanisms for maladjustments interfering with proper operation.~~
  - (B) ~~Control and drive mechanisms for apparent wear of components and contamination by lubricants, water or other foreign matter.~~
  - (C) ~~Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation.~~
  - (D) ~~Hydraulic system for proper fluid level.~~
  - (E) ~~Hooks and latches for deformation, cracks, wear, or damage such as from chemicals or heat.~~
  - (F) ~~Wire rope reeving for compliance with the manufacturer's specifications.~~
  - (G) ~~Wire rope, in accordance with 13 NCAC 07F .0914(b)(1).~~
  - (H) ~~Electrical apparatus for malfunctioning, signs of apparent deterioration, dirt or moisture accumulation.~~
  - (I) ~~Tires (when in use) for proper inflation and condition.~~
  - (J) ~~Ground conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions.~~
  - (K) ~~The equipment for level position, both shift and after each move and setup.~~
  - (L) ~~Operator cab windows for cracks, breaks, or other deficiencies that would hamper the operator's view.~~
  - (M) ~~Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling.~~
  - (N) ~~Safety devices and operational aids for proper operation.~~
- (2) ~~If any deficiency in Parts (d)(1)(A) through (d)(1)(N) of the Rule (or in additional inspection items required to be checked for~~

~~specific types of equipment in accordance with other Rules of this Section) is identified, an immediate determination shall be made by the competent person as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the equipment shall be removed from service until it has been corrected.~~

- (3) ~~If any deficiency in Part (d)(1)(N) of this Rule (safety devices/operational aids) is identified, the action specified in 13 NCAC 07F .0917 and .0918 shall be taken prior to using the equipment.~~

~~(e) Monthly.~~

- (1) ~~Each month the equipment is in service it shall be inspected in accordance with Paragraph (d) of this Rule (each shift).~~
- (2) ~~Equipment shall not be used until an inspection under this paragraph demonstrates that no corrective action under Subparagraphs (d)(2) and (d)(3) of this Rule is required.~~
- (3) ~~Documentation.~~
  - (A) ~~The following information shall be documented by the employer that conducts the inspection:~~
    - (i) ~~The items checked and the results of the inspection.~~
    - (ii) ~~The name and signature of the person who conducted the inspection and the date.~~
  - (B) ~~This document shall be retained for a minimum of three months.~~

~~(f) Annual/comprehensive.~~

- (1) ~~At least every 12 months the equipment shall be inspected by a qualified person in accordance with Paragraph (d) of this Rule (each shift), except that the corrective action set forth in this paragraph shall apply.~~
- (2) ~~In addition, at least every 12 months, the equipment shall be inspected by a qualified person for the following:~~
  - (A) ~~Equipment structure (including the boom and, if equipped, the jib):~~
    - (i) ~~Structural members: deformed, cracked, or corroded.~~
    - (ii) ~~Bolts, rivets and other fasteners: loose, failed or corroded.~~
    - (iii) ~~Welds for cracks.~~
  - (B) ~~Sheaves and drums for cracks, damage, or wear.~~
  - (C) ~~Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or wear.~~
  - (D) ~~Brake and clutch system parts, linings, pawls and ratchets for wear.~~
  - (E) ~~Safety devices and operational aids for proper operation.~~

- (F) ~~Gasoline, diesel, electric, or other power plants for safety related problems (such as leaking exhaust and emergency shut down feature), condition and proper operation.~~
- (G) ~~Chains and chain drive sprockets for wear of sprockets and chain stretch.~~
- (H) ~~Travel steering, brakes, and locking devices, for proper operation.~~
- (I) ~~Tires for damage or wear.~~
- (J) ~~Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:~~
  - (i) ~~Flexible hose or its junction with the fittings for indications of leaks.~~
  - (ii) ~~Threaded or clamped joints for leaks.~~
  - (iii) ~~Outer covering of the hose for blistering, abnormal deformation or other signs of failure.~~
  - (iv) ~~Outer surface of a hose, rigid tube, or fitting for indications of abrasion or scrubbing.~~
- (K) ~~Hydraulic and pneumatic pumps and motors, as follows:~~
  - (i) ~~Performance indicators: noise or vibration, low operating speed, abrasion or scrubbing.~~
  - (ii) ~~Loose bolts or fasteners.~~
  - (iii) ~~Shaft seals and joints between pump sections for leaks.~~
- (L) ~~Hydraulic and pneumatic valves, as follows:~~
  - (i) ~~Spools: sticking, improper return to neutral, and leaks.~~
  - (ii) ~~Leaks.~~
  - (iii) ~~Valve housing cracks.~~
  - (iv) ~~Relief valves: failure to reach correct pressure (if there is a manufacturer procedure for checking pressure, it shall be followed).~~
- (M) ~~Hydraulic and pneumatic cylinders, as follows:~~
  - (i) ~~Drifting caused by fluid leaking across the piston.~~
  - (ii) ~~Rod seals and welded joints for leaks.~~
  - (iii) ~~Cylinder rods for scores, nicks, or dents.~~
  - (iv) ~~Case (barrel) for dents.~~
  - (v) ~~Rod eyes and connecting joints: loose or deformed.~~
- (N) ~~Outrigger pads/floats and slider pads for wear or cracks.~~
- (O) ~~Slider pads for wear or cracks.~~
- (P) ~~Electrical components and wiring for cracked or split insulation and loose or corroded terminations.~~
- (Q) ~~Warning labels and decals originally supplied with the equipment by the manufacturer or otherwise required under this Section: missing or unreadable.~~
- (R) ~~Originally equipped operator seat: missing.~~
- (S) ~~Operator seat: unusable.~~
- (T) ~~Originally equipped steps, ladders, handrails, guards: missing.~~
- (U) ~~Steps, ladders, handrails, guards: in unusable/unsafe condition.~~
- (3) ~~This inspection shall include functional testing to determine that the equipment as configured in the inspection is functioning properly.~~
- (4) ~~If any deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a safety hazard or, though not yet a safety hazard, needs to be monitored in the monthly inspections.~~
- (5) ~~If the qualified person determines that a deficiency is a safety hazard, the equipment shall be removed from service until it has been corrected.~~
- (6) ~~If the qualified person determines that, though not presently a safety hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.~~
- (7) ~~Documentation of annual/comprehensive inspection. The following information shall be documented and maintained by the employer that conducts the inspection:~~
  - (A) ~~The items checked and the results of the inspection.~~
  - (B) ~~The name and signature of the person who conducted the inspection and the date.~~
  - (C) ~~This document shall be retained for a minimum of 12 months.~~
- (g) ~~Severe Service. Where the severity of use/conditions is such that there is a reasonable probability of damage or wear (such as loading that may have exceeded rated capacity, shock loading that may have exceeded rated capacity, prolonged exposure to a corrosive atmosphere), the employer shall stop using the equipment and a qualified person shall:~~
  - (1) ~~Inspect the equipment for structural damage.~~
  - (2) ~~In light of the use/conditions, determine whether any items/conditions listed in Paragraph (f) of this Rule need to be inspected; if so, the qualified person shall inspect those items/conditions.~~



~~(3) If a deficiency is found, the employer shall follow the requirements in Subparagraphs (f)(4) through (f)(6) of this Rule.~~

~~(h) Equipment not in regular use. Equipment that has been idle for three months or more shall be inspected by a qualified person in accordance with the requirements of Paragraph (c) of this Rule (Monthly) before initial use.~~

~~(i) Any part of a manufacturer's procedures regarding inspections that relate to safe operation (such as to a safety device or operator aid, critical part of a control system, power plant, braking system, load sustaining structural components, load hook, or in-use operating mechanism) that is more comprehensive or has a more frequent schedule than the requirements of this Rule shall be followed. Additional documentation requirements by the manufacturer are not required.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0916 OPERATION OF EQUIPMENT**

~~(a) The employer shall comply with all manufacturer procedures applicable to the operational functions of equipment, including its use with attachments.~~

~~(b) Unavailable operation procedures.~~

- ~~(1) Where the manufacturer procedures are unavailable, the employer shall develop and ensure compliance with all procedures necessary for the safe operation of the equipment and attachments.~~
- ~~(2) Procedures for the operational controls shall be developed by a qualified person.~~
- ~~(3) Procedures related to the capacity of the equipment shall be developed and signed by a qualified engineer familiar with the equipment.~~

~~(c) Accessibility of procedures.~~

- ~~(1) The procedures applicable to the operation of the equipment, including rated capacities (load charts), recommended operating speeds, special hazard warnings, instructions, and operator's manual, shall be readily available in the cab at all times for use by the operator.~~
- ~~(2) Where rated capacities are available in the cab only in electronic form: in the event of a failure which makes the rated capacities inaccessible, the operator shall immediately cease operations or follow safe shut down procedures until the rated capacities (in electronic or other form) are available.~~

~~(d) The operator shall not engage in any practice that diverts his/her attention while actually engaged in operating the crane, such as the use of cell phones (other than when used for signal communications) or other attention diverting activities.~~

~~(e) Authority to Stop Operation. Whenever there is a concern as to safety, the operator shall have the authority to stop and refuse to handle loads until safety has been ensured.~~

~~(f) Leaving the equipment unattended. The operator shall not leave the controls while the load is suspended.~~

~~(g) Tag out.~~

~~(1) Tagging out of service equipment/functions. Where the employer has taken the equipment out of service, a tag shall be placed in the cab stating that the equipment is out of service and is not to be used. Where the employer has taken a function(s) out of service, a tag shall be placed in a conspicuous position stating that the function is out of service and not to be used.~~

~~(2) Response to tag out or maintenance/do not operate signs.~~

~~(A) If there is a warning (tag out or maintenance/do not operate) sign on the equipment or starting control, the operator shall not activate the switch or start the equipment until the sign has been removed by a person authorized to remove it, or until the operator has verified that:~~

- ~~(i) No one is servicing, working on, or otherwise in a dangerous position on the machine.~~
- ~~(ii) The equipment has been repaired and is working properly.~~

~~(B) If there is a warning (tag out or maintenance/do not operate) sign on any other switch or control, the operator shall not activate that switch or control until the sign has been removed by a person authorized to remove it, or until the operator has verified that the requirements in Subparts (g)(2)(A)(i) and (g)(2)(A)(ii) of this Rule have been met.~~

~~(h) Before starting the engine, the operator shall verify that all controls are in the proper starting position and that all personnel are in the clear.~~

~~(i) Storm Warning. When a local storm warning has been issued, the competent person shall determine whether it is necessary to implement manufacturer recommendations for securing the equipment.~~

~~(j) The operator shall be familiar with the equipment and its proper operation. If adjustments or repairs are necessary, the operator shall promptly inform the person designated by the employer to receive such information and, where there are successive shifts, to the next operator.~~

~~(k) If the competent person determines that there is a slack rope condition requiring re-spooling of the rope, it shall be verified (before starting to lift) that the rope is seated on the drum and in the sheaves as the slack is removed.~~

~~(l) The competent person shall consider the effect of meteorological conditions such as wind, rain, ice, or snow on equipment stability and rated capacity.~~

~~(m) Compliance with rated capacity.~~

- ~~(1) The equipment shall not be operated in excess of its rated capacity.~~

- ~~(2) The operator shall not be required to operate the equipment in a manner that would violate Subparagraph (m)(1) of this Rule.~~
- ~~(3) Load weight. The operator shall verify that the load is within the rated capacity of the equipment by at least one of the following methods:~~
  - ~~(A) The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. In addition, when requested by the operator, this information shall be provided to the operator prior to the lift; or~~
  - ~~(B) The operator shall begin hoisting the load to determine, using a load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter, if it exceeds 75 percent of the maximum rated capacity at the longest radius that will be used during the lift operation. If it does, then the lift is considered to be a critical lift and the operator shall not proceed with the lift until he/she verifies the weight of the load in accordance with Part (m)(3)(A) of this Rule.~~
- ~~(n) Work Area Control.~~
  - ~~(1) Swing radius hazards.~~
    - ~~(A) The requirements in Part (n)(1)(B) of this Rule apply where there are accessible areas in which the equipment's rotating superstructure (whether permanently or temporarily mounted) poses a reasonable foreseeable risk of:~~
      - ~~(i) Striking and injuring an employee; or~~
      - ~~(ii) Pinching/crushing an employee against another part of the equipment or another object.~~
    - ~~(B) To prevent employees from entering these hazard areas, the employer shall:~~
      - ~~(i) Instruct employees assigned to work on the equipment or within the accessible areas of the swing radius of the equipment ("authorized personnel") in how to recognize struck by and pinch/crush hazard areas~~
        - ~~posed by the rotating superstructure.~~
      - ~~(ii) Erect and maintain control lines, warning lines, railing or similar barriers to mark the boundaries of the hazard areas. Exception: where it is neither feasible to erect such barriers on the ground nor on the equipment, the hazard areas shall be marked by a combination of warning signs (such as "Danger—Swing/Crush Zone") and high visibility markings on the equipment that identify the hazard areas. In addition, the employer shall train the employees to understand what these markings signify.~~
  - ~~(C) Protecting employees in the hazard area.~~
    - ~~(i) Before an employee goes to a location in the hazard area that is out of view of the operator, the employee (or someone instructed by the employee) shall ensure that the operator is informed that he/she is going to that location.~~
    - ~~(ii) Where the operator knows that an employee went to a location covered by Subparagraph (n)(1)(C)(i) of this Rule, the operator shall not rotate the superstructure until the operator:~~
      - ~~(I) Gives a warning that is understood by the employee as a signal that the superstructure is about to be rotated and allows time for the employee to get to a safe position; or~~
      - ~~(II) Is informed in accordance with a pre-arranged system of communication that the employee is in a safe position.~~
- ~~(2) Multiple equipment coordination. Where any part of a crane/derrick is within the working radius of another crane/derrick, the controlling~~

entity shall institute a system to coordinate operations. If there is no controlling entity, the employers shall institute such a system.

(o) ~~The boom or other parts of the equipment shall not contact any obstruction.~~

(p) ~~The equipment shall not be used to drag or pull loads sideways.~~

(q) ~~On wheel mounted equipment, no loads shall be lifted over the front area, except as permitted by the manufacturer.~~

(r) ~~The operator shall test the brakes each time a load that is 90 percent or more of the maximum line pull is handled by lifting the load a few inches and applying the brakes. In duty cycle and repetitive lifts where each lift is 90 percent or more of the maximum line pull, this requirement applies to the first lift but not to successive lifts.~~

(s) ~~Neither the load nor the boom shall be lowered below the point where less than two full wraps of rope remain on their respective drums.~~

(t) ~~Keeping Clear of the Load.~~

(1) ~~Hoisting routes that minimize the exposure of employees to hoisted loads shall be used.~~

(2) ~~While the operator is not moving a suspended load, no employee shall be within the fall zone, except for employees:~~

(A) ~~Engaged in hooking, unhooking or guiding a load, or~~

(B) ~~Engaged in the initial attachment of the load to a component structure, or~~

(C) ~~Operating a concrete hopper or concrete bucket.~~

(3) ~~When employees are engaged in hooking, unhooking, or guiding the load, or in the initial connection of a load to a component or structure and are within the fall zone, the following criteria shall be met:~~

(A) ~~The materials being hoisted shall be rigged to prevent unintentional displacement.~~

(B) ~~Hooks with self closing latches or their equivalent shall be used. Exception: "J" hooks may be used for setting wooden trusses.~~

(C) ~~The materials shall be rigged by a qualified rigger.~~

(4) ~~Receiving a load. Only employees needed to receive a load shall be permitted to be within the fall zone when a load is being landed.~~

(5) ~~During a tilt up or tilt down operation:~~

(A) ~~No employee shall be directly under the load.~~

(B) ~~Only employees' essential to the operation shall be in the fall zone (but not directly under the load).~~

(u) ~~Traveling with a load.~~

(1) ~~Traveling with a load is prohibited if the practice is prohibited by the manufacturer.~~

(2) ~~When traveling with a load, the employer shall ensure that:~~

(A) ~~A competent person supervises the operation, determines if it is necessary to reduce rated capacity, and makes determinations regarding load position, boom location, ground support, travel route, overhead obstructions, and speed of movement necessary to ensure safety.~~

(B) ~~The determinations of the competent person required in Part (u)(2)(A) of this Rule are implemented.~~

(C) ~~For equipment with tires, tire pressure specified by the manufacturer is maintained.~~

(v) ~~Free Fall and Controlled Load Lowering.~~

(1) ~~Boom free fall prohibitions.~~

(A) ~~The use of equipment in which the boom is designed to free fall (live boom) is prohibited in each of the following circumstances:~~

(i) ~~An employee is in the fall zone of the boom or load.~~

(ii) ~~An employee is being hoisted.~~

(iii) ~~The load or boom is directly over a power line, or over any part of the area extending the 13 NCAC 07F .0913, Table A clearance distance to each side of the power line.~~

(iv) ~~The load is over a shaft.~~

(v) ~~The load is over a cofferdam, except where there are no employees in the fall zone.~~

(vi) ~~Lifting operations are taking place in a refinery or tank farm.~~

(B) ~~The use of equipment in which the boom is designed to free fall (live boom) is permitted only where none of the circumstances listed in Part (v)(1)(A) of this Rule are present and:~~

(i) ~~The equipment was manufactured prior to October 31, 1984, or~~

(ii) ~~The equipment is a floating crane/derrick or a land crane/derrick on a vessel/flotation device.~~

(2) ~~Preventing boom free fall. Where the use of equipment with a boom that is designed to free fall (live boom) is prohibited (see Part (v)(1)(A) of this Rule), the boom hoist shall have a secondary mechanism or device designed to prevent the boom from falling in the event the primary system used to hold or regulate the boom hoist fails as follows:~~

- (A) ~~Friction drums shall have:~~
  - (i) ~~A friction clutch and, in addition, a braking device, to allow for controlled boom lowering.~~
  - (ii) ~~A secondary braking or locking device, which is manually or automatically engaged, to back up the primary brake while the boom is held (such as a secondary friction brake or a ratchet and pawl device).~~
- (B) ~~Hydraulic drums shall have an integrally mounted holding device or internal static brake to prevent boom hoist movement in the event of hydraulic failure.~~
- (C) ~~Neither clutches nor hydraulic motors shall be considered brake or locking devices for purposes of this Section.~~
- (D) ~~Hydraulic boom cylinders shall have an integrally mounted holding device.~~
- (3) ~~Preventing uncontrolled retraction. Hydraulic telescoping booms shall have an integrally mounted holding device to prevent boom from retracting in the event of hydraulic failure.~~
- (4) ~~Load line free fall. In each of the following circumstances, controlled load lowering is required and free fall of the load line hoist is prohibited.~~
  - (A) ~~An employee is directly under the load.~~
  - (B) ~~An employee is being hoisted.~~
  - (C) ~~The load is directly over a power line, or over any part of the area extending the 13 NCAC 07F .0913, Table A clearance distance to each side of the power line.~~
  - (D) ~~The load is over a shaft or cofferdam.~~
- (w) ~~Rotational speed of the equipment shall be such that the load does not swing out beyond the radius at which it can be controlled.~~
- (x) ~~A tag or restrain line shall be used if necessary to prevent rotation of the load that would be hazardous.~~
- (y) ~~The brakes shall be adjusted in accordance with manufacturer procedures to prevent unintended movement.~~
- (z) ~~The operator shall obey a stop (or emergency stop) signal, irrespective of who gives it.~~
- (aa) ~~Swinging locomotive cranes. A locomotive crane shall not be swung into a position where it is reasonably foreseeable that railway cars on an adjacent track could strike it, until it is determined that cars are not being moved on the adjacent track and that proper flag protection has been established.~~
- (bb) ~~Counterweight/ballast.~~
  - (1) ~~The following applies to equipment other than tower cranes:~~
    - (A) ~~Equipment shall not be operated without the counterweight or ballast~~

- ~~in place as specified by the manufacturer.~~
- (B) ~~The maximum counterweight or ballast specified by the manufacturer for the equipment shall not be exceeded.~~
- (2) ~~Counterweight/ballast requirements for tower cranes are specified in 13 NCAC 07F .0921(b)(8).~~
- (cc) ~~Multiple Crane / Derrick Lifts Supplemental Requirements.~~
  - (1) ~~Plan Development. Before beginning a crane/derrick operation in which more than one crane/derrick will be supporting the load, the operation shall be planned. The planning shall meet the following requirements:~~
    - (A) ~~The plan shall be developed by a qualified person.~~
    - (B) ~~The plan shall be designed to ensure that the requirements of this Section are met.~~
    - (C) ~~Where the qualified person determines the engineering expertise is needed for the planning, the employer shall ensure that it is provided.~~
  - (2) ~~Plan Implementation.~~
    - (A) ~~The multiple crane / derrick lift shall be supervised by a person who meets the criteria for both a competent person and a qualified person, or by a competent person who is assisted by one or more qualified persons.~~
    - (B) ~~The supervisor shall review the plan with all employees who will be involved with the operation.~~
  - (3) ~~The provisions of 13 NCAC 07F .0919(k) regarding communication with multiple cranes/derricks shall apply.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0917 OPERATIONAL AIDS**

- (a) ~~The devices listed in this Rule ("listed operational aids") are required on all equipment covered by this Section, unless otherwise specified.~~
- (b) ~~Operations shall not begin unless the listed operational aids are in proper working order, except where the employer meets the specified temporary alternative measures. More protective alternative measures specified by the crane/derrick manufacturer, if any, shall be followed.~~
- (c) ~~If a listed operational aid stops working properly during operations, the operator shall safely stop operations until the temporary alternative measures are implemented or the device is again working properly. If a replacement part is no longer available, the use of a substitute device that performs the same~~

~~type of function is permitted and is not considered a modification under 13 NCAC 07F .0911.~~

~~(d) Category I operational aids and alternative measures. Operational aids listed in this Paragraph that are not working properly shall be repaired no later than seven days after the deficiency occurs. Exception: If the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, the repair shall be completed within seven days of receipt of the parts.~~

~~(1) Boom hoist limiting device.~~

~~(A) For equipment manufactured after December 16, 1969, a boom hoist limiting device is required. Temporary alternative measures (use at least one):~~

- ~~(i) Use a boom angle indicator.~~
- ~~(ii) Mark the boom hoist cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to keep the boom within the minimum allowable radius. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.~~
- ~~(iii) Mark the boom hoist cable (so that it can easily be seen by a spotter) at a point that will give the spotter sufficient time to signal the operator and have the operator stop the hoist to keep the boom within the minimum allowable radius.~~

~~(B) If the equipment was manufactured on or before December 16, 1969, and was not originally equipped with a boom hoist limiting device, at least one of the measures in Subparts (d)(1)(A)(i) through (d)(1)(A)(iii) of this Rule shall be used, on a permanent basis.~~

~~(2) Luffing jib limiting device. Equipment with a luffing jib shall have a luffing jib limiting device. Temporary alternative measures are the same as in Part (d)(1)(A) of this Rule, except to limit the movement of the luffing jib.~~

~~(3) Anti two blocking device.~~

~~(A) Telescopic boom cranes manufactured after February 28, 1992, shall be equipped with a device which automatically prevents damage from contact between the load block, overhaul bail, or similar component, and the boom tip (or upper block or similar component). The device(s)~~

~~shall prevent such damage at all points where two blocking could occur. Temporary alternative measures: Mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two blocking, and use a spotter when extending the boom.~~

~~(B) Lattice boom cranes.~~

~~(i) Lattice boom cranes manufactured after February 28, 1992, shall be equipped with a device that either automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component), or warns the operator in time for the operator to prevent two blocking. The device(s) shall prevent such damage/failure or provide warning for all points where two blocking could occur.~~

~~(ii) Lattice boom cranes, and derricks, manufactured more than one year after the effective date of this Rule shall be equipped with a device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device(s) shall prevent such damage/failure at all points where two blocking could occur.~~

~~(iii) Exception. The requirements in Subparts (d)(3)(B)(i) and (d)(3)(B)(ii) of this Rule do not apply to such lattice boom equipment when used for dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, marine operations that do not involve hoisting personnel, and pile driving work.~~

~~(iv) Temporary alternative measures. Mark the cable~~

~~(so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two blocking, or use a spotter.~~

~~(e) Category II operational aids and alternative measures. Operation aids listed in this paragraph that are not working properly shall be repaired no later than 30 days after the deficiency occurs. Exception: If the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 days, the repair shall be completed within seven days of receipt of the parts.~~

- ~~(1) Boom angle or radius indicator. The equipment shall have a boom angle or radius indicator readable from the operator's station. Temporary alternative measures: Radii or boom angle shall be determined by measuring the radii or boom angle with a measuring device.~~
- ~~(2) Jib angle indicator if the equipment has a luffing jib. Temporary alternative measures: Radii or jib angle shall be determined by ascertaining the main boom angle and then measuring the radii or jib angle with a measuring device.~~
- ~~(3) Boom length indicator if the equipment has a telescopic boom, except where the rated capacity is independent of the boom length. Temporary alternative measures: One of the following methods shall be used:  
(A) Mark the boom with measured marks to calculate boom length; or  
(B) Calculate boom length from boom angle and radius measurements; or  
(C) Measure the boom with a measuring device.~~
- ~~(4) Load weighing and similar devices. Equipment (other than derricks) manufactured after March 29, 2003 with a rated capacity over 6,000 pounds shall have at least one of the following: load weighing device, load moment (or rated capacity) indicator, or load moment (or rated capacity) limiter. Temporary alternative measures: The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information shall be provided to the operator prior to the lift.~~
- ~~(5) The following devices are required on equipment manufactured more than one year after the effective date of this Rule:  
(A) Outrigger position (horizontal beam extension) sensor/monitor if the~~

~~equipment has outriggers. Temporary alternative measures: the operator shall verify that the position of the outriggers is correct (in accordance with manufacturer procedures) before beginning operations requiring outrigger deployment.~~

- ~~(B) Hoist drum rotation indicator if the drum is not visible from the operator's station. Temporary alternative measures: Mark the drum. In addition, install mirrors or remote video cameras and displays if necessary for the operator to see the mark.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0918 SAFETY DEVICES**

~~(a) Safety Devices. The following safety devices are required on all equipment covered by this Section, unless otherwise specified:~~

- ~~(1) Crane level indicator.  
(A) The equipment shall have a crane level indicator that is either built into the equipment or is available on the equipment.  
(B) If a built in crane level indicator is not working properly, the indicator shall be tagged out or removed.  
(C) This Subparagraph does not apply to portal cranes, derricks, floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.~~
- ~~(2) Boom stops, except for derricks and hydraulic booms.~~
- ~~(3) Jib stops (if a jib is attached), except for derricks.~~
- ~~(4) Equipment with foot pedal brakes shall have locks, except for portal cranes and floating cranes.~~
- ~~(5) Hydraulic outrigger jacks shall have an integral holding device/check valve.~~
- ~~(6) Equipment on rails shall have rail clamps and rail stops, except for portal cranes.~~

~~(b) Proper operation required. Operations shall not begin unless the devices listed in this section are in proper working order. If a device stops working properly during operations, the operator shall safely stop operations. Operations shall not resume until the device is again working properly. Alternative measures are not permitted to be used.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

**13 NCAC 07F .0919 SIGNALS**

(a) A signal person shall be provided in each of the following situations:

- (1) The point of operation, meaning the load travel or the area near or at load placement, is not in full view of the operator.
- (2) When the equipment is traveling, the view in the direction of travel is obstructed.
- (3) Due to site specific safety concerns, either the operator or the person handling the load determines that it is necessary.

(b) Types of signals. Signals to operators shall be by hand, voice, audible, or new signals.

(c) Hand signals.

- (1) When using hand signals, the standard method as established in ASME B30.5 2004, Section 5.3.3.4 shall be used. Exception: where use of the standard method for hand signals is infeasible, or where an operation or use of an attachment is not covered in the standard method, non-standard hand signals may be used in accordance with Subparagraph (c)(2) of this Rule.
- (2) Non-standard hand signals. When using non-standard hand signals, the signal person, operator, and lift supervisor (when there is one) shall contact each other prior to the operation and agree on the non-standard hand signals that will be used.

(d) New signals. Signals other than hand, voice or audible signals may be used where the employer demonstrates that:

- (1) The new signals provide at least equally effective communications as voice, audible, or Standard Method hand signals, or
- (2) There is a national consensus standard, as that term is defined in 29 CFR 1910.2(g), for the new signals.

(e) Use and Suitability.

- (1) Prior to beginning operations, the operator, signal person, and lift supervisor (if there is one), shall contact each other and agree on the voice signals that will be used. Once the voice signals are agreed upon, these employees need not meet again to discuss voice signals unless another employee is substituted, there is confusion about the voice signals, or a voice signal is to be changed.
- (2) Each voice signal shall contain the following three elements, given in the following order: function (such as hoist, boom, etc.), direction; distance or speed; function, stop command.
- (3) The operator, signal person and lift supervisor (if there is one), shall be able to effectively communicate in the language used.
- (4) The signals used (hand, voice, audible, or new), and means of transmitting the signals to the operator (such as direct line of sight, video, radio, etc.) shall be appropriate for the site conditions.

(f) During operations requiring signals, the ability to transmit signals between the operator and signal person shall be maintained. If that ability is interrupted at any time, the operator shall safely stop operations requiring signals until it is reestablished and a proper signal is given and understood.

(g) If the operator becomes aware of a safety problem and needs to communicate with the signal person, the operator shall safely stop operations. Operations shall not resume until the operator and signal person agree that the problem has been resolved.

(h) Only one person gives signals to a crane/derrick at a time, except in circumstances covered by Paragraph (i) of this Rule.

(i) Anyone who becomes aware of a safety problem shall alert the operator or signal person by giving the stop or emergency stop signal. (NOTE: 13 NCAC 07F .0916(z) requires the operator to obey a stop or emergency stop signal).

(j) All directions given to the operator by the signal person shall be given from the operator's direction perspective.

(k) Communication with multiple cranes/derricks. Where a signal person(s) is in communication with more than one crane/derrick, a system for identifying the crane/derrick that each signal is for shall be used, as follows:

- (1) For each signal, prior to giving the function/direction, the signal person shall identify the crane/derrick the signal is for, or
- (2) An equally effective method of identifying which crane/derrick the signal is for shall be used.

(l) Hand signal chart. Hand signal charts shall be either posted on the equipment or readily available at the site.

(m) Radio, Telephone or Other Electronic Transmission of Signals.

- (1) The device(s) used to transmit signals shall be tested on site before beginning operations to ensure that the signal transmission is clear and reliable.
- (2) Signal transmission shall be through a dedicated channel. Exception: Multiple cranes/derricks and one or more signal persons may share a dedicated channel for the purpose of coordinating operations.
- (3) The operator's reception of signals shall be made by a hands-free system.

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

**13 NCAC 07F .0920 HOISTING PERSONNEL**

The requirements of this Rule are supplemental to the other requirements in this Section and apply when one or more employees are hoisted.

- (1) The use of equipment to hoist employees is prohibited except where the employer demonstrates that the erection, use, and dismantling of conventional means of reaching the worksite, such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform, or scaffold, would be more dangerous, or is

- not possible because of the project's structural design or worksite conditions.
- (2) ~~Use of personnel platform:~~
- (a) ~~When using equipment to hoist employees, the employees shall be in a personnel platform that meets the requirements of Paragraph (5) of this Rule.~~
  - (b) ~~Exceptions: A personnel platform is not required for hoisting employees:~~
    - (i) ~~Into and out of drill shafts that are up to and including eight feet in diameter (see Item (13) of this Rule for requirements for hoisting these employees).~~
    - (ii) ~~In pile driving operations (see Item (14) of this Rule for requirements for hoisting these employees).~~
    - (iii) ~~Solely for transfer to or from a marine worksite in a marine hoisted personnel transfer device (see Item (15) of this Rule for requirements for hoisting these employees).~~
    - (iv) ~~In storage tank (steel or concrete), shaft and chimney operations (see Item (16) of this Rule for requirements for hoisting these employees).~~
- (3) ~~Equipment set up:~~
- (a) ~~The equipment shall be uniformly level, within one percent of level grade, and located on footing that a qualified person has determined to be sufficiently firm and to support the equipment.~~
  - (b) ~~Equipment with outriggers shall have them all extended and locked. The amount of extension shall be the same for all outriggers and in accordance with manufacturer procedures and load charts.~~
- (4) ~~Equipment criteria:~~
- (a) ~~Capacity: use of suspended personnel platforms. The total load (with the platform loaded, including the hook, load line and rigging) shall not exceed 50 percent of the rated capacity for the radius and configuration of the equipment, except during proof testing.~~
  - (b) ~~Capacity: use of boom attached personnel platforms. The total weight of the loaded personnel platform shall not exceed 50 percent of the rated~~
- ~~capacity for the radius and configuration of the equipment, except during proof testing.~~
- (c) ~~Capacity: hoisting personnel without a personnel platform. When hoisting personnel without a personnel platform pursuant to Sub Item (2)(b) of this Rule, the total load (including the hook, load line, rigging and any other equipment that imposes a load) shall not exceed 50 percent of the rated capacity for the radius and configuration of the equipment, except during proof testing.~~
  - (d) ~~When the occupied personnel platform is in a stationary working position, the load and boom hoist brakes, swing brakes, and operator actuated secondary braking and locking features (such as pawls or dogs) or automatic secondary brakes shall be engaged.~~
  - (e) ~~Devices:~~
    - (i) ~~Equipment (except for derricks) with a variable angle boom shall be equipped with:~~
      - (A) ~~A boom angle indicator, readily visible to the operator.~~
      - (B) ~~A boom hoist limiting device.~~
    - (ii) ~~Equipment with a luffing jib shall be equipped with:~~
      - (A) ~~A jib angle indicator, readily visible to the operator.~~
      - (B) ~~A jib hoist limiting device.~~
    - (iii) ~~Equipment with telescoping booms shall be equipped with a device to indicate the boom's extended length to the operator, or shall have measuring marks on the boom.~~
    - (iv) ~~Anti two block. A device which automatically prevents damage and load failure from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component) shall be used. The device(s) shall prevent damage/failure at all points where two~~



- ~~blocking could occur.~~  
~~Exception: This device is not required when hoisting personnel in pile driving operations. Instead, Sub-Item (14)(b) of this Rule specifies how to prevent two blocking during such operations.~~
- (v) ~~Controlled load lowering.~~  
~~The load line hoist drum shall have a system, other than the load line hoist brake, which regulates the lowering rate of speed of the hoist mechanism. This system or device shall be used when hoisting personnel.~~  
~~(NOTE: free fall of the load line hoist is prohibited (see 13 NCAC 07F .0916(v)(4)); the use of equipment in which the boom hoist mechanism can free fall is also prohibited (see 13 NCAC 07F .0916(v)(1)(A)).~~
- (vi) ~~Proper operation required.~~  
~~Personnel hoisting operations shall not begin unless the devices listed in this section are in proper working order. If a device stops working properly during such operations, the operator shall safely stop operations. Personnel hoisting operations shall not resume until the device is again working properly. Alternative measures are not permitted.~~
- (f) ~~Direct attachment of a personnel platform to a luffing jib is prohibited.~~
- (5) ~~Personnel platform criteria:~~
- (a) ~~The personnel platform and attachments/suspension system shall be designed for hoisting personnel by a qualified engineer or a qualified person competent in structural design.~~
- (b) ~~The system used to connect the personnel platform to the equipment shall allow the platform to remain within 10 degrees of level, regardless of boom angle.~~
- (c) ~~The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.~~
- (d) ~~The personnel platform itself (excluding the guardrail system and personal fall arrest system anchorages), shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load.~~
- (e) ~~All welding of the personnel platform and its components shall be performed by a certified welder familiar with the weld grades, types and material specified in the platform design.~~
- (f) ~~The personnel platform shall be equipped with a guardrail system which meets the requirements of 29 CFR 1926, Subpart M, and shall be enclosed at least from the toeboard to mid rail with either solid construction material of expanded metal having openings no greater than ½ inch (1.27 cm). Points to which personal fall arrest systems are attached shall meet the anchorage requirements in 29 CFR 1926, Subpart M.~~
- (g) ~~A grab rail shall be installed inside the entire perimeter of the personnel platform except for access gates/doors.~~
- (h) ~~Access gates/doors. If installed, access gates/doors of all types (including swinging, sliding, folding, or other types) shall:~~
- (i) ~~Not swing outward.~~
- (ii) ~~Be equipped with a device that prevents accidental opening.~~
- (i) ~~Headroom shall be sufficient to all employees to stand upright in the platform.~~
- (j) ~~In addition to the use of hard hats, employees shall be protected by overhead protection on the personnel platform when employees are exposed to falling objects. The platform overhead protection shall not obscure the view of the operator or platform occupants (such as wire mesh that has up to ½ inch openings); unless full protection is necessary.~~
- (k) ~~All edges exposed to employee contact shall be smooth enough to prevent injury.~~
- (l) ~~The weight of the platform and its rated capacity shall be conspicuously posted on the platform with a plate or other permanent marking.~~
- (6) ~~Personnel platform loading.~~
- (a) ~~The personnel platform shall not be loaded in excess of its rated capacity.~~

- (b) ~~Use.~~
  - (i) ~~Personnel platforms shall be used only for employees, their tools, and the materials necessary to do their work. Platforms shall not be used to hoist materials or tools when not hoisting personnel.~~
  - (ii) ~~Exception: materials and tools to be used during the lift, if secured and distributed in accordance with Sub-Item (6)(c) of this Rule, may be in the platform for trial lifts.~~
- (c) ~~Materials and tools shall be:~~
  - (i) ~~Secured to prevent displacement.~~
  - (ii) ~~Evenly distributed within the confines of the platform while it is suspended.~~
- (d) ~~The number of employees occupying the personnel platform shall not exceed the maximum number the platform was designed to hold or the number required to perform the work, whichever is less.~~
- (7) ~~Attachment and rigging.~~
  - (a) ~~Hooks and other detachable devices.~~
    - (i) ~~Hooks used in connection between the hoist line and the personnel platform (including hooks on overhaul ball assemblies, lower load blacks, bridle legs, or other attachment assemblies or components) shall be:~~
      - (A) ~~Of a type that can be closed and locked, eliminating the throat opening.~~
      - (B) ~~Closed and locked when attached.~~
    - (ii) ~~Shackles used in place of hooks shall be of the alloy anchor type, with either:~~
      - (A) ~~A bolt, nut and retaining pin, in place; or~~
      - (B) ~~Of the screw type, with the screw pin secured from accidental removal.~~
    - (iii) ~~Where other detachable devices are used, they shall be of the type that can be closed and locked to the same extent as the devices addressed in Sub-Items~~
      - (7)(a)(i) and (7)(a)(ii) of this Rule. Such devices shall be closed and locked when attached.
  - (b) ~~Rope Bridle. When a rope bridle is used to suspend the personnel platform, each bridle leg shall be connected to a master link or shackle in a manner that ensures that the load is evenly divided among the bridle legs.~~
  - (c) ~~Rigging hardware (including wire rope, shackles, rings, master links, and other rigging hardware) and hooks shall be capable of supporting, without failure, at least five times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall be capable of supporting without failure at least ten times the maximum intended load.~~
  - (d) ~~Eyes in wire rope slings shall be fabricated with thimbles.~~
  - (e) ~~Bridles and associated rigging for suspending the personnel platform shall be used only for the platform and the necessary employees, their tools and materials necessary to do their work, and shall not be used for any other purpose when not hoisting personnel.~~
- (8) ~~Trial lift and inspection.~~
  - (a) ~~A trial lift with the unoccupied personnel platform loaded at least to the anticipated lift weight shall be made from ground level, or any other location where employees will enter the platform, to each location at which the platform is to be hoisted and positioned. Where there is more than one location to be reached from a single set up position, either individual trial lifts for each location, or a single trial lift for all locations, shall be performed.~~
  - (b) ~~The trial lift shall be performed immediately prior to each shift in which personnel will be hoisted. In addition, the trial lift shall be repeated prior to hoisting employees in each of the following circumstances:~~
    - (i) ~~The equipment is moved and set up on a new location or returned to a previously used location.~~
    - (ii) ~~The lift route is changed, unless the competent person determines that the new~~

- route presents no new factors affecting safety.
- (e) The competent person shall determine that:
  - (i) Safety devices and operational aids required by this Section are activated and functioning properly. Other safety devices and operational aids shall meet the requirements of 13 NCAC 07F .0917 and 13 NCAC 07F .0918.
  - (ii) Nothing interferes with the equipment or the personnel platform in the course of the trial lift.
  - (iii) The lift will not exceed 50 percent of the equipment's rated capacity at any time during the lift.
  - (iv) The load radius to be used during the lift has been accurately determined.
- (d) Immediately after the trial lift, the competent person shall:
  - (i) Conduct a visual inspection of the equipment, base support or ground, and personnel platform, to determine whether the trial lift has exposed any defect or problem or produced any adverse effect.
  - (ii) Confirm that, upon completion of the trial lift process, the test weight has been removed.
- (e) Immediately prior to each lift:
  - (i) The platform shall be hoisted a few inches and inspected by a competent person to ensure that it is secure and properly balanced.
  - (ii) The following conditions shall be determined by a competent person to exist before the lift of personnel proceeds:
    - (A) Hoist ropes shall be free of deficiencies in accordance with 13 NCAC 07F .0914(b)(1).
    - (B) Multiple part lines shall not be twisted around each other.
- (C) The primary attachment shall be centered over the platform.
- (D) If the load rope is slack, the hoisting system shall be inspected to ensure that all ropes are properly seated on drums and in sheaves.
- (f) Any condition found during the trial lift and subsequent inspection(s) that fails to meet a requirement of this Section or otherwise creates a safety hazard shall be corrected before hoisting personnel.
- (9) Proof Testing:
  - (a) At each jobsite, prior to hoisting employees on the personnel platform, and after any repair or modification, the platform and rigging shall be proof tested to 125 percent of the platform's rated capacity. The proof test may be done concurrently with the trial lift.
  - (b) The platform shall be lowered by controlled load lowering, braked and held in a suspended position for a minimum of five minutes with the test load evenly distributed on the platform.
  - (c) After proof testing, a competent person shall inspect the platform and rigging to determine if the test has been passed. If any deficiencies are found that pose a safety hazard, the platform and rigging shall not be used to hoist personnel unless the deficiencies are corrected, the test is repeated, and a competent person determines that the test has been passed.
  - (d) Personnel hoisting shall not be conducted until the competent person determines that the platform and rigging have successfully passed the proof test.
- (10) Work practices:
  - (a) Hoisting of the personnel platform shall be performed in a slow, controlled, cautious manner, with no sudden movements of the equipment or the platform.
  - (b) Platform occupants shall:
    - (i) Keep all parts of the body inside the platform during raising, lowering, and

- ~~horizontal movement. This provision does not apply to an occupant of the platform when necessary to position the platform or while performing the duties of a signal person.~~
- ~~(ii) Not stand, sit on, or work from the top or intermediate rail or toeboard, or use any other means/device to raise their working height.~~
  - ~~(iii) Not pull the platform out of plumb in relation to the hoisting equipment.~~
  - ~~(c) Before employees exit or enter a hoisted personnel platform that is not landed, the platform shall be secured to the structure where the work is to be performed, unless securing to the structure would create a greater hazard.~~
  - ~~(d) If the platform is tied to the structure, the operator shall not move the platform until the operator receives confirmation that it is freely suspended.~~
  - ~~(e) Tag lines shall be used when necessary to control the platform.~~
  - ~~(f) Platforms without controls. Where the platform is not equipped with controls, the equipment operator shall remain at the equipment controls at all times while the platform is occupied.~~
  - ~~(g) Platforms with controls. Where the platform is equipped with controls, the following shall be met at all times while the platform is occupied:~~
    - ~~(i) The occupant using the controls in the platform shall be a qualified person with respect to their use, including the safe limitations of the equipment and hazards associated with its operation.~~
    - ~~(ii) The equipment operator shall be at the equipment controls, or in the personnel platform, or on site and in view of the equipment.~~
    - ~~(iii) The platform operating manual shall be in the platform or on the equipment.~~
  - ~~(h) Environmental conditions.~~
    - ~~(i) Wind. When wind speed (sustained or gusts) exceeds~~
- ~~20 mph at the personnel platform, a qualified person shall determine if, in light of the wind conditions, it is not safe to lift personnel. If it is not, the lifting operation shall not begin (or, if already in progress, shall be terminated).~~
- ~~(ii) Other weather and environmental conditions. A qualified person shall determine if, in light of indications of dangerous weather conditions, or other impending or existing danger, it is not safe to lift personnel. If it is not, the lifting operation shall not begin (or, if already in progress, shall be terminated).~~
  - ~~(i) Employees being hoisted shall remain in direct communication with the signal person (where used), or the operator.~~
  - ~~(j) Fall protection.~~
    - ~~(i) Except over water, employees occupying the personnel platform shall be provided and use a personal fall arrest system. The system shall be attached to a structural member within the personnel platform.~~
    - ~~(ii) The fall arrest system, including the attachment point (anchorage) used to comply with Sub Item (10)(j)(i) of this Rule, shall meet the requirements in 29 CFR 1926.502.~~
- ~~NOTE: When working over or near water, the requirements of 29 CFR 1926.106 apply.~~
- ~~(k) Other load lines.~~
    - ~~(i) No lifts shall be made on any other of the equipment's load lines while personnel are being hoisted, except in pile driving operations.~~
    - ~~(ii) Factory produced boom-mounted personnel platforms that incorporate a winch as original equipment: loads may be hoisted by such a winch while employees occupy the personnel platform only~~

- ~~where the load on the winch line does not exceed 500 pounds and does not exceed the rated capacity of the winch and platform.~~
- (l) ~~Traveling equipment other than derricks.~~
- (i) ~~Hoisting of employees while the equipment is traveling is prohibited, except for:~~
- (A) ~~Equipment that travels on fixed rails, or~~
- (B) ~~Where the employer demonstrates that there is no less hazardous way to perform the work.~~
- (C) ~~The exception in this Sub-item does not apply to rubber-tired equipment.~~
- (ii) ~~Where employees are hoisted while the equipment is traveling, the following criteria shall be met:~~
- (A) ~~Crane travel shall be restricted to a fixed track or runway.~~
- (B) ~~Where a runway is used, it shall be a firm, level surface designed, prepared and designated as a path of travel for the weight and configuration of the equipment being used to lift and travel with the personnel platform. An existing surface may be used as long as it meets these criteria.~~
- (C) ~~Travel shall be limited to boom length.~~
- (D) ~~The boom shall be parallel to the direction of travel, except where it is safer to do otherwise.~~
- (E) ~~A complete trial run shall be performed to test the route of~~
- ~~travel before employees are allowed to occupy the platform. This trial run may be performed at the same time as the trial lift required by Item (8) of this Rule which tests the lift route.~~
- (m) ~~Traveling derricks. Derricks are prohibited from traveling while personnel are hoisted.~~
- (11) ~~Pre-lift meeting. A pre-lift meeting shall be:~~
- (a) ~~Held to review the applicable requirements of this Rule and the procedures that will be followed.~~
- (b) ~~Attended by the equipment operator, signal person (if used for the lift), employees to be hoisted, and the person responsible for the task to be performed.~~
- (c) ~~Held prior to the trial lift at each new work location, and shall be repeated for any employees newly assigned to the operation.~~
- (12) ~~Hoisting personnel near power lines. Hoisting personnel within 20 feet of a power line that is up to 350 kV, and hoisting personnel within 50 feet of a power line that exceeds 350 kV, is prohibited, except for work covered by 29 CFR 1926, Subpart V (Power Transmission and Distribution). If the operating voltage of the power line exceeds 1,000 kV, then the minimum clearance distance shall be established by a qualified engineer or by the owner or operator of the power line who is a qualified person with respect to electrical power transmission and distribution.~~
- (13) ~~Hoisting personnel in drill shafts. When hoisting employees into and out of drill shafts that are up to and including 8 feet in diameter, the following requirements shall be met:~~
- (a) ~~The employee shall be in either a personnel platform or on a boatswain's chair.~~
- (b) ~~If using a personnel platform, Paragraphs (1) through (12) of this Rule apply.~~
- (c) ~~If using a boatswain's chair:~~
- (i) ~~The following Items of this Rule apply: (1), (3), (4)(a), (4)(c), (4)(d), 5(a), (5)(b), (5)(c), (6)(a), (6)(b)(i), (6)(c)(i), (7), (8), (10)(a), (10)(f), (10)(h), (10)(i), (10)(k)(i), (11) and (12). Where the terms "personnel~~

- platform" or "platform" are used in these Paragraphs, substitute them with "boatswain's chair."
- (ii) A signal person shall be stationed at the shaft opening.
  - (iii) The employee shall be hoisted in a slow, controlled descent and ascent.
  - (iv) The employee shall use personal fall protection equipment, including a full body harness, attached independent of the crane/derrick.
  - (v) The fall protection equipment shall meet the applicable requirements in 29 CFR 1926.502.
  - (vi) The boatswain's chair itself (excluding the personal fall arrest system anchorages), shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load.
  - (vii) No more than one person shall be hoisted at a time.
- (14) Hoisting personnel for pile-driving operations. When hoisting an employee in pile-driving operations, the following requirements shall be met:
- (a) The employee shall be in a personnel platform or boatswain's chair.
  - (b) For lattice boom cranes, mark the cable (so that it can easily be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two blocking, or use a spotter. For telescopic boom cranes, mark the cable (so that it can be easily seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two blocking, and use a spotter.
  - (c) If using a personnel platform, Items (2) through (12) of this Rule apply.
  - (d) If using a boatswain's chair:
    - (i) The following Items of this Rule apply: (1), (3), (4)(a), (4)(c), (4)(d), 5(a), (5)(b), (5)(c), (6)(a), (6)(b)(i), (6)(c)(i), (7), (8), (9), (10)(a), (10)(f), (10)(h), (10)(i), (10)(k)(i), (11) and (12). Where the terms
- "personnel platform" or "platform" are used in these Paragraphs, substitute them with "boatswain's chair."
- (ii) The employee shall be hoisted in a slow, controlled descent and ascent.
  - (iii) The employee shall use personal fall protection equipment, including a full body harness, independently attached to the lower load block or overhall ball.
  - (iv) The fall protection equipment shall meet the applicable requirements in 29 CFR 1926.502.
- (15) Hoisting personnel for marine transfer. When hoisting employees solely for transfer to or from a marine worksite, the following requirements shall be met:
- (a) The employee shall be in either a personnel platform or a marine hoisted personnel transfer device.
  - (b) If using a personnel platform, Paragraphs (1) through (12) of this Rule apply.
  - (c) If using a marine hoisted personnel transfer device:
    - (i) The following Items of this Rule apply: (1), (3)(b), (4)(a), (4)(c), (4)(d), (5)(a) through (5)(e), (5)(l), (6)(a), (7), (8), (9), (10)(a), (10)(h), (10)(i), (10)(j)(ii), (10)(k)(i), (10)(l), (11) and (12). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "marine hoisted personnel transfer device."
    - (ii) The transfer device shall be used only for transferring employees.
    - (iii) The number of employees occupying the transfer device shall not exceed the maximum number it was designed to hold.
    - (iv) Each employee shall wear a personal flotation device approved by the U.S. Coast Guard for industrial use.
- (16) Hoisting personnel for storage tank (steel or concrete), shaft and chimney operations. When hoisting an employee in storage tank (steel or concrete), shaft and chimney

operations, the following requirements shall be met:

- (a) ~~The employee shall be in a personnel platform except where use of a personnel platform is infeasible; in such a case, a boatswain's chair shall be used.~~
- (b) ~~If using a personnel platform, Items (1) through (12) of this Rule apply.~~
- (c) ~~If using a boatswain's chair:~~
  - (i) ~~The following Items of this Rule apply: (1), (3), (4)(a), (4)(c), (4)(d), (5)(a), (5)(b), (5)(c), (6)(a), (6)(b)(i), (6)(c)(i), (7), (8), (10)(a), (10)(f), (10)(h), (10)(i), (10)(k)(i), (11) and (12). Where the terms "personnel platform" or "platform" are used in these paragraphs, substitute them with "boatswain's chair."~~
  - (ii) ~~The employees shall be hoisted in a slow, controlled descent and ascent.~~
  - (iii) ~~The employee shall use personal fall protection equipment, including a full body harness, attached independent of the crane/derrick.~~
  - (iv) ~~The fall protection equipment shall meet the applicable requirements in 29 CFR 1926.502.~~
  - (v) ~~The boatswain's chair itself (excluding the personal fall arrest system anchorages), shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load.~~
  - (vi) ~~No more than one person shall be hoisted at a time.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### **13 NCAC 07F .0921 TOWER CRANES**

- (a) ~~This Rule contains supplemental requirements for tower cranes; all rules of this Section apply to tower cranes unless specified otherwise.~~
- (b) ~~Erecting, climbing and dismantling.~~
  - (1) ~~13 NCAC 07F .0912 (assembly and disassembly of equipment) applies to tower cranes (except as otherwise specified), except that the term "assembly/disassembly" is~~

~~replaced by "erecting, climbing and dismantling," and the term "disassembly" is replaced by "dismantling."~~

- (2) ~~Dangerous areas (self erecting tower cranes). In addition to the requirement in 13 NCAC 07F .0912(g), for self-erecting tower cranes, the following applies: Employees shall not be in or under the tower, jib, or rotating portion of the crane during erecting, climbing and dismantling operations until the crane is secured in a locked position and the competent person in charge indicates it is safe to enter this area, unless the manufacturer's instructions direct otherwise and only the necessary personnel are permitted in this area.~~
- (3) ~~Foundations and structural supports. Tower crane foundations and structural supports shall be designed by the manufacturer or a qualified engineer.~~
- (4) ~~Addressing specific hazards. The requirements of 13 NCAC 07F .0912(j)(1) through (j)(9) apply. In addition, the A/D supervisor shall address the following:~~
  - (A) ~~Foundations and structural supports. The A/D supervisor shall verify that tower crane foundations and structural supports are installed in accordance with their design.~~
  - (B) ~~Loss of backward stability. Backward stability shall be considered before swinging self-erecting cranes or cranes on traveling or static undercarriages.~~
  - (C) ~~Wind speed. Wind shall not exceed the speed recommended by the manufacturer or, where manufacturer does not specify this information, the speed determined by a qualified person.~~
- (5) ~~Plumb tolerance. Towers shall be erected plumb to the manufacturer's tolerance and verified by a qualified engineer. Where the manufacturer does not specify plumb tolerance, the crane tower shall be plumb to a tolerance of at least 1:500 (approximately 1 inch in 40 feet).~~
- (6) ~~Multiple tower crane jobsites. On jobsites where more than one fixed jib (hammerhead) tower crane is installed, the cranes shall be located so that no crane may come in contact with the structure of another crane. Cranes may pass over one another.~~
- (7) ~~Climbing procedures. Prior to, and during, all climbing procedures (including inside climbing and top climbing), the employer shall:~~
  - (A) ~~Comply with all manufacturer prohibitions.~~

(B) — Have a qualified engineer verify that the host structure is strong enough to sustain the forces imposed through the braces, brace anchorages and supporting floors.

(C) — Ensure that no part of the climbing procedure takes place when wind exceeds the speed recommended by the manufacturer or, where the manufacturer does not specify this information, the speed determined by a qualified person.

(8) — Counterweight/ballast.

(A) — Equipment shall not be erected, dismantled or operated without the amount and position of counterweight or ballast in place as specified by the manufacturer or a qualified engineer familiar with the equipment.

(B) — The maximum counterweight or ballast specified by the manufacturer or qualified engineer familiar with the equipment shall not be exceeded.

(e) Signs. The size and location of signs installed on tower cranes shall be in accordance with manufacturer specifications. Where these are unavailable, a qualified engineer familiar with the type of equipment involved shall approve in writing the size and location of any signs.

(d) Safety devices.

(1) — 13 NCAC 07F .0918 does not apply to tower cranes.

(2) — The following safety devices are required on all tower cranes unless otherwise specified:

(A) — Boom stops on luffing boom type tower cranes.

(B) — Jib stops on luffing boom type tower cranes if equipped with a jib attachment.

(C) — Travel rail end stops at both ends of travel rail.

(D) — Travel rail clamps on all travel bogies.

(E) — Integrally mounted check valves on all load supporting hydraulic cylinders.

(F) — Hydraulic system pressure limiting device.

(G) — The following brakes, which shall automatically set in the event of pressure loss or power failure:

(i) — A hoist brake on all hoists.

(ii) — Swing brake.

(iii) — Trolley brake.

(iv) — Rail travel brake.

(H) — Deadman control or forced neutral return control (hand) levers.

(I) — Emergency stop switch at the operator's station.

(J) — Trolley end stops at both ends of travel of the trolley.

(3) — Proper operation required. Operations shall not begin unless the devices listed in this section are in proper working order. If a device stops working properly during operations, the operator shall safely stop operations. Operations shall not resume until the device is again working properly. Alternative measures are not permitted to be used.

(e) Operational aids.

(1) — 13 NCAC 07F .0917 does not apply to tower cranes.

(2) — The devices listed in this Rule ("operational aids") are required on all tower cranes covered by this Section, unless otherwise specified.

(3) — Operations shall not begin unless the operational aids are in proper working order, except where the employer meets the specified temporary alternative measures. More protective alternative measures specified by the tower crane manufacturer, if any, shall be followed.

(4) — If an operational aid stops working properly during operations, the operator shall safely stop operations until the temporary alternative measures are implemented or the device is again working properly. If a replacement part is no longer available, the use of a substitute device that performs the same type of function is permitted and is not considered a modification under 13 NCAC 07F .0911.

(5) — Category I operational aids and alternative measures. Operational aids listed in this paragraph that are not working properly shall be repaired no later than seven days after the deficiency occurs. Exception: if the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, the repair shall be completed within seven days of receipt of the parts.

(A) — Trolley travel limiting device. The travel of the trolley shall be restricted at both ends of the jib by a trolley travel limiting device to prevent the trolley from running into the trolley end stops. Temporary alternative measures:

(i) — Option A. The trolley rope shall be marked (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the trolley prior to the end stops.

(ii) — Option B. A spotter shall be used when operations are conducted within 10 feet of



- the outer or inner trolley end stops.
- (B) ~~Boom hoist limiting device. The range of the boom shall be limited at the minimum and maximum radius. Temporary alternative measures: Mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the boom hoist within the minimum and maximum boom radius, or use a spotter.~~
- (C) ~~Anti two blocking device. The tower crane shall be equipped with a device which automatically prevents damage from contact between the load block, overhaul ball, or similar component, and the boom tip (or fixed upper block or similar component). The device(s) shall prevent such damage at all points where two blocking could occur. Temporary alternative measures: Mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the hoist to prevent two blocking, or use a spotter.~~
- (D) ~~Hoist drum lower limiting device. Tower cranes manufactured more than one year after the effective date of this Rule shall be equipped with a device that prevents the last two wraps of hoist cable from being spooled off the drum. Temporary alternative measures: Mark the cable (so it can be seen by the operator) at a point that will give the operator sufficient time to stop the hoist prior to the last two wraps of hoist cable being spooled off the drum, or use a spotter.~~
- (E) ~~Load moment limiting device. The tower crane shall have a device that prevents moment overloading. Temporary alternative measures: A radius indicating device shall be used (if the tower crane is not equipped with a radius indicating device, the radius shall be measured to ensure the load is within the rated capacity of the crane). In addition, the weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information~~
- shall be provided to the operator prior to the lift.
- (F) ~~Hoist line pull limiting device. The capacity of the hoist shall be limited to prevent overloading, including each individual gear ratio if equipped with a multiple speed hoist transmission. Temporary alternative measures: The operator shall ensure that the weight of the load does not exceed the capacity of the hoist (including for each individual gear ratio if equipped with a multiple speed hoist transmission).~~
- (G) ~~Rail travel limiting device. The travel distance in each direction shall be limited to prevent the travel bogies from running into the end stops or buffers. Temporary alternative measures: A spotter shall be used when operations are conducted within 10 feet of either end of the travel rail end stops.~~
- (H) ~~Boom hoist drum positive locking device. The boom hoist drum shall be equipped with a device to positively lock the boom hoist drum. Temporary alternative measures: The device shall be manually set when required if an electric, hydraulic or automatic type is not functioning.~~
- (6) ~~Category II operational aids and alternative measures. Operational aids listed in this paragraph that are not working properly shall be repaired no later than 30 days after the deficiency occurs. Exception: If the employer certifies that it has ordered the necessary parts within seven days of the occurrence of the deficiency, and the part is not received in time to complete the repair in 30 days, the repair shall be completed within seven days of receipt of the parts.~~
- (A) ~~Boom angle or hook radius indicator.~~
- (i) ~~Luffing boom tower cranes shall have a boom angle indicator readable from the operator's station.~~
- (ii) ~~Hammerhead tower cranes manufactured more than one year after the effective date of this Rule shall have a hook radius indicator readable from the operator's station.~~
- (iii) ~~Temporary alternative measures: Hook radii or boom angle shall be determined by measuring the~~

- ~~hook radii or boom angle with a measuring device.~~
- (B) ~~Trolley travel deceleration device. The trolley speed shall be automatically reduced prior to the trolley reaching the end limit in both directions. Temporary alternative measure: The operator shall reduce the trolley speed when approaching the trolley end limits.~~
- (C) ~~Boom hoist deceleration device. The boom speed shall be automatically reduced prior to the boom reaching the minimum or maximum radius limit. Temporary alternative measure: The operator shall reduce the boom speed when approaching the boom maximum or minimum end limits.~~
- (D) ~~Load hoist deceleration device. The load speed shall be automatically reduced prior to the hoist reaching the upper limit. Temporary alternative measure: The operator shall reduce the hoist speed when approaching the upper limit.~~
- (E) ~~Wind speed indicator. A device shall be provided to display the wind speed and shall be mounted above the upper rotating structure on tower cranes. On self-erecting cranes, it shall be mounted at or above the jib level. Temporary alternative measures: Use of wind speed information from a properly functioning indicating device on another tower crane on the same site, or a qualified person estimates the wind speed.~~
- (F) ~~Load indicating device. Cranes manufactured more than one year after the effective date of this Rule shall have a device that displays the magnitude of the load on the hook. Displays that are part of load moment limiting devices that display the load on the hook meet this requirement. Temporary alternative measures: The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information shall be provided to the operator prior to the lift.~~

(f) Inspections.

- (1) ~~13 NCAC 07F .0915 (Inspections) applies to tower cranes, except that the term "assembly" is replaced by "erection."~~
- (2) ~~Post erection inspections. In addition to the requirements in 13 NCAC 07F .0915(e), the following requirements shall be met:~~
  - (A) ~~A load test using weights certified in accordance with Chapter 81A of the North Carolina General Statutes, or sealed weights using a scale with a current certificate of calibration, shall be conducted after each erection.~~
  - (B) ~~The load test shall be conducted in accordance with the manufacturer's instructions. Where these instructions are unavailable, a qualified engineer familiar with the type of equipment involved shall develop written load test procedures.~~
- (3) ~~Monthly. The following additional items shall be included:~~
  - (A) ~~Tower (mast) bolts and other structural bolts (for loose or dislodged condition) from the base of the tower crane up or, if the crane is tied to or braced by the structure, those above the upper most brace support.~~
  - (B) ~~The upper most tie in, braces, floor supports and floor wedges where the tower crane is supported by the structure, for loose or dislodged components.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### **13 NCAC 07F .0922 DERRICKS**

- (a) ~~This Rule contains supplemental requirements for derricks, whether temporary or permanently mounted; all rules of this Section apply to derricks unless specified otherwise. A derrick is powered equipment consisting of a mast or equivalent member that is held at or near the end by guys or braces, with or without a boom, and its hoisting mechanism. The mast/equivalent member or the load is moved by the hoisting mechanism (typically base mounted) and operating ropes. Derricks include A-frame, basket, breast, Chicago boom, gin pole (except gin poles used for erection of communication towers), guy, shearleg, stiffleg, and variations of such equipment.~~
- (b) ~~Operation procedures:~~
  - (1) ~~The following paragraphs of 13 NCAC 07F .0916 (Operation of Equipment) apply: Paragraphs (a), (b), (d), (f) through (m), (o) through (s), (u), (w) through (bb).~~
  - (2) ~~Load chart contents. Load charts shall contain the following information:~~

- (A) ~~Rated capacity at corresponding ranges of boom angle or operating radii.~~
- (B) ~~Specific lengths of components to which the rated capacities apply.~~
- (C) ~~Required parts for hoist reeving.~~
- (D) ~~Size and construction of rope shall be included on the load chart or in the operating manual.~~
- (3) ~~Load chart location.~~
  - (A) ~~Permanent installations. For permanently installed derricks with fixed lengths of boom, guy, and mast, a load chart shall be posted where it is visible to personnel responsible for the operation of the equipment.~~
  - (B) ~~Non permanent installations. For derricks that are not permanently installed, the load chart shall be readily available at the job site to personnel responsible for the operation of the equipment.~~
- (e) ~~Construction.~~
  - (1) ~~General requirements.~~
    - (A) ~~Derricks shall be constructed to meet all stresses imposed on members and components when installed and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.~~
    - (B) ~~Welding of load sustaining members shall conform to recommended practices in ANSI/AWS D14.3 — 2005 or D1.1 — 2006.~~
  - (2) ~~Guy derricks.~~
    - (A) ~~The minimum number of guys shall be six, with equal spacing, except where a qualified person or derrick manufacturer approves variations from these requirements and revises the rated capacity to compensate for such variations.~~
    - (B) ~~Guy derricks shall not be used unless the employer has the following guy information:~~
      - (i) ~~The number of guys.~~
      - (ii) ~~The spacing around the mast.~~
      - (iii) ~~The size, grade, and construction of rope to be used for each guy.~~
    - (C) ~~For guy derricks manufactured after December 18, 1970, in addition to the information required in Subparagraph (e)(2) of this Rule, the employer shall have the following guy information:~~
      - (i) ~~The amount of initial sag or tension.~~
      - (ii) ~~The amount of tension in guy line rope at anchor.~~
- (D) ~~The mast base shall permit the mast to rotate freely with allowance for slight tilting of the mast caused by guy slack.~~
- (E) ~~The mast cap shall:~~
  - (i) ~~Permit the mast to rotate freely.~~
  - (ii) ~~Withstand tilting and cramping caused by the guy loads.~~
  - (iii) ~~Be secured to the mast to prevent disengagement during erection.~~
  - (iv) ~~Be provided with means for attaching guy ropes.~~
- (3) ~~Stiffleg derricks.~~
  - (A) ~~The mast shall be supported in the vertical position by at least two stifflegs; one end of each shall be connected to the top of the mast and the other end securely anchored.~~
  - (B) ~~The stifflegs shall be capable of withstanding the loads imposed at any point of operation within the load chart range.~~
  - (C) ~~The mast base shall:~~
    - (i) ~~Permit the mast to rotate freely (when necessary).~~
    - (ii) ~~Permit deflection of the mast without binding.~~
  - (D) ~~The mast shall be prevented from lifting out of its socket when the mast is in tension.~~
  - (E) ~~The stiffleg connecting member at the top of the mast shall:~~
    - (i) ~~Permit the mast to rotate freely (when necessary).~~
    - (ii) ~~Withstand the loads imposed by the action of the stifflegs.~~
    - (iii) ~~Be secured so as to oppose separating forces.~~
- (4) ~~Gin pole derricks.~~
  - (A) ~~Guy lines shall be sized and spaced so as to make the gin pole stable in both boomed and vertical positions. Exception: Where the size or spacing of guy lines do not result in the gin pole being stable in both boomed and vertical positions, the employer shall ensure that the derrick is not used in an unstable position.~~
  - (B) ~~The base of the gin pole shall permit movement of the pole (when necessary).~~
  - (C) ~~The gin pole shall be anchored at the base against horizontal forces (when such forces are present).~~

- (5) ~~Chicago boom derricks. The fittings for stepping the boom and for attaching the topping lift shall be arranged to:~~
  - (A) ~~Permit the derrick to swing at all permitted operating radii and mounting heights between fittings.~~
  - (B) ~~Accommodate attachment to the upright member of the host structure.~~
  - (C) ~~Withstand the forces applied when configured and operated in accordance with the manufacturer's/builder's procedures and within its rated capacity.~~
  - (D) ~~Prevent the boom or topping lift from lifting out under tensile forces.~~
- (d) ~~Anchoring and guying-~~
  - (1) ~~Load anchoring data developed by the manufacturer or a qualified person shall be used.~~
  - (2) ~~Guy derricks.~~
    - (A) ~~The mast base shall be anchored.~~
    - (B) ~~The guys shall be secured to the ground or other firm anchorage.~~
    - (C) ~~The anchorage and guying shall be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular guy slope and spacing specified for the application.~~
  - (3) ~~Stiffleg derricks.~~
    - (A) ~~The mast base and stifflegs shall be anchored.~~
    - (B) ~~The mast base and stifflegs shall be designed to withstand maximum horizontal and vertical forces encountered when operating within rated capacity with the particular stiffleg spacing and slope specified for the application.~~
- (e) ~~Swingers and hoists.~~
  - (1) ~~The boom, swinger mechanisms and hoists shall be suitable for the derrick work intended and shall be anchored to prevent displacement from the imposed loads.~~
  - (2) ~~Base mounted drum hoists.~~
    - (A) ~~Base mounted drum hoists shall meet the requirements in the following sections of ANSI/ASME B30.7—2006.~~
      - (i) ~~Section 7 1.1 (Load ratings and markings).~~
      - (ii) ~~Sections 7 1.2 (Construction), except: 7 1.2.13 (Operator's cab); 7 1.2.15 (Fire extinguishers).~~
      - (iii) ~~Section 7 1.3 (Installation).~~
      - (iv) ~~Applicable terms in Section 7 0.2 (Definitions).~~
- (B) ~~Load tests for new hoists. The employer shall ensure that new hoists are load tested to a minimum of 100 percent of rated capacity, but not more than 125 percent of rated capacity, unless otherwise recommended by the manufacturer. This requirement is met where the manufacturer has conducted this testing.~~
- (C) ~~Repaired or modified hoists. Hoists that have had repairs, modifications or additions affecting their capacity or safe operation shall be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing shall be conducted in accordance with Parts (e)(2)(B) and (e)(2)(D) of this Rule.~~
- (D) ~~Load test procedure. Load tests required by Parts (e)(2)(B) or (e)(2)(C) of this Rule shall be conducted as follows:~~
  - (i) ~~The test load shall be hoisted a vertical distance to ensure that the load is supported by the hoist and held by the hoist brake(s).~~
  - (ii) ~~The test load shall be lowered, stopped and held with the brake(s).~~
  - (iii) ~~The hoist shall not be used unless a competent person determines that the test has been passed.~~
- (f) ~~Operational aids.~~
  - (1) ~~13 NCAC 07F .0917 (Operational aids) applies, except for 13 NCAC 07F .0917(d)(1) (Boom hoist limiting device), 13 NCAC 07F .0917(e)(1) (Boom angle or radius indicator) and 13 NCAC 07F .0917(e)(4) (Load weighing and similar devices).~~
  - (2) ~~Boom angle aid. The employer shall ensure that either:~~
    - (A) ~~The boom hoist cable is marked with caution and stop marks. The stop marks shall correspond to maximum and minimum allowable boom angles. The caution and stop marks shall be in view of the operator, or a spotter who is in direct communication with the operator; or~~
    - (B) ~~An electronic or other device that signals the operator in time to prevent the boom from moving past its maximum and minimum angles, or automatically prevents such movement, is used.~~

- (3) ~~Load weight/capacity devices. Derricks manufactured more than one year after the effective date of this Rule with a maximum rated capacity over 6,000 pounds shall have at least one of the following: load weighing device, load moment indicator, rated capacity indicator, or rated capacity limiter. Temporary alternative measures: The weight of the load shall be determined from a reliable source (such as the load's manufacturer), by a reliable calculation method (such as calculating a steel beam from measured dimensions and a known per foot weight), or by other equally reliable means. This information shall be provided to the operator prior to the lift.~~
- (g) ~~Post assembly approval and testing new or reinstalled derricks.~~
- (1) ~~Anchorage:~~
- (A) ~~Anchorage, including the structure to which the derrick is attached (if applicable), shall be approved by a qualified person.~~
- (B) ~~If using a rock or hairpin anchorage, the qualified person shall determine if testing of the anchorage is needed. If so, it shall be tested accordingly.~~
- (2) ~~Functional test. Prior to initial use, new or reinstalled derricks shall be tested by a competent person with no hook load to verify proper operation. This test shall include:~~
- (A) ~~Lifting and lowering the hook(s) through the full range of hook travel.~~
- (B) ~~Raising and lowering the boom through the full range of boom travel.~~
- (C) ~~Swinging in each direction through the full range of swing.~~
- (D) ~~Actuating the anti two block and boom hoist limit devices (if provided).~~
- (E) ~~Actuating locking, limiting and indicating devices (if provided).~~
- (3) ~~Load test. Prior to initial use, new or reinstalled derricks shall be load tested by a competent person. The test load shall meet the following requirements:~~
- (A) ~~Test loads shall be at least 100 percent and no more than 110 percent of the rated capacity, unless otherwise recommended by the manufacturer or qualified person, but in no event shall the test load be less than the maximum anticipated load.~~
- (B) ~~The test shall consist of:~~
- (i) ~~Hoisting the test load a few inches and holding to verify that the load is supported by the derrick and held by the hoist brake(s).~~
- (ii) ~~Swinging the derrick, if applicable, the full range of its swing, at the maximum allowable working radius for the test load.~~
- (iii) ~~Booming the derrick up and down within the allowable working radius for the test load.~~
- (iv) ~~Lowering, stopping and holding the load with the brake(s).~~
- (C) ~~The derrick shall not be used unless the competent person determines that the test has been passed.~~
- (4) ~~Documentation. Tests conducted under this Paragraph shall be documented. The document shall contain the date, test results and the name of the tester. The document shall be retained until the derrick is re tested or dismantled, whichever occurs first.~~
- (h) ~~Load testing repaired or modified derricks. Derricks that have had repairs, modifications or additions affecting the derrick's capacity or safe operation shall be evaluated by a qualified person to determine if a load test is necessary. If it is, load testing shall be conducted and documented in accordance with Paragraph (g) of this Rule.~~
- (i) ~~Power failure procedures. If power fails during operations, the derrick operator shall safely stop operations. This shall include:~~
- (1) ~~Setting all brakes or locking devices.~~
- (2) ~~Moving all clutch and other power controls to the off position.~~
- (j) ~~Use of winch heads.~~
- (1) ~~Ropes shall not be handled on a winch head without the knowledge of the operator.~~
- (2) ~~While a winch head is being used, the operator shall be within reach of the power unit control lever.~~
- (k) ~~Securing the boom.~~
- (1) ~~When the boom is being held in a fixed position, dogs, pawls, or other positive holding mechanisms on the boom hoist shall be engaged.~~
- (2) ~~When taken out of service for 30 days or more, the boom shall be secured by one of the following methods:~~
- (A) ~~Laid down.~~
- (B) ~~Secured to a stationary member, as nearly under the head as possible, by attachment of a sling to the load block.~~
- (C) ~~For guy derricks, lifted to a vertical position and secured to the mast.~~
- (D) ~~For stiffleg derricks, secured against the stiffleg.~~
- (l) ~~The process of jumping the derrick shall be supervised by the A/D supervisor.~~

(m) ~~Derrick operations shall be conducted by and supervised by a competent person.~~

(n) ~~Inspections. In addition to the requirements in 13 NCAC 07F .0915, the following additional items shall be included in the inspections:~~

- (1) ~~Daily: Guys for proper tension.~~
- (2) ~~Annual:~~
  - (A) ~~Gudgeon pin for cracks, wear, and distortion.~~
  - (B) ~~Foundation supports for continued ability to sustain the imposed loads.~~

(o) ~~13 NCAC 07F .0904 (Operator qualification and certification) does not apply.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### **13 NCAC 07F .0923 FLOATING CRANES/DERRICKS AND LAND CRANES/DERRICKS ON BARGES**

(a) ~~This Rule contains supplemental requirements for floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation (vessel/flotation device); all Rules of this Section apply to floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation, unless specified otherwise. The requirements of this Rule do not apply when using jacked barges when the jacks are deployed to the river/lake/sea bed and the barge is fully supported by the jacks.~~

(b) ~~General requirements. The requirements in Paragraphs (e) through (j) of this Rule apply to both floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation.~~

(c) ~~Work area control.~~

- (1) ~~The requirements of 13 NCAC 07F .0916(n) (Work area control) apply, except for Subparagraph (n)(1)(B)(ii).~~
- (2) ~~The employer shall either:~~
  - (A) ~~Erect and maintain control lines, warning lines, railings or similar barriers to mark the boundaries of the hazard areas, or~~
  - (B) ~~The hazard areas shall be marked by a combination of warning signs (such as "Danger - Swing/Crush Zone") and high visibility markings on the equipment that identify the hazard areas. In addition, the employer shall train the employees to understand what these markings signify.~~

(d) ~~Keeping clear of the load. 13 NCAC 07F .0916(t) does not apply.~~

(e) ~~Additional Safety devices. In addition to the safety devices listed in 13 NCAC 07F .0918, the following safety devices are required:~~

- (1) ~~Barge, pontoon, vessel or other means of flotation and trim device. This shall be located in the cab or, where there is no cab, at the operator's station.~~

(2) ~~Horn.~~

(3) ~~Positive equipment house lock.~~

(4) ~~Wind speed and direction indicator. A competent person shall determine if wind is a factor that needs to be considered; if it needs to be considered, a wind speed and direction indicator shall be used.~~

(f) ~~Operational aids. The operational aids listed in 13 NCAC 07F .0917 apply, except as follows:~~

- (1) ~~An anti two block device is required only when hoisting personnel or hoisting over an occupied coffer dam or shaft.~~
- (2) ~~13 NCAC 07F .0917(e)(4) (load weighing and similar devices) does not apply to dragline, clamshell (grapple), magnet, drop ball, container handling, concrete bucket, and pile driving work.~~

(g) ~~Accessibility of procedures applicable to equipment operation. If the crane/derrick has a cab, the requirements of 13 NCAC 07F .0916(e) apply. If the crane/derrick does not have a cab:~~

- (1) ~~Rated capacities (load charts) shall be posted at the operator's station. If the operator's station is moveable (such as with pendant-controlled equipment), the load charts shall be posted on the equipment.~~
- (2) ~~Procedures applicable to the operation of the equipment (other than load charts), recommended operating speeds, special hazard warning, instructions and operators manual, shall be readily available on board.~~

(h) ~~Inspections. In addition to meeting the requirements of 13 NCAC 07F .0915 for inspecting the crane/derrick, the employer shall ensure that the barge, pontoons, vessel or other means of flotation used to support a floating crane/derrick or land crane/derrick is inspected as follows:~~

- (1) ~~Shift. The means used to secure/attach the equipment to the vessel/flotation device shall be inspected for proper condition, including wear, corrosion, loose or missing fasteners, defective welds, and (where applicable) insufficient tension.~~
- (2) ~~Monthly. The vessel/flotation device used shall be inspected for the following:~~
  - (A) ~~The means used to secure/attach the equipment to the vessel/flotation device shall be inspected for proper condition, including wear, corrosion and (where applicable) insufficient tension.~~
  - (B) ~~Taking on water.~~
  - (C) ~~Deckload for proper securing.~~
  - (D) ~~Chain lockers, storage, fuel compartments and battening of hatches for serviceability as a water-tight appliance.~~
  - (E) ~~Firefighting and lifesaving equipment in place and functional.~~

- (3) ~~The shift and monthly inspections shall be conducted by a competent person. If any deficiency is identified, an immediate determination shall be made by a qualified person as to whether the deficiency constitutes a hazard. If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.~~
- (4) ~~Annual: external vessel/flotation device inspection.~~
- (A) ~~The external portion of the barge, pontoons, vessel or other means of flotation used shall be inspected annually by a qualified person who has expertise with respect to vessels/flotation devices. The inspection shall include the following items:~~
- (i) ~~The items identified in Subparagraphs (h)(1) (Shift) and (h)(2) (Monthly) of this Rule.~~
- (ii) ~~Cleats, bitts, choeks, fenders, capstans, ladders, and stanchions, for corrosion, wear, deterioration, and deformation.~~
- (iii) ~~External evidence of leaks and structural damage.~~
- (iv) ~~Four corner draft readings.~~
- (v) ~~Firefighting equipment for serviceability.~~
- (B) ~~Rescue skiffs, lifelines, work vests, life preservers and ring buoys shall be inspected for proper condition.~~
- (C) ~~If any deficiency is identified, an immediate determination shall be made by the qualified person as to whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly inspections. If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.~~
- (D) ~~If the qualified person determines that, though not presently a hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly inspections.~~
- (5) ~~Quadrennial: internal vessel/flotation device inspection.~~
- (A) ~~The internal portion of the barge, pontoons, vessel or other means of flotation used shall be surveyed once every four years by a marine engineer, marine architect, licensed surveyor, or other qualified person who has expertise with respect to vessels/flotation devices.~~
- (B) ~~If any deficiency is identified, an immediate determination shall be made by the surveyor as to whether the deficiency constitutes a hazard or, though not yet a hazard, needs to be monitored in the monthly or annual inspections, as appropriate.~~
- (C) ~~If the deficiency is determined to constitute a hazard, the vessel/flotation device shall be removed from service until it has been corrected.~~
- (D) ~~If the surveyor determines that, though not presently a hazard, the deficiency needs to be monitored, the employer shall ensure that the deficiency is checked in the monthly or annual inspections, as appropriate.~~
- (6) ~~Documentation. The monthly and annual inspections required in Subparagraphs (h)(2) and (h)(4) of this Rule shall be documented in accordance with 13 NCAC 07F .0915(e)(3) and (f)(7), respectively. The quadrennial inspection required in Subparagraph (h)(5) of this Rule shall be documented in accordance with 13 NCAC 07F .0915(f)(7), except that the documentation for that inspection shall be retained for a minimum of four years.~~
- (i) ~~Working with a diver. The following additional requirements apply when working with a diver in the water:~~
- (1) ~~If a crane/derrick is used to get a diver into and out of the water, it shall not be used for any other purpose until the diver is back on board. When used for more than one diver, it shall not be used for any other purpose until all divers are back on board.~~
- (2) ~~The operator shall remain at the controls of the crane/derrick at all times.~~
- (3) ~~In addition to the requirements of 13 NCAC 07F .0919 (Signals), either:~~
- (A) ~~A clear line of sight shall be maintained between the operator and tender, or~~
- (B) ~~The signals between the operator and tender shall be transmitted electronically.~~
- (4) ~~The means used to secure the crane/derrick to the vessel/flotation device (see Subparagraph (i)(5) of this Rule) shall not allow any amount of shifting in any direction.~~
- (j) ~~The employer shall ensure that the manufacturer's specifications and limitations with respect to environmental, operational and in transit loads for the barge, pontoons, vessel or other means of flotation are not exceeded or violated.~~

(k) ~~Floating cranes/derricks. For equipment designed by the manufacturer (or employer) for marine use by permanent attachment to barges, pontoons, vessels or other means of flotation:~~

(1) ~~Load charts:~~

(A) ~~The manufacturer load charts applicable to operations on water shall not be exceeded. When using these charts, the employer shall comply with all parameters and limitations (such as dynamic/environmental parameters) applicable to the use of the charts.~~

(B) ~~The load charts shall take into consideration a minimum wind speed of 40 miles per hour.~~

(2) ~~The requirements for maximum allowable list and maximum allowable trim as specified in Table M1 shall be met.~~

TABLE M1		
Equipment designed for marine use by permanent attachment (other than derricks)		
Rated Capacity	Maximum Allowable List	Maximum Allowable Trim
25 tons or less	5 degrees	5 degrees
Over 25 tons	7 degrees	7 degrees
Derricks designed for marine use by permanent attachment:		
Any rated capacity	10 degrees	10 degrees

(3) ~~The equipment shall be stable under the conditions specified in Tables M2 and M3.~~

TABLE M2		
Operated at	Wind Speed	Minimum freeboard
Rated Capacity	60 mph	2 ft
Rated capacity plus 25%	60 mph	1 ft
High boom, no load	60 mph	2 ft

TABLE M3	
For backward stability of the boom:	
Operated at:	Wind speed
High boom, no load, full back list (least stable condition)	90 mph

(4) ~~If the equipment is employer made, it shall not be used unless the employer has documents demonstrating that the load charts and applicable parameters for use meet the requirements of Subparagraphs (k)(1) through (k)(3) of this Rule. Such documents shall be signed by a qualified engineer who is a qualified person with respect to the design of this type of equipment (including the means of flotation).~~

(5) ~~The barge, pontoons, vessel or other means of flotation used shall:~~

(A) ~~Be structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all anticipated deck loads and ballasted compartments.~~

(B) ~~Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free surface effect.~~

(C) ~~Have access to void compartments to allow for inspection and pumping.~~

(l) ~~Land cranes/derricks. For land cranes/derricks used on barges, pontoons, vessels or other means of flotation:~~

(1) ~~The rated capacity of the equipment (load charts) applicable for use on land shall be reduced to:~~

(A) ~~Account for increased loading from list, trim, wave action, and wind.~~

(B) ~~Be applicable to a specified location(s) on the specific barge, pontoons, vessel or other means of flotation that will be used, under the expected environmental conditions.~~

(C) ~~Ensure that the conditions required in Subparagraphs (l)(3) and (l)(4) of this Rule are met.~~

(2) ~~The rated capacity modification required in Subparagraph (l)(1) of this Rule shall be done by the equipment manufacturer, or a qualified person who has expertise with respect to both land crane/derrick capacity and the stability of vessels/flotation devices.~~

(3) ~~List and trim:~~

(A) ~~The maximum allowable list and the maximum allowable trim for the barge/pontoons/vessel/other means of flotation shall not exceed the amount necessary to ensure that the conditions of Subparagraph (l)(4) of this Rule are met. In addition, the maximum allowable list and the maximum allowable trim shall not exceed the least of the following: five degrees, the amount specified by the crane/derrick manufacturer, or where an amount is not so specified, the amount specified by the qualified person.~~

(4) ~~The following conditions shall be met:~~

(A) ~~All deck surfaces of the barge, pontoons, vessel or other means of flotation used shall be above water.~~

(B) ~~The entire bottom area of the barge, pontoons, vessel or other means of flotation used shall be submerged.~~



(5) ~~Physical attachment, corraling, rails system and centerline cable system. The employer shall meet the requirements in Option (1), Option (2), Option (3), or Option (4). Whichever option is used, the requirements of Part (1)(5)(E) of this Rule shall also be met.~~

(A) ~~Option (1) Physical attachment. The crane/derrick shall be physically attached to the barge, pontoons, vessel or other means of flotation. Methods of physical attachment include crossed cable systems attached to the crane/derrick and vessel/flotation device (this type of system allows the crane/derrick to lift up slightly from the surface of the vessel/flotation device), bolting or welding the crane/derrick to the vessel/flotation device, strapping the crane/derrick to the vessel/means of flotation with chains, or other methods of physical attachment.~~

(B) ~~Option (2) Corraling. The crane/derrick shall be prevented from shifting by installing barricade restraints (a corraling system). Corraling systems shall not allow any amount of shifting in any direction by the equipment.~~

(C) ~~Option (3) Rails. The crane/derrick shall be prevented from shifting by being mounted on a rail system. Rail clamps and rail stops are required unless the system is designed to prevent movement during operation by other means.~~

(D) ~~Option (4) Centerline cable system. The crane/derrick shall be prevented from shifting by being mounted to a wire rope system. The wire rope system shall meet the following requirements:~~

(i) ~~The wire rope and attachments shall be of sufficient size/strength to support the side load of crane/derrick.~~

(ii) ~~The wire rope shall be physically attached to the vessel/flotation device.~~

(iii) ~~The wire rope shall be attached to the crane/derrick by appropriate attachment methods (such as shackles or sheaves) on the undercarriage which will allow the crew to secure the crane/derrick from movement during operation~~

~~and to move the crane/derrick longitudinally along the vessel/flotation device for repositioning.~~

(iv) ~~Means shall be installed to prevent the crane/derrick from passing the forward or aft end of the wire rope attachments.~~

~~The crane/derrick shall be secured from movement during operation.~~

(E) ~~The systems/means used to comply with Option (1), Option (2), Option (3), or Option (4) shall be designed by a marine engineer, qualified engineer familiar with floating crane/derrick design, or qualified person familiar with floating crane/derrick design.~~

(F) ~~Exception. For mobile auxiliary cranes used on the deck of a floating crane/derrick, the requirement to use Option (1), Option (2), Option (3), or Option (4) does not apply where the employer demonstrates implementation of a plan and procedures that meet the following requirements:~~

(i) ~~A marine engineer or qualified engineer familiar with floating crane/derrick design develops and signs a written plan for the use of the mobile auxiliary crane.~~

(ii) ~~The plan is designed so that the applicable requirements of this Rule will be met despite the position, travel, operation, and lack of physical attachment (or corraling, use of rails or cable system) of the mobile auxiliary crane.~~

(iii) ~~The plan specifies the areas of the deck where the mobile auxiliary crane is permitted to be positioned, travel, and operate and the parameters/limitations of such movements and operation.~~

(iv) ~~The deck is marked to identify the permitted areas for positioning, travel, and operation.~~

(v) ~~The plan specifies the dynamic/environmental~~

- ~~conditions that shall be present for use of the plan.~~
- (vi) ~~If the dynamic/environmental conditions in Subpart (I)(5)(F)(v) of this Rule are exceeded, the mobile auxiliary crane is physically attached or corralled in accordance with Option (1), Option (2) or Option (4).~~
- (6) ~~The barge, pontoons, vessel or other means of flotation used shall:~~
- (A) ~~Be structurally sufficient to withstand the static and dynamic loads of the crane/derrick when operating at the crane/derrick's maximum rated capacity with all anticipated deck loads and ballasted compartments.~~
- (B) ~~Have a subdivided hull with one or more longitudinal watertight bulkheads for reducing the free surface effect.~~
- (C) ~~Have access to void compartments to allow for inspection and pumping.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### **13 NCAC 07F .0924 OVERHEAD & GANTRY CRANES**

- (a) ~~Permanently installed overhead and gantry cranes:~~
- (1) ~~This Paragraph applies to the following equipment when used in construction and permanently installed in a facility: overhead and gantry cranes, including semigantry, cantilever gantry, wall cranes, storage bridge cranes, and others having the same fundamental characteristics.~~
- (2) ~~The requirements of 29 CFR 1910.179, except for 1910.179(b)(1), apply to the equipment identified in Subparagraph (a)(1) of this Rule.~~
- (b) ~~Overhead and gantry cranes that are not permanently installed in a facility:~~
- (1) ~~This Paragraph applies to the following equipment when used in construction and not permanently installed in a facility: overhead and gantry cranes, overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.~~
- (2) ~~The following requirements apply to equipment identified in Subparagraph (b)(1) of this Rule:~~
- (A) ~~The following Rules in this Section: 13 NCAC 07F .0901 through .0915; .0916, except Subparagraphs (v)(1)~~

- ~~through (v)(3); .0919; .0920; .0923; and .0925.~~
- (B) ~~The following portions of 29 CFR 1910.179:~~
- (i) ~~Paragraphs (b)(5), (6), (7); (e)(1), (3), (5), (6); (f)(1), (4); (g); (h)(1), (3); (k); and (n).~~
- (ii) ~~The definitions in 29 CFR 1910.179(a), except for "hoist" and "load." For those words, the definitions in 13 NCAC 07F .0903 apply.~~
- (iii) ~~1910.179(b)(2) applies only to equipment identified in Subparagraph (b)(1) of this Rule manufactured before September 19, 2001.~~
- (C) ~~For equipment manufactured on or after September 19, 2001, the following sections of ANSI/ASME B.30.2 2005 apply: 2-1.3.1; 2-1.3.2; 2-1.4.1; 2-1.6; 2-1.7.2; 2-1.8.2; 2-1.9.1; 2-1.9.2; 2-1.11; 2-1.12.2; 2-1.13.7; 2-1.14.2; 2-1.14.3; 2-1.14.5; 2-1.15; 2-2.2.2; 2-3.2.1.1. In addition, 2-3.5 applies, except in 2-3.5.1(b), "29 CFR 1910.147 is substituted for ANSI Z244.1".~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
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### **13 NCAC 07F .0925 DEDICATED PILE DRIVERS**

- (a) ~~The provisions of this Section apply to dedicated pile drivers, except as specified in this Rule.~~
- (b) ~~13 NCAC 07F .0917(d)(3) (anti two block device) does not apply.~~
- (c) ~~13 NCAC 07F .0917(e)(4) (Load weight/capacity devices) applies only to dedicated pile drivers manufactured more than one year after the effective date of this Rule.~~
- (d) ~~In 13 NCAC 07F .0909 (Design, construction and testing), only Paragraphs (d) and (e) apply to dedicated pile drivers.~~
- (e) ~~13 NCAC 07F .0904 (Operator qualification and certification) applies, except that the qualification or certification shall be for operation of either dedicated pile drivers or equipment that is the most similar to dedicated pile drivers.~~

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Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0926 SIDEBOOM CRANES**

- (a) ~~The provisions of this Section apply, except 13 NCAC 07F .0912(a) (Ground Conditions), .0918 (Safety Devices), .0917 (Operational Aids), and .0904 (Operator Qualification and Certification).~~

~~(b) 13 NCAC 07F .0916(v) (Free Fall and Controlled Load Lowering) applies, except Subpart (v)(1)(B)(i). Sideboom cranes in which the boom is designed to free fall (live boom) are permitted only if manufactured prior to the effective date of this Rule.~~

~~(c) Sideboom cranes mounted on wheel or crawler tractors shall meet the following requirements of ANSI/ASME B30.14 2004 (Side Boom Tractors):~~

- ~~(1) Section 14.1.1 ("Load Ratings").~~
- ~~(2) Section 14.1.3 ("Side Boom Tractor Travel").~~
- ~~(3) Section 14.1.5 ("Ropes and Reeving Accessories").~~
- ~~(4) Section 14.1.7.1 ("Booms").~~
- ~~(5) Section 14.1.7.2 ("General Requirements — Exhaust Gases").~~
- ~~(6) Section 14.1.7.3 ("General Requirements — Stabilizers (Wheel Type Side Boom Tractors)").~~
- ~~(7) Section 14.1.7.4 ("General Requirements — Welded Construction").~~
- ~~(8) Section 14.1.7.6 ("General Requirements — Clutch and Brake Protection").~~
- ~~(9) Section 14.2.2.2 ("Testing — Rated Load Test"), except that it applies only to equipment that has been modified or repaired.~~
- ~~(10) In section 14.3.1.2 ("Operator Qualifications"). Paragraph (a), except the phrase "When required by law."~~
- ~~(11) In section 14.3.1.3 ("Operating Practices"), Paragraphs (e), (f)(1) through (4), (6), (7); (h); and (i).~~
- ~~(12) In section 14.3.2.3 ("Moving the Load"), Paragraphs (j), (l), and (m).~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

### **13 NCAC 07F .0927 OPERATOR CERTIFICATION – WRITTEN EXAMINATION – TECHNICAL KNOWLEDGE CRITERIA**

When developing criteria for a written examination to test an individual's technical knowledge of the operation of cranes pursuant to 13 NCAC 07F .0904(i), the following topics shall be considered:

- ~~(1) General technical information:
  - ~~(a) The functions and limitations of the crane and attachments.~~
  - ~~(b) Wire rope:
    - ~~(i) Background information necessary to understand the inspection and removal from service criteria in 13 NCAC 07F .0913 and .0914.~~
    - ~~(ii) Capacity and when multi-part rope is needed.~~
    - ~~(iii) Relationship between line pull and safe working load.~~~~~~

~~(iv) How to determine the manufacturer's recommended rope for the crane.~~

- ~~(c) Rigging devices and their use, such as:
  - ~~(i) Slings.~~
  - ~~(ii) Spreaders.~~
  - ~~(iii) Lifting beams.~~
  - ~~(iv) Wire rope fittings, such as elips, shackles and wedge sockets.~~
  - ~~(v) Saddles (softeners).~~
  - ~~(vi) Clamps (beams).~~~~
- ~~(d) The technical limitations of protective measures against electrical measures against electrical hazards:
  - ~~(i) Grounding.~~
  - ~~(ii) Proximity warning devices.~~
  - ~~(iii) Insulated links.~~
  - ~~(iv) Boom cages.~~
  - ~~(v) Proximity to electric power lines, radii, and microwave structures.~~~~
- ~~(e) The effects of load share and load transfer in multi crane lifts.~~
- ~~(f) Basic crane terms.~~
- ~~(g) The basics of machine power flow systems:
  - ~~(i) Mechanical.~~
  - ~~(ii) Electrical.~~
  - ~~(iii) Pneumatic.~~
  - ~~(iv) Hydraulic.~~
  - ~~(v) Combination.~~~~
- ~~(h) The significance of the instruments and gauge readings.~~
- ~~(i) The effects of thermal expansion and contraction in hydraulic cylinders.~~
- ~~(j) Background information necessary to understand the requirements of pre-operation and inspection.~~
- ~~(k) How to use the safety devices and operational aids required under 13 NCAC 07F .0915 and .0916.~~
- ~~(l) The difference between duty cycle and lifting operations.~~
- ~~(m) How to calculate net capacity for every possible configuration of the equipment using the manufacturer's load chart.~~
- ~~(n) How to use manufacturer approved attachments and their effect on the equipment.~~
- ~~(o) How to obtain dimensions, weight, and center of gravity of the load.~~
- ~~(p) The effects of dynamic loading from:
  - ~~(i) Wind.~~
  - ~~(ii) Stopping and starting.~~
  - ~~(iii) Impact loading.~~~~

- (iv) — Moving with the load.
- (q) — The effect of side loading.
- (r) — The principles of backward stability.
- (2) — Site information.
  - (a) — How to identify the suitability of the supporting ground/surface to support the expected loads of the operation. Elements include:
    - (i) — Weakness below the surface (such as voids, tanks, loose fill).
    - (ii) — Weaknesses on the surface (such as retaining walls, slopes, excavations, depressions).
  - (b) — Proper use of mats, blocking/cribbing and outriggers or crawlers.
  - (c) — Identification of site hazards such as power lines, piping, and traffic.
  - (d) — How to review operation plans with supervisors and other workers (such as the signal person), including how to determine working height, boom length, load radius, and travel clearance.
  - (e) — How to determine if there is adequate room for extension of crawlers or outriggers/stabilizers and counterweights.
- (3) — Operations.
  - (a) — How to pick, carry, swing and place the load smoothly and safely on rubber tires and on outriggers/stabilizers or crawlers (where applicable).
  - (b) — How to communicate at the site with supervisors, the crew and the signal person.
  - (c) — Proper procedures and methods of reeving wire ropes and methods of reeving multiple part lines and selecting the proper load block or ball.
  - (d) — How to react to changes in conditions that affect the safe operation of the equipment.
  - (e) — How to shut down and secure the equipment properly when leaving it unattended.
  - (f) — Know how to apply the manufacturer's specifications for operating in various weather conditions, and understand how environmental conditions affect the safe operation of the equipment.
  - (g) — How to properly level the equipment.
  - (h) — How to verify the weight of the load and rigging prior to initiating the lift.
  - (i) — How to determine where the load is to be picked up and placed and how to verify the radii.
  - (j) — Know basic rigging procedures.
  - (k) — How to carry out the shift inspection required in this Section.
  - (l) — Know that the following operations require specific procedures and skill levels:
    - (i) — Multi crane lifts.
    - (ii) — Hoisting personnel.
    - (iii) — Clamshell/dragline operations.
    - (iv) — Pile driving and extracting.
    - (v) — Concrete operations, including poured in place and tilt up.
    - (vi) — Demolition operations.
    - (vii) — Operations on water.
    - (viii) — Magnet Operations
    - (ix) — Multi-drum operations.
  - (m) — Know the proper procedures for operating safely under the following conditions:
    - (i) — Traveling with suspended loads.
    - (ii) — Approaching a two block condition.
    - (iii) — Operating near power lines.
    - (iv) — Hoisting personnel.
    - (v) — Using other than full outrigger/crawler extensions.
    - (vi) — Lifting loads from beneath the surface of the water.
    - (vii) — Using various approved counterweight configurations.
    - (viii) — Handling loads out of the operator's vision ("operating in the blind").
    - (ix) — Using electronic communication systems for signal communication.
  - (n) — Know the proper procedures for load control and the use of hand held tag lines.
  - (o) — Know the emergency response procedure for:
    - (i) — Fires.
    - (ii) — Power line contact.
    - (iii) — Loss of stability.
    - (iv) — Control malfunction.
    - (v) — Two blocking.
    - (vi) — Overload.
    - (vii) — Carrier or travel malfunction.
  - (p) — Know how to properly use outriggers in accordance with manufacturer specifications.

- (4) ~~Use of load charts.~~
  - (a) ~~Know the terminology necessary to use load charts.~~
  - (b) ~~Know how to ensure that load chart is the appropriate chart for the equipment in its particular configuration and application.~~
  - (c) ~~Know how to use load charts. This includes knowing:~~
    - (i) ~~The operational limitations of load charts and footnotes.~~
    - (ii) ~~How to relate the chart to the configuration of the crane, crawlers, or outriggers extended or retracted, jib erected or offset, and various counterweight configurations.~~
    - (iii) ~~The difference between structural capacity and capacity limited by stability.~~
    - (iv) ~~What is included in capacity ratings.~~
    - (v) ~~The range diagram and its relationship to the load chart.~~
    - (vi) ~~The work area chart and its relationship to the load chart.~~
    - (vii) ~~Where to find and how to use the "parts of line" information.~~
  - (d) ~~Know how to use the load chart together with the load indicators and/or load moment devices.~~

*History Note: Authority G.S. 95-131;  
Eff. October 1, 2009;  
Temporary Repeal Eff. November 8, 2010.*

## TITLE 23 – COMMUNITY COLLEGES

**Rule-making Agency:** *Board of Community Colleges*

**Rule Citation:** *23 NCAC 02C .0213*

**Effective Date:** *November 2, 2010*

**Date Approved by the Rules Review Commission:** *October 21, 2010*

**Reason for Action:** *G.S. 115D-5(u) requires that the State Board of Community Colleges direct community colleges to adopt policies addressing religious exemptions beginning with the 2010-2011 academic year.*

## CHAPTER 02 - COMMUNITY COLLEGES

### SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

#### 23 NCAC 02C .0213 SCHOOL ABSENCE FOR RELIGIOUS OBSERVANCES

Each community college shall adopt a policy that authorizes a minimum of two excused absences each academic year for religious observances required by the faith of a student. The policy may require that the student provide written notice of the request for an excused absence a reasonable time prior to the religious observance. The policy shall also provide that the student shall be given the opportunity to make up any tests or other work missed due to an excused absence for a religious observance.

*History Note: Authority G.S. 115D-5; S.L. 2010-112, s. 2;  
Temporary Adoption Eff. November 2, 2010.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday, October 21, 2010 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
John B. Lewis  
Clarence E. Horton, Jr.  
Daniel F. McLawhorn  
Curtis Venable

**COMMISSION COUNSEL**

Joe Deluca (919)431-3081  
Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

November 18, 2010      December 16, 2010  
January 20, 2011      February 17, 2010

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**RULES REVIEW COMMISSION****October 21, 2010****MINUTES**

The Rules Review Commission met on Thursday, October 21, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Clarence Horton, Dan McLawhorn, and Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, Julie Edwards and Dana Vojtko.

The following people were among those attending the meeting:

David Griffin	DENR/Aquariums
John Hoomani	Department of Labor
Erin Gould	Department of Labor
Cathe Evans	Board of Architecture
Shanon Gerger	Allen and Pinnix
Karen Waddell	Department of Insurance
Erin Glendening	DHHS/Division of Health Service Regulation
Robert Hamilton	ABC Commission
Chris Hoke	DHHS/Division of Public Health
Nancy Pate	Department of Environment and Natural Resources
Craig Smith	DHHS/Division of Health Service Regulation
Linda Brinkley	DHHS/Division of Public Health
Anca Grozav	Office of State Budget and Management
Sara Nienow	Department of Environment and Natural Resources

The meeting was called to order at 9:01 a.m. with Ms. Hayman presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the September 16, 2010 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

02 NCAC 34 .0331, .1103 – Structural Pest Control Commission. No rewritten rules have been submitted and no action was taken.

10A NCAC 14A .0103 – HHS/Division of Health Service Regulation. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 41C .0904 – Commission for Public Health. The Commission approved the rewritten rule submitted by the agency.

11 NCAC 13 .0528 – Department of Insurance. The Commission approved the rewritten rule submitted by the agency.

15A NCAC 28 .0502 – Department of Environment and Natural Resources. The Commission approved the rewritten rule submitted by the agency.

## **LOG OF FILINGS**

Chairman Hayman presided over the review of the log of permanent rules.

### **Alcoholic Beverage Control Commission**

All permanent rules were approved unanimously with the following exceptions:

04 NCAC 02R .0103 – The Commission objected to this rule based on lack of statutory authority and ambiguity. There is no authority for the agency to adopt the definition for “aggrieved party” in (a)(3). The General Assembly has already defined “person aggrieved” in the Administrative Procedure Act (APA) and the agency has not cited any authority for adopting a definition that might conflict with the statutory definition. To the extent that there might be any conflict in the definitions, this conflict could arise in the conduct of a contested case hearing. Even if there were authority to adopt the rule it is unclear which definition, the agency’s or the statutory definition, would apply in the case of a contested case hearing which would be conducted under the APA and the rules of the Office of Administrative Hearings

04 NCAC 02R .0701 – The Commission objected to this rule based on lack of statutory authority. There is no authority cited to enlarge the restrictions pertaining to familial conflicts of interest, as set in (b) beyond the first degree.

04 NCAC 02R .0905 – The Commission objected to this rule based on lack of statutory authority and ambiguity. This rule sets deposit requirements for local boards. The last paragraph contains a provision for altering or waiving these requirements. However the guideline “for good cause shown” is not the “specific guideline” required by the Administrative Procedure Act (APA), NCGS 150B-19(6). It is unclear what constitutes “good cause” in the context of this rule. The other guideline, “where adequate security for the funds involved is demonstrated” is sufficiently specific.

04 NCAC 02R .1008 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (a) line 4 it is unclear what constitutes a “direct or indirect” interest. For example does it constitute such an interest to own stock of whatever amount or control in a spirituous liquor company or company that engages in any of the cited activities? Would it constitute a violation of this rule to work, even limited hours, in such a company while also working for a local board, such as being a waiter or bartender in a restaurant selling such beverages? For the same reasons as cited in the opinion concerning 2R .0701, staff believes that the employment prohibition in (b) extending to first cousins is not authorized. Even if the Commission had authority to make an employment prohibition extending as far as first cousins there is no authority cited for the additional provision in (b) extending that prohibition to a person related not to a local board member but to a “member of any other authority that appoints members of the local board.”

04 NCAC 02R .1502 – The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the markup price or formula as set out in (a) lines 4 - 6 to be “determined by the [ABC] Commission” outside rulemaking.

The Commission granted the Agency’s Request for Waiver of Rule 26 NCAC 05 .0108(a) and approved re-written rules 04 NCAC 02R .0103, 04 NCAC 02R .0905 and 04 NCAC 02R .1502.

Following the vote Commissioner Gray stated that he would like the record to reflect that he had prior knowledge that the ABC Commission was promulgating rules in Winter, 2010 and had decided to recuse himself in the future hearing of those rules when he accepted a speaking engagement before the NC Association of ABC Boards. The recent enactment of legislation by the General Assembly nullified the opinions expressed by Commissioner Gray before the NCAACB and he no longer has a conflict of interest with any of the rules heard today. Also, he had a case which tangentially involved the ABC Commission but it resolved itself for all practical purposes on Tuesday.

### **HHS – Division of Health Service Regulation**

All permanent rules were approved unanimously.

**State Registrar**

All permanent rules were approved unanimously.

**Alarm Systems Licensing Board**

Prior to the review of the rules from the Alarm Systems Licensing Board, Commissioner Gray recused himself and did not participate in any discussion or vote concerning this rule because Charles McDarris, an attorney in his office represents the board.

12 NCAC 11 .0106 was approved unanimously.

**Department of Labor and Apprenticeship Council**

All permanent rules were approved unanimously with the following exceptions:

13 NCAC 14B .0202 - The Commission objected to this rule based on lack of statutory authority. In (a)(4), there is no authority cited for the agency to set occupational requirements for apprenticeship instructors. G.S. 94-4 specifically states that "the selection and training of teachers and coordinators of such instruction shall be the responsibility of State and local boards responsible for vocational education."

13 NCAC 14B .0205 - The Commission objected to this rule based on ambiguity. In (g)(2), it is not clear to whom the department is going to recommend a program for deregistration procedures. It appears that the department itself has the deregistration authority. There is the same issue in (h).

13 NCAC 14B .0208 - The Commission objected to this rule based on lack of statutory authority. Item (5) is not consistent with G.S. 94-7(8). The statute provides that controversies or differences that cannot be adjusted locally be submitted to the Director for determination. The rule requires the designation of some other authority.

13 NCAC 14B .0211, .0213, .0308 - The Commission objected to these rules based on lack of statutory authority. In each rule the provision in Paragraph (c) giving a sponsor 30 days to appeal the director's decision (file a contested case) is not consistent with G.S. 150B-23(f) which gives 60 days. These objections apply to existing language in these Rules.

13 NCAC 14B .0401 - The Commission objected to this rule based on lack of statutory authority and ambiguity. In (c)(3), it is not clear what factors the director will use in determining good cause for an extension. As written this provision amounts to a modification provision without specific guidelines in violation of G.S. 150B-19(6). This objection applies to existing language in this Rule.

13 NCAC 14B .0407 - The Commission objected to this rule based on ambiguity. In (a)(2)(C), it is not clear what constitutes "good and sufficient reason." In (d), it is not clear what constitutes "good cause" for de-registration. This objection applies to existing language in this Rule.

13 NCAC 14B .0604 - The Commission objected to this rule based on ambiguity. In (b)(4), it is not clear what is meant by "the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices."

13 NCAC 14B .0610 - The Commission objected to this rule based on ambiguity. In (b)(7), it is not clear what other records will be required by the director. This objection applies to existing language in this Rule.

13 NCAC 14B .0611 - The Commission objected to this rule based on ambiguity. In (e)(3), it is not clear what standards the department will use in determining what is a reasonable time. This objection applies to existing language in this Rule.

13 NCAC 14B .0612 - The Commission objected to this rule based on ambiguity. In (a), it is not clear what standards the director will use in determining what is a reasonable time. This objection applies to existing language in this Rule.

**Board of Architecture**

All permanent rules were approved unanimously with the following exceptions:

21 NCAC 02 .0108 - The Commission objected to this rule based on lack of statutory authority. There does not appear to be any authority for the two hundred fifty dollars (\$250.00) reinstatement fee. G.S. 83A-4 specifically prohibits the Board from collecting any fees not authorized by Chapter 83A. G.S. 83A-11 allows the Board to reinstate in its discretion after one year from the date of revocation, but it does not authorize any special fee to do so. It appears that this Rule stacks too many fees to come up with this amount. This objection applies to existing language in the Rule.



21 NCAC 02 .0204 - The Commission objected to this rule based on lack of statutory authority. There is no authority for the Board to adopt a rule limiting the practice of architecture beyond any limitations in G.S. Chapter 83A. For instance, G.S. 83A-9 would appear to allow for a general partnership, but the rule appears to prohibit that.

21 NCAC 02 .0206 - The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the Board to require seals for a Limited Liability Partnership as the rule does in (a)(3)(C), or for a partnership as the rule does in (a)(3)(D). G.S. 83A-9 specifically states that G.S. Chapter 83A does not require partnership seals. The only seals required by statute are individual seals and corporate seals. G.S. 57C-2-01(c) would extend that to Professional Limited Liability Companies.

21 NCAC 02 .0213 - The Commission objected to this rule based on lack of statutory authority. G.S. 83A-11 requires certificates to be renewed on or before the first day in July every year. There is no authority cited for the Board to change that date to June 30 as the rule does in (a), (b) and (c). "Certificate" and "License registration" are used interchangeably in the statutes and rules.

21 NCAC 02 .0214 - The Commission objected to this rule based on lack of statutory authority. G.S. Chapter 83A only allows for certification of individuals and corporations that meet the requirements of the Professional Corporation Act (G.S. 83A-8(a)). G.S. 57C-2-01(c) extends the authorization to Professional Limited Liability Companies. There is no authority cited for the Board to require registration of Limited Liability Partnerships (G.S. 59-84.2). G.S. 83A-9 specifically says that partnerships do not need certificates. That would seem to include Limited Liability Partnerships.

21 NCAC 02 .0215 - The Commission objected to this rule based on lack of statutory authority. There is no authority cited for the last sentence in (a) prohibiting practice as an individual if the individual otherwise meets the requirements for individual licensure. G.S. 83A-9 specifically states that the enabling legislation does not require partnership certificates of practice. There is therefore no authority for the Board to require them as the rule does in (e) and (f). This objection applies to existing language in the Rule.

#### **Board of Massage and Bodywork Therapy**

21 NCAC 30 .0629 was approved unanimously.

#### **Medical Board**

All permanent rules were approved unanimously.

#### **TEMPORARY RULES**

Chairman Hayman presided over the review of the log of temporary rules.

#### **Department of Labor**

All temporary repeals were approved unanimously.

#### **Board of Community Colleges**

23 NCAC 02C .0213 was approved unanimously.

#### **REQUEST FOR FILING DEADLINE WAIVER**

The Commission received a request for a waiver of its filing deadline for rules 15A NCAC 02B .0225, .0307 and .0308. Commissioner Gray moved to approve the request. Commissioners Gray and McLawhorn voted to approve the motion. Commissioners Crisp, Funderburk, Horton and Walker voted against the motion.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commission adopted Rule 26 NCAC 05 .0113 with an effective date of December 1, 2010.

The meeting adjourned at 10:48 a.m.

The next scheduled meeting of the Commission is Thursday, November 18 at 9:00 a.m.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

**LIST OF APPROVED PERMANENT RULES**  
**October 21, 2010 Meeting**

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Definitions</u>	04 NCAC 02R .0103
<u>Distribution, Inspection and Copies of ABC Laws</u>	04 NCAC 02R .0303
<u>Fee for Computer Services</u>	04 NCAC 02R .0304
<u>Definition</u>	04 NCAC 02R .0601
<u>Request for Declaratory Ruling</u>	04 NCAC 02R .0603
<u>Daily Deposits</u>	04 NCAC 02R .0905
<u>Annual Independent Financial Audit</u>	04 NCAC 02R .0907
<u>Warehouse: Presence of Unauthorized Person Prohibited</u>	04 NCAC 02R .1005
<u>Audits to be Forwarded to Commission</u>	04 NCAC 02R .1103
<u>Approval of New Stores</u>	04 NCAC 02R .1203
<u>Definitions</u>	04 NCAC 02R .1301
<u>Commemorative Bottles</u>	04 NCAC 02R .1405
<u>Payment</u>	04 NCAC 02R .1407
<u>Markup Formula</u>	04 NCAC 02R .1502
<u>Removal of Beverages from ABC Stores</u>	04 NCAC 02R .1701
<u>Purchase-Transportation Permits</u>	04 NCAC 02R .1708
<u>Credit Card Sales</u>	04 NCAC 02R .1710
<u>Purchase-Transportation Permits: Wine: Liquor</u>	04 NCAC 02R .1801
<u>Mixed Beverage Permit/Invoice Form</u>	04 NCAC 02R .1802
<u>Cabinet Permittees: Purchase-Transportation Permits</u>	04 NCAC 02R .1803
<u>Designation of Store</u>	04 NCAC 02R .1902

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

<u>Declaratory Rulings</u>	10A NCAC 14A .0103
<u>Information Required of Applicant</u>	10A NCAC 14C .1202
<u>Information Required of Applicant</u>	10A NCAC 14C .1402
<u>Performance Standards</u>	10A NCAC 14C .1403
<u>Definitions</u>	10A NCAC 14C .1701
<u>Performance Standards</u>	10A NCAC 14C .1703
<u>Information Required of Applicant</u>	10A NCAC 14C .1902
<u>Information Required of Applicant</u>	10A NCAC 14C .2102
<u>Performance Standards</u>	10A NCAC 14C .2103
<u>Support Services</u>	10A NCAC 14C .2104
<u>Staffing and Staff Training</u>	10A NCAC 14C .2105
<u>Facility</u>	10A NCAC 14C .2106
<u>Information Required of Applicant</u>	10A NCAC 14C .2202
<u>Performance Standards</u>	10A NCAC 14C .2203
<u>Definitions</u>	10A NCAC 14C .2701

**PUBLIC HEALTH, COMMISSION FOR**

<u>Accreditation of Training Courses</u>	10A NCAC 41C .0904
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**STATE REGISTRAR**

<u>Routine Requests for Certified Copies</u>	10A NCAC 41H .0701
<u>Research Requests</u>	10A NCAC 41H .0702
 <b>INSURANCE, DEPARTMENT OF</b>	
<u>Sanctions for NCEC Noncompliance by Licensees, Course Pro...</u>	11 NCAC 13 .0528
 <b>ALARM SYSTEMS LICENSING BOARD</b>	
<u>Determination of Experience</u>	12 NCAC 11 .0106
 <b>LABOR, DEPARTMENT OF, AND APPRENTICESHIP COUNCIL</b>	
<u>Apprenticeship Council</u>	13 NCAC 14A .0103
<u>Certification</u>	13 NCAC 14A .0105
<u>Public Access to Records</u>	13 NCAC 14A .0108
<u>Name: Address</u>	13 NCAC 14B .0101
<u>Registration Agency</u>	13 NCAC 14B .0102
<u>Veterans Training Assistance Allowances</u>	13 NCAC 14B .0103
<u>Definition</u>	13 NCAC 14B .0104
<u>Criteria for Apprenticeable Occupations</u>	13 NCAC 14B .0201
<u>Program Performance Standards</u>	13 NCAC 14B .0203
<u>Registration Request Procedure</u>	13 NCAC 14B .0204
<u>Registration of Apprentice and Agreement</u>	13 NCAC 14B .0209
<u>Termination and Extension of Agreements</u>	13 NCAC 14B .0212
<u>Standards for OJT Programs</u>	13 NCAC 14B .0301
<u>Registration Request Procedure for OJT Programs</u>	13 NCAC 14B .0302
<u>Eligibility and Procedure for Registration of OJT Programs</u>	13 NCAC 14B .0303
<u>OJT Agreement</u>	13 NCAC 14B .0305
<u>Registration of OJT Agreements</u>	13 NCAC 14B .0306
<u>Termination and Extension of Agreements</u>	13 NCAC 14B .0309
<u>De-Registration of Program</u>	13 NCAC 14B .0402
<u>Voluntary De-Registration</u>	13 NCAC 14B .0403
<u>De-Registration</u>	13 NCAC 14B .0404
<u>De-Registration for Inactivity</u>	13 NCAC 14B .0405
<u>Reinstatement of Registration</u>	13 NCAC 14B .0406
<u>Complaint Procedure</u>	13 NCAC 14B .0503
<u>Noncompliance with Federal and State Equal Opportunity Re...</u>	13 NCAC 14B .0616
 <b>ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF</b>	
<u>Sales of Alcohol or Controlled Substances</u>	15A NCAC 28 .0502
 <b>ARCHITECTURE, BOARD OF</b>	
<u>Definitions</u>	21 NCAC 02 .0109
<u>Architect and Firm Contact Information as on File with th...</u>	21 NCAC 02 .0201
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**October 21, 2010 Meeting**

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13 NCAC 07F .0927

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23 NCAC 02C .0213

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	May	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
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ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	Gray	08/02/10	
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ABC Commission v. El Corona Mexican Restaurant Inc., T/A Corona II	10 ABC 4122	May	09/24/10	
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<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>				
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Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
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California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	Overby	05/12/10	
Earl Stanley Peters III v. Victims Compensation Service Division	09 CPS 5444	Elkins	08/30/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
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David Leon Darby v. Division of Crime Control and Public Safety	09 CPS 6703	Overby	08/17/10	
Selective Clearing and Grading, Inc., Danny Creech, Lynn Creech v. Crime Control and Public Safety	09 CPS 6726	Gray	07/29/10	
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Anne F. Palmer v. Victim and Justice Services	10 CPS 3604	Lassiter	09/08/10

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

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Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission	09 DOJ 4151	Lassiter	04/14/10	
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Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources	09 OSP 4432	Brooks	05/19/10	
Charolette Hope v. Cumberland County Department of Social Services	09 OSP 4436	Gray	04/15/10	
O'Tonious T. Raynor v. DHHE, Emery Milliken	09 OSP 4648	Webster	07/26/10	25:07 NCR 948
Charles T. Hodge Jr. v. Mike Totolo, Vance County Public Schools	09 OSP 4977	Elkins	08/30/10	
Michael Karr v. DHHS, Division of Vocational Rehabilitation Services	09 OSP 5157	Elkins	07/19/10	25:07 NCR 960
Robert L. Hamm v. Department of Correction	09 OSP 5320	May	04/15/10	
Horace Blakeney v. UNC Charlotte	09 OSP 5352	Brooks	07/14/10	
Steven Dancy v. Appalachian State University	09 OSP 5566	Brooks	08/02/10	
Quintino Brooks v. NCCU	09 OSP 5567	Webster	04/28/10	25:03 NCR 379
Dwight Steven Murphy v. DHHS, Div. of Services for the Blind	09 OSP 5924	Webster	05/13/10	
LaCinda L. McKenzie v. O'Berry Center	09 OSP 6785	Lassiter	06/21/10	
Glenn Hodge v. DOT	10 OSP 0229	Lassiter	06/14/10	
Stephen R. West v. UNC	10 OSP 1567	Overby	09/02/10	
Janice F. Stokes v. DOC, Division of Community Corrections	10 OSP 2316	Gray	08/20/10	
Beverly Ann Wynn v. DOC, Div. of Community Corrections and Div. of Prisons	10 OSP 2415	Elkins	09/20/10	
Alvin L. Bess v. The County of Cumberland	10 OSP 2517	Overby	06/25/10	
Cynthia Lloyd v. Vance County	10 OSP 2577	Overby	08/30/10	
John Anthony McDonald, II v. DHHS, Division of Information Resource Management	10 OSP 2786	Gray	06/24/10	
Tammy R. Northern v. County of Durham Criminal Justice Resources Center	10 OSP 2904	Gray	08/20/10	

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**CONTESTED CASE DECISIONS**

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Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	Lassiter	06/29/10
Angela R. Harris v. DOC	10 OSP 3007	Lassiter	08/31/10
Vance L. Yates v. DJJDP Dept. of Juvenile Justice & Delinquency Prevention	10 OSP 3155	Overby	08/20/10
Maureen Marie Schepis v. DHHS, J. Iverson Riddle Developmental Center, Emery Milliken, DHHS General Counsel	10 OSP 3346	Gray	08/30/10
George A. McLamb v. DOC	10 OSP 4398	Gray	10/20/10

**OFFICE OF SECRETARY OF STATE**

Jenny S. Thompson v. Department of SOS	09 SOS 2342	Lassiter	03/17/10
Jessica Nicole Blackwell Lewis v. Dept. of SOS	09 SOS 6174	Elkins	08/30/10
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10

**UNC HOSPITALS**

Alexander Lee v. UNC Hospitals	10 UNC 1095	Elkins	08/30/10
Edwin Matthews v. UNC Hospitals	10 UNC 2576	Overby	09/13/10