

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 07 • Pages 749 - 975

October 1, 2010

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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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 th 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
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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.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 61

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS
TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING
ESSENTIALS THROUGHOUT THE STATE**

WHEREAS, I have determined that a State of Emergency exists due to Hurricane Earl and its likely-effects in North Carolina, thereby justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential during the storm and after the storm and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well being; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, and restoration of utility services; and

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

Section 1.

The Department of Crime Control and Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

Section 3.

The Department of Crime Control & Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting equipment and supplies for the restoration of utility services along North Carolina roadways to our impacted counties.

Section 4.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.
- d. Vehicles and vehicles combinations subject to exemptions or permits by authority of this executive order shall not be exempt from the requirement of a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend oversized load in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise a certified escort shall be required for load exceeding 8 feet 6 inches in width.

Section 5.

Vehicles referenced under Sections 1 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 6.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1-6 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with Hurricane Earl and its after-effects in North Carolina.

Section 9.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 1st day of September 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

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 62

PROCLAMATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA DUE TO HURRICANE EARL

Pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina:

Section 1.

I declare that a state of emergency exists in the State due to the approach of Hurricane Earl.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, or his designee, all power and authority granted to me and required of me by Article 1 of Chapter 166A of the General Statutes and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Young, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G.S. § 143B-476.

Section 5.

I further direct Secretary Young to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

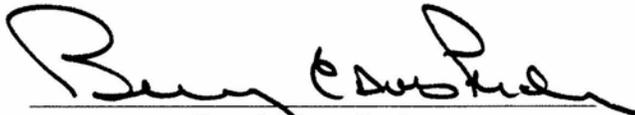
I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 7.

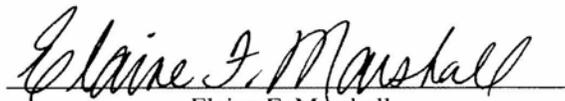
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 day first of September 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 Haves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

25:07

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 63

NOTICE OF TERMINATION OF EXECUTIVE ORDERS NO. 61 AND NO. 62

WHEREAS, Executive Order No. 62 declaring a state of emergency was issued on September 1, 2010, by the Governor of the State of North Carolina as a result on the approach of Hurricane Earl; and,

WHEREAS, Executive Order No. 61 also issued on September 1, 2010, waived the rules and regulations that limit the hours of service for operators of certain commercial vehicles and lifted weight restrictions on certain vehicles; and,

WHEREAS, both Executive Orders contained a provision that they would be effective for thirty (30) days or the duration of the emergency, whichever is less; and,

WHEREAS, the emergency that necessitated both Executive Orders has now ended.

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

Executive Orders No. 61 and No. 62, issued September 1, 2010, are hereby terminated, effective as of 12:00 p.m. on the date signed below.

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 8th day of September 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

by and through

Rodney S. Mackay
Chief Deputy Secretary of State

**The 2011 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. INTRODUCTION

The 2011 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of federal low-income housing tax credits:

1. Project location and site suitability.
2. Market demand and local housing needs.
3. Serving the lowest income tenants.
4. Serving qualified tenants for the longest periods.
5. Design and quality of construction.
6. Financial structure and long-term viability.
7. Use of federal project-based rental assistance.
8. Use of mortgage subsidies.
9. Experience of development team and management agent(s).
10. Serving persons with disabilities and the homeless.
11. Willingness to solicit referrals from public housing waiting lists.
12. Tenant populations of individuals with children.
13. Projects intended for eventual tenant ownership.
14. Projects that are part of a Community Revitalization Plan.
15. Energy efficiency.
16. Historic nature of the buildings.

B. Threshold, underwriting and process requirements for project applications and tax credit awards.

C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the low-income housing tax credit and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major

natural disaster or disruption in the financial markets, the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(B) or II(C). This Section II only applies to 9% tax credit applications. Projects will be counted towards the limitations in the order awarded under the Plan (rehabilitation, higher-scoring new construction applications, and tie-breakers).

A. [reserved]

B. REHABILITATION SET-ASIDE

The Agency will award up to twenty percent (20%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3).

1. The following will be considered new construction under Section II(C) below:

- (a) — adaptive reuse projects,
- (b) — entirely vacant residential buildings,
- (c) — proposals to increase and/or substantially re-configure residential units.

2. Up to \$750,000 of the rehabilitation set-aside will be awarded to projects meeting one or both of the following criteria:

- (a) existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units;
- (b) allocated 9% tax credits in 1992 or earlier.

C. NEW CONSTRUCTION SET-ASIDES

The Agency will award tax credits remaining after awards described above and any under Section II(G)(2) to other new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside.

WEST 17%		CENTRAL 24%		METRO 36%	EAST 23%	
Alexander	Jackson	Alamance	Montgomery	Buncombe	Beaufort	Johnston
Alleghany	Lincoln	Anson	Moore	Cumberland	Bertie	Jones
Ashc	Macon	Cabarrus	Orange	Durham	Bladen	Lenoir
Avery	Madison	Caswell	Person	Forsyth	Brunswick	Martin
Burke	McDowell	Chatham	Randolph	Guilford	Camden	Nash
Caldwell	Mitchell	Davidson	Richmond	Mecklenburg	Carteret	New Hanover
Catawba	Polk	Davie	Rockingham	Wake	Chowan	Northampton
Cherokee	Rutherford	Franklin	Rowan		Columbus	Onslow
Clay	Surry	Granville	Scotland		Craven	Pamlico
Cleveland	Swain	Harnett	Stanly		Currituck	Pasquotank
Gaston	Transylvania	Hoke	Stokes		Dare	Pender
Graham	Watauga	Iredell	Union		Duplin	Perquimans
Haywood	Wilkes	Lee	Vance		Edgecombe	Pitt
Henderson	Yadkin		Warren		Gates	Robeson
	Yancey				Greene	Sampson
					Halifax	Tyrrell
					Hertford	Washington

| Hyde Wayne
 Wilson

D. NONPROFIT AND CHDO SET-ASIDES

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

1. NONPROFIT SET-ASIDE

In order to qualify as a nonprofit application, the proposed project must either:

- (a) not involve any for-profit Principals or
- (b) comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

2. CHDO SET-ASIDE

In order to qualify as a CHDO application,

- (a) the proposed project must meet the requirements of subsection (D)(1) above, 24 CFR 92.300(a)(1),
- (b) as of the full application deadline, the applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- (c) the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(2).

E. PRINCIPAL AND PROJECT AWARD LIMITS; 30% BASIS BOOST

1. PRINCIPAL LIMIT

The maximum awards to any one Principal will be the lesser of:

- (a) a total of \$1,500,000 in tax credits, including all set-asides (the ability under Section II(G)(4) to exceed this limit to completely fund a project request no longer applies), and
- (b) ~~two~~three projects.

The Agency may further limit awards based on unforeseen circumstances.

For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the proposed project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,300,000.

3. PHR AND JV PROJECTS

Public housing redevelopment (PHR) and joint venture (JV) projects:

- (a) The Agency may determine that fifty percent (50%) of the tax credits awarded to PHR or JV projects do not count against some or all of the Principals involved for the purpose of subsection (E)(1)(a) above. This determination will be based on the Principal's role in the project(s) and overall development capacity. The allowance in this subsection (E)(3)(a) will apply to a maximum of one (1) project per Principal. The project will count towards the maximum number of projects in subsection (E)(1)(b). In the event a Principal is involved in multiple PHR or JV projects, this exemption will apply to the one with the smallest award of 9% tax credits.
- (b) PHR includes:
 - (i) buildings to be located on the site of former public housing,
 - (ii) constructing replacement public housing units, or
 - (iii) rehabilitation of existing public housing.
- (c) JV includes projects that involve nonprofit Principal(s) with limited development experience or capacity and the Project would qualify under Section II(D)(1) (the nonprofit set-aside).

4. AGENCY-DESIGNATED BASIS BOOST

The Agency may boost the eligible basis of projects awarded in 2011 by up to thirty percent (30%) for high land costs because of being in a desirable or commercially valuable location. The Agency may order an appraisal during the preliminary application review (costs to be paid by the applicant). Projects with market-rate units are ineligible for an increase under this subsection (E)(4). The Agency will make designations between preliminary and full applications.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

- (a) No county will be awarded tax credits for new construction exceeding \$2,000,000 unless doing so is necessary to meet another set-aside requirement of this Plan. No county will be awarded more than two (2) projects under the rehabilitation set-aside. The Agency may further limit awards based on unforeseen circumstances. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies.
- (b) The Agency will not accept applications in the following counties: Alamance, Beaufort, Caldwell, Cleveland, Columbus, Dare, Henderson, Lee, Lenoir, Richmond, Robeson, Rowan, Vance, and Wilkes.

2. INCOME DESIGNATIONS

Pursuant to N.C.G.S. § 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination: (a) county median income; (b) poverty rate; (c) percent of population in rural areas; (d) regional growth patterns; (e) N.C. Department of Commerce tier (one, two or three).

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Lincoln	Alleghany	Graham	Pasquotank

Buncombe	Brunswick	Moore	Anson	Greene	Pender
Cabarrus	Burke	Nash	Ashe	Halifax	Perquimans
Catawba	Carteret	Onslow	Avery	Hertford	Richmond
Chatham	Cleveland	Person	Beaufort	Hoke	Robeson
Durham	Craven	Pitt	Bertie	Hyde	Rutherford
Forsyth	Cumberland	Polk	Bladen	Jackson	Sampson
Gaston	Dare	Randolph	Caldwell	Jones	Scotland
Guilford	Davidson	Rockingham	Camden	Lenoir	Surry
Iredell	Davie	Rowan	Caswell	Macon	Swain
Johnston	Franklin	Stanly	Cherokee	Madison	Transylvania
Mecklenburg	Granville	Stokes	Chowan	Martin	Tyrrell
New Hanover	Harnett	Watauga	Clay	McDowell	Vance
Orange	Haywood	Wayne	Columbus	Mitchell	Warren
Union	Henderson	Wilson	Currituck	Montgomery	Washington
Wake	Lee	Yadkin	Duplin	Northampton	Wilkes
			Edgecombe	Pamlico	Yancey
			Gates		

G. OTHER AWARDS AND EXCEEDING LIMITATIONS

1. The Agency may award tax credits remaining from the four geographic set-asides to the next highest scoring eligible new construction application(s) statewide and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. The Agency may award 2011 tax credits outside of the normal process to projects that: a) allow the Agency to comply with HUD regulations regarding timely commitment of funds, b) prevent the loss of state or federal investment, c) provide housing for underserved populations or d) are part of a settlement agreement of legal action brought against a local government. The total amount of such awards(s) shall not exceed \$1,000,000.
3. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.
4. The Agency may exceed the limitations on awards contained in Sections II(B), II(F)(1) and this Section II(G) in order to completely fund a project request.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2011 application process for 9% tax credits and the first round of bond volume and 4% tax credits. The Agency will announce the application schedule for a second round of bond volume and 4% tax credits at a later time.

January 14 ⁵	Deadline for submission of preliminary applications (12:00 noon)
March 7 ⁸	Market analysts will mail studies to the Agency and applicants
March 18 ⁹	Notification of final site scores and qualification for Agency-designated increase in eligible basis

March 28 ⁹	Deadline for market-related project revisions
April 4 ⁵	Deadline for the Agency and applicant to receive a hard copy of the revised market study, if applicable
May 13 ⁴	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency reserves the right to change the schedule as necessary.

B. APPLICATION, ALLOCATION, MONITORING AND PENALTY FEES

1. All applicants are required to pay a nonrefundable fee of \$~~5,500~~⁴⁷⁰ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$~~1,200~~¹⁷⁰ preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All applicants are required to pay a nonrefundable processing fee of \$~~1,200~~¹⁷⁰ upon submission of the full application.
3. Entities receiving ~~9%~~ tax credit awards, including those involving tax exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.664% of the project's total qualified basis.
4. ~~Entities receiving tax exempt bond volume are required to pay a nonrefundable allocation fee equal to forty (40) basis points of the awarded bond volume. (For example, the fee due on a \$10 million bond award would be \$40,000.)~~ The allocation fee will be due at the time of either the carryover allocation or the bond volume is awarded. Failure to return the required documentation and fee by the date specified may result in cancellation of the bond-allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$~~740~~⁷²⁰ per unit (includes all units, qualified, unrestricted and employee) prior to issuance of the project's IRS Form 8609.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
7. The Agency may assess applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).
8. The Agency will assess \$1,500 for closing a state tax credit loan and \$2,000 for an RPP closing.

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require applicants to submit any information, letter or representation relating to Plan requirements or point scoring as part of the application process. Unless otherwise noted, the Agency may elect to not consider information submitted after the relevant deadline.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. The Agency may elect to treat applications involving more than one site, population type (family/elderly) or activity (new/rehabilitation) as separate for purposes of the Agency's application

process. Each application would require a separate initial application fee. The Agency may allow such applications to be considered as one for the full application underwriting if all sites are secured by one permanent mortgage and are not intended for separation and sale after the tax credit allocation.

4. The Agency will notify the appropriate unit of government about the project after submission of the full application. The Agency reserves the right to reject applications opposed in writing by the chief elected official (supported by the council or board), but is not obligated to do so.
5. For each application one individual or validly existing entity must be identified as the applicant and execute the preliminary and full applications. An entity may be one of the following:
 - (a) corporation, including nonprofits,
 - (b) limited partnership, or
 - (c) limited liability company.

Only the identified applicant will have the ability to make decisions with regard to that application. The applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the applicant must become a managing member or general partner of the ownership entity.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

New construction applications must meet all threshold requirements and receive 110 points to be considered for award and funding. Rehabilitation applications will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H)(3) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2011 cycle. Penalties and limitations for market-rate units will not apply for applications with a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity and state tax credits.

A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 100 POINTS)

(a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application submission date, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions). The Agency may grant an extension of this deadline if:
 - requested by the applicant in advance of the full application due date, and
 - all approval(s) are scheduled to be considered for final approval no later than ~~forty five (45)~~ thirty (30) days from the full application date.

In evaluating extension requests, the Agency will consider whether the applicant complied with the jurisdiction's deadlines and other requirements in a timely manner. The Agency will assess a \$250 fee for requests submitted within ten (10) calendar days of the full application deadline.

(iii) Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage and document the right to perform such work.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. Evaluation of sites will involve a relative comparison with other applications in the same geographic set-aside. The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. The score for a particular category will reflect the project's tenant type (family/elderly/supportive housing).

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 340 POINTS)

- Trend and direction of real estate development and area economic health.
- Physical condition of buildings and improvements in the immediate vicinity.
- Concentration of affordable housing, including HUD, Rural Development, and tax credit projects as well as unsubsidized, below-market housing.

(ii) SURROUNDING LAND USES AND AMENITIES (MAXIMUM 620 POINTS, POSSIBLE 10 POINT DEDUCTION)

- Land use pattern is residential in character (single and multifamily housing).
- Availability, quality and proximity of services, amenities and features, including but not limited to: grocery store; mall/strip center; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center.
- Effect of industrial, large-scale institutional or other incompatible uses, including but not limited to: wastewater treatment facilities, high traffic corridors, junkyards, prisons, landfills, large swamps, distribution facilities, frequently used railroad tracks, power transmission lines and towers, factories or similar operations, sources of excessive noise, and sites with environmental concerns (such as odors or pollution).
- Extent that the location is isolated.

(iii) AMENITIES (MAXIMUM 40 POINTS)

Availability, quality and proximity of the following: grocery store(s); basic shopping / general merchandise; pharmacy; community/senior center; public park or library; access to public transportation; other beneficial services or amenities.

(iv) SITE SUITABILITY AND BUILDING LOCATION (MAXIMUM 10 POINTS, POSSIBLE 10 POINT DEDUCTION)

- Adequate traffic safety controls (i.e. stop lights, speed limits, turn lanes, lane width).
- Burden on public facilities (particularly roads).
- Access to mass transit (if applicable).
- Degree of negative features, design challenges or physical barriers that will impede project construction or adversely affect future tenants; for example: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive reuse projects- suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition).
- The proximity of the buildings to adjacent residential structures would be a problem because of their height and/or scale.
- The project would not be visible to potential tenants using normal travel patterns.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
 - (i) the project's capture rate,
 - (ii) the project's absorption rate,
 - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
 - (iv) the project's effect on existing or awarded properties with 9% tax credits or Agency loans. Applicants may not increase rents or the number of units after the deadline for completing market-related project revisions.
- (c) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (d) Projects may not give preferences to potential tenants based on:
 - (i) residing in the jurisdiction of a particular local government,
 - (ii) having a particular disability, or
 - (iii) being part of a specific occupational group (e.g. artists).

B. RENT AFFORDABILITY

1. FEDERAL RENTAL ASSISTANCE

- (a) Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as funding source under Section VI(B)(6)(d); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.
- (b) Applicants must include a written agreement between the owner and all PHAs and Section 8 providers with jurisdiction inside the project's primary market area. The agreement must commit the PHAs to include the project in any listing of housing opportunities where households with tenant-based subsidies are welcome, and the project's management agent to actively seek referrals from the PHAs to apply for units at the proposed project. If one or more of the PHAs refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA(s). This requirement does not apply to projects with rental assistance provided through RD or if one hundred percent (100%) of the units have project-based subsidy.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 20 POINTS)

- (a) Eligibility:

Only loans or grants from the following sources will qualify for points under this subsection (B)(2):

- (i) HOPE VI the local PHA,
- (ii) Community Development Block Grant (CDBG) program funds,
- (iii) HUD Section 202 or 811,
- (iv) Federal Home Loan Bank Affordable Housing Program (AHP),
- (v) established local government housing development funds, and
- (vi) RD Section 515.

Other sources of funding may qualify PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE by the Agency prior to the preliminary application deadline. (Approval of a particular source in prior years does not meet this requirement.) Applications including market-rate units will be ineligible for points under subsection (B)(2) unless the total housing expense for all market-rate units are at least twenty percent (20%) higher than the maximum allowed for a unit at 60% area median income. Adjustments to the purchase price of the land by the seller, Agency loans, state credits and bond financing are not sources of mortgage subsidy.

(b) Required Terms:

In order to qualify for points under subsection (B)(2), loans must be listed as a source in the full application, comply with the requirements of Section VI(B)(6)(b), and have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%). See Section IV(C)(2) for a restriction on RPP loans for applications with local government financing.

(c) Metro Region:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$6,000	6	\$14,000	14
\$8,000	8	\$16,000	16
\$10,000	10	\$18,000	18
\$12,000	12	\$20,000	20

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government.

(d) East, Central and West Regions:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$32,000	105	\$6,000	1615
\$4,000	1249	\$78,000	1829
\$5,000	14	\$8,000	20

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government.

(e) Projects that will utilize federal and state historic rehabilitation tax credits and are funded entirely with equity and state low-income housing tax credits (no grants or debt sources other than

deferred developer fees) will be awarded five (5) points. Any deferred fee must comply with Section VI(B)(5).

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

The application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
 - ~~Fifteen (15)~~ ~~Ten (10)~~ points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
 - ~~Ten (10)~~ ~~Five (5)~~ points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)
- (b) If the project is in a Moderate Income county:
 - Fifteen (15) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
 - Ten (10) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)
- (c) If the project is in a Low Income county, fifteen (15) points will be awarded for projects in which at least forty percent (40%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (d) Ten (10) points will be awarded to applications for new construction tax exempt bond projects that meet one of the following requirements:
 - at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 20 POINTS)

The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Cost (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- (a) all units are detached single family houses or duplexes,
- (b) serving persons with severe mobility impairments,
- (c) development challenges resulting from being within or adjacent to a central business district,
- (d) public housing redevelopment projects, or
- (e) building(s) with both steel and concrete construction and at least four (4) stories of housing.

Chart A	Chart B
\$60,000 -10	\$71,000 -10
\$69,000 -20	\$85,000 -20

The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the application review process.

See Sections VI(B)(7), (8), and (9) for other cost restrictions.

2. RESTRICTIONS ON RPP AWARDS

(a) Projects requesting RPP funds may not:

- (i) request RPP loan funds in excess of the following amounts per unit- \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
- (ii) include market-rate units,
- (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999,
- (iv) request less than \$150,000 or more than \$1,250,000 per project, or
- (v) have a commitment of funds from a local government under terms that will result in more repayment than the RPP financing (see description in subsection (C)(2)(b) below).

The maximum award of RPP funds to any one Principal will be a total of \$2,000,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(d) if the Agency has inadequate funds.

(b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

$$\text{Repayment of RPP and local government loans} = (\text{NOI} / 1.15) - \text{conventional debt service.}$$

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan =	\$400,000				
local government loan =	\$200,000				
		Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000	
RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667	
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333	

(c) Loan payments made to the applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

(a) At least one Principal must have successfully developed, operated and maintained in compliance either one (1) North Carolina low-income housing tax credit project or six (6) separate low-income housing tax credit projects totaling in excess of 200 units. The project(s) must have been placed in service between December 1, 2004~~3~~ and January 1, 2010~~09~~. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:

- (i) be identified in the preliminary application,
- (ii) become a general partner or managing member of the ownership entity, and

- (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
 - (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).
2. MANAGEMENT EXPERIENCE

The management agent must have at least:

- (a) one similar tax credit project in their current portfolio, and
- (b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization accepted by the Agency (refer to the list in **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits in 201006 or earlier for which either the permanent financing or equity investment has not closed;
- (i) has been involved in any project awarded tax credits in 2006 or earlier for which the final cost certification requirements have not been met by December 18, 2009;

- (j) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (k) would be removed from the ownership of a property that is the subject of an application under the rehabilitation set-aside in the current cycle; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2011 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where, as of the full application, the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible.
2. New construction 9% tax credit projects may not exceed one hundred and twenty (120) units.
3. New construction bond financed projects may not exceed two hundred (200) units.
4. All projects must have at least twenty four (24) ~~sixteen (16)~~ qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

F. SPECIAL CRITERIA AND TIEBREAKERS

1. ENERGY STAR

New construction residential buildings must comply with all Energy Star standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

2. COMMUNITY REVITALIZATION PLANS (MAXIMUM 10 POINTS)

Ten (10) points will be awarded to applications if all of the following apply:

- (a) the project is within the geographic area identified by a community revitalization plan (CRP), which does not include basic local land use plans unless there is a specific revitalization component;
- (b) the project is in a Qualified Census Tract or the CRP is primarily focused on an existing residential neighborhood;
- (c) completion of the project would contribute to one or more of the goal(s) stated in the CRP; and
- (d) the CRP either (i) was officially adopted or amended by a local government between January 1, 2004~~3~~ and the preliminary application deadline or (ii) is actively underway.

Only documents or information included in the officially adopted CRP will be considered in evaluating the criteria in this subsection. The CRP must be included with the preliminary application to be eligible for points in this subsection.

3. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must:

- (a) be fully accessible according to the standards set forth in Volume 1-C (1999) of the North Carolina State Building Code, (Chapter 30, Multi-Family Dwellings),
- (b) have at least one bathroom with a toilet located in a five foot by five foot clear floor space (may overlap with the five foot turning diameter described in Chapter 30), with no overlapping elements or fixtures; the toilet must be positioned in a corner with the centerline of the toilet bowl 18 inches from the sidewall, and
- (c) have at least one bathroom with a ~~36 inch by 60 inch (minimum size)~~ curbless, roll-in shower as described in Appendix B. Such showers must also meet the requirements for accessible controls as required by Volume 1-C.

At least one unit in each class of fully accessible units must meet the above requirements. Unit classes are measured by the number of bedrooms, pursuant to Volume 1-C (1999) of the North Carolina State Building Code (Chapter 30, Section 30.3.2). **THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES)**. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Plan requirements of subsection (F)(4).

4. TARGETING PLANS

All projects will be required to target ten percent (10%) of the total units to persons with disabilities or homeless populations. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that are targeting units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS). At a minimum, Targeting Plans must include:

- (a) A description of how the project will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include:
 - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
 - (ii) The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
 - (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.
- (d) Certification that participation in supportive services will not be a condition of tenancy.
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the required number of units for persons with disabilities will be held vacant other than for such population(s).

- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, up to the required number of units.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.
- (j) A description of how the project will make the targeted units affordable to persons with extremely low incomes. NOTE: Key Program assistance is only available to persons receiving income based upon a disability. Projects targeting units to non-disabled homeless populations or persons in recovery with only a substance abuse diagnosis must have an alternative mechanism to assure affordability.

The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A Targeting Plan template and other documents related to this subsection are included in **Appendix D** (incorporated herein by reference). Owners will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July 2022, 2012~~4~~ or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This subsection (F)(4) does not apply to tax-exempt bond applications.

5. LOCAL GOVERNMENT LAND DONATION (MAXIMUM 5 POINTS)

Applications that meet the following criteria will be awarded five (5) points:

- (a) the real estate that will contain the proposed project buildings is owned by a unit of local government as of the preliminary application deadline;
- (b) the local government did not purchase any portion of the real estate from the applicant or any owner, Principal or affiliate thereof; and
- (c) the application shows no more than a total of \$1,000 in the line-items for purchase of land and buildings (in the case of a ground lease, no more than \$50 per year).

6. SECTION 1602 EXCHANGE PROJECTS (-40 POINT DEDUCTION)

The Agency may deduct up to forty (-40) points from any application if the applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

7. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.

Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).

Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS

All proposed measures must be shown on the plans or in specifications in the application in order to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding. These minimum requirements include, but are not limited to, standards in the following categories:

- on-site playground areas;
- on-site postal and laundry facilities;
- community/office space;
- on-site parking and refuse collection areas;
- exterior and interior building design;
- plumbing and electrical provisions;
- heating, ventilating and air conditioning provisions;
- sitework;
- bedrooms, bathrooms and kitchens;
- provisions for all elderly housing;
- building envelope and insulation;
- provisions for sight and hearing impaired residents;
- additional requirements for rehabilitation of existing apartments;
- additional requirements for adaptive reuse; and
- Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM OF 50 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to ten (10) points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to forty (40) points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
 - (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
 - (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
 - (iv) Use of brick veneer or masonry products on building exteriors.
- (c) Adaptive Re-Use
- (The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)
- The Agency will award up to forty (40) points based on the following characteristics:
- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
 - (ii) Aesthetics after adaptation.
 - (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Section II(B), a project must:

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit or (ii) federal rental assistance for at least thirty percent (30%) of the total units, which may consist of a project-based contract, households with Section 8 vouchers as of the preliminary application deadline, or a combination of the two,
- (b) have been placed in service on or before December 31, 1995,
- (c) require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five (5) years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five (5) years, and
- (i) have total replacement costs of less than \$110,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B**, the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(B) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (g) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed federally subsidized existing housing, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (d) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (e) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (f) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (g) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall HOPE VI revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive reuse projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax exempt bonds and 4% credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. New construction applications must earn 100 points.
2. All projects must meet one of the following requirements:
 - (a) at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - (b) at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
3. Rehabilitation applications must:
 - (a) have been placed in service on or before December 31, 1995,
 - (b) require rehabilitation expenses in excess of \$10,000 per unit,
 - (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
 - (d) not have begun or completed after December 31, 2001 a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five (5) years, and
 - (e) not be deteriorated to the point of requiring demolition.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. PROJECTS WITH HISTORIC TAX CREDITS

Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,

(d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. ENVIRONMENTAL HAZARDS

All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

4. APPRAISALS

The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. Any project involving an existing structure or budgeting more than \$15,000 per acre toward land costs must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may order an additional appraisal with costs to be paid by the applicant. Appraisals for rehabilitation and adaptive reuse projects must break out the land and building values from the total value.

5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. RENT INCREASES

Owners of projects with 9% tax credits must seek approval from the Agency prior to increasing rents for qualified low-income units during the time between award and issuance of the federal form 8609.

8. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

9. EXTENDED USE PERIOD

Owners must agree to record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner (a) will not

apply for relief under Section 42(h)(6)(E)(i)(II) of the Code, (b) will not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder, and (c) will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the project application. The Extended Use Agreement may also contain other provisions as determined by the Agency.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding.

1. LOAN UNDERWRITING STANDARDS

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in Appendix G.
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

- (a) New construction (excluding adaptive reuse): minimum of ~~\$3,2003,000~~ per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive reuse): minimum of ~~\$3,4003,200~~ per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.
- (c) The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. EQUITY PRICING

The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the applicant's projection. The Agency may also set a maximum price. Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management

agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the low-income use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive reuse projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen (15) years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required. This letter must clearly state the term of the permanent loan is at least eighteen (18) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for eighteen (18) years.
- (b) All projects proposing public permanent financing, binding commitments are required to be submitted by the full application due date. The Agency may grant a ~~forty-five (45)~~ ~~thirty (30)~~ day extension of this deadline for local governments if requested by the applicant in advance of the

full application due date. The Agency will assess a \$250 fee for requests submitted within ten (10) calendar days of the full application deadline. Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least eighteen (18) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.

- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility.

7. DEVELOPER FEES AND ADDITIONAL CONTINGENCY

- (a) Developer fees for new construction projects shall be the lesser of \$10,500 per unit or \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000).
- (b) Developer fees for rehabilitation projects shall be ~~the greater of \$7,500 per unit or twenty five percent (25%) of the PDC description line item for rehabilitation (line 4), but in no event will exceed \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000).~~
- (c) Builder's general requirements shall be limited to six percent (6%) of hard costs.
- (d) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).
- (f) The application may include up to the greater of \$500 per unit or \$30,000 in additional contingency to cover overruns in any project development cost. To the extent this amount is not used for cost overruns it may be taken as additional developer fee.

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description).

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of NO MORE THAN five percent (5%) of total hard costs, including general requirements, builder profit and overhead. Rehabilitation and adaptive reuse projects shall include a hard cost contingency line item of NO MORE THAN ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. GENERAL REQUIREMENTS

1. The 9% tax credit reservation amount will be the total anticipated qualified basis amount multiplied by nine percent (9%), or three and three quarters percent (3.75%) for the 4% tax credit. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code.
2. Ownership entities must (a) expend ten percent (10%) of the project's reasonably expected basis by a date to be determined by the Agency and (b) submit to the Agency a completed carryover agreement and cost certification by a date to be determined by the Agency. (This requirement also applies to projects with partial allocations.) Failure to meet these deadlines will preclude the project from participation in the state credit program. Pursuant to Section VI(B)(6), the Agency may determine that an awarded application listing state tax credits as a source of funding is ineligible for allocation due to failure to comply with the requirements of this subsection (A)(2). Projects will be required to elect a project-based allocation.
3. Once approved, the ownership entity will proceed to acquire, construct or rehabilitate the project. Owners may not start construction, including sitework, before the Agency has approved the project's final plans and specifications. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a completed Final Cost Certification that complies with the Agency's guidelines and requirements. Project cash flow is a prohibited source of funds for the project budget.
4. Projects must meet all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act; the Agency may treat any failure to do so as a violation of the Plan.
5. Allocated tax credits may also be returned to the Agency under the following conditions: (a) credits have been allocated to a project building that is not a qualified building within the time period required by the Code, for example, because it is not placed in service within the period required under the Code, (b) credits have been allocated to a building that does not comply with the terms of its allocation agreement, (c) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (d) by mutual written agreement between the allocation recipient

and the Agency. Returned credits may include credits previously allocated to project that fails to meet the 10% test under Section 42(b)(1)(E)(ii) of the Code.

6. The Agency may conduct construction inspections for adherence to approved final plans and specifications.
7. The owner of the project must sign and record the Extended Use Agreement in the county in which the project is located by the end of the first year after the tax credits are allocated. The owner must have good and marketable title at that time, and must obtain the consent of any lienholder on the project property recorded prior to the Extended Use Agreement (other than a lienholder relative to the financing of the construction of the project that by its terms will be cancelled within one year of the last building in the project being placed in service) to be bound by the terms of this Extended Use Agreement.
8. The Agency may revoke tax credits if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction. Owners will acknowledge that the following constitute conditions to their allocation:
 - (a) accuracy of the facts and compliance with representations contained in the project's final accepted application, including all exhibits and attachments,
 - (b) completion of construction as depicted on the site layout, floor plan and elevations submitted with the project application,
 - (c) adherence to the Plan, and
 - (d) provision and maintenance of those certain unit and project amenities for the benefit of the tenants described in the project application.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to this allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

9. Federal form 8609 will not be issued until:
 - (a) the owner and management company produces evidence of attending a low-income housing tax credit compliance seminar sponsored either by the Agency or a sponsor acceptable to the Agency within the last 12 months;
 - (b) the Agency confirms that the monitoring fees have been paid and that the project has adhered to all representations made in the application (including design elements); and
 - (c) the project demonstrates that it will meet all relevant Plan requirements.

The Agency may require evidence of escrowed funds to complete landscaping.

10. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in the Code and from time to time amended.

11. An allocation of tax credits does not constitute a representation or warranty that the ownership entity or its owners will qualify for or be able to use the tax credits. The Agency's interpretation of the Code is not binding on the IRS, and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the IRS will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

NOTE: Applicants are advised that some portion or all of a project's application may be subject to disclosure to the public under the North Carolina Public Records Act.

B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under N.C.G.S. § 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to N.C.G.S. § 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.
2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under N.C.G.S. § 105-129.42(g)(1) will not occur until all of the following requirements have been met:
 - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
 - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
 - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, including Section VII(A)(2), to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

C. COMPLIANCE MONITORING

1. Basic Requirements: Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, local codes, the Plan, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements.
2. Agency Requirements: The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity that is applying for the tax credits and/or any RPP loan funds, as applicable.

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Community Service Facility: Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person or such person's personal property from their current residence.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Homeless Populations: People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or temporary housing but originally came from places not meant for habitation or emergency shelters.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

Stabilized Occupancy: Maintenance of at least ninety percent (90%) occupancy for three consecutive months.

APPENDIX B

Design Quality Standards and Requirements

The terms of this Appendix B are the minimum requirements for any project awarded tax credits in 2010. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

Once final plans and specifications have been completed, owners must submit them to the Agency and receive written approval before commencing sitework or construction.

At all times after award the owner is responsible for promptly informing the Agency of any changes or alterations which deviate from the final plans and specifications approved by the Agency. In particular owners must not take action on any material change in the site layout, floor plan, elevations or amenities without written authorization from the Agency. This includes changes required by local governments to receive building permits.

I. DESIGN DOCUMENT STANDARDS

All required documents must be prepared by an engineer or architect licensed to do business in North Carolina. All drawings should be to scale, using the minimum required scale as detailed below.

A. PRELIMINARY APPLICATION PLAN REQUIREMENTS

Plans must be 11" x 17" and indicate the following:

1. Street name(s) where site access is made, site acreage, planned parking areas, layout of building(s) on site to scale, any flood plains that will prohibit development on site, retaining walls where needed, and adjacent properties with descriptions.
2. Front, rear and side elevations of **ALL** building types and identify all materials to be used on building exteriors.
3. Use a 1/8" or 1/16" scale for each building.

B. FULL APPLICATION PLAN REQUIREMENTS

Site and floor plans must be 24" x 36" and indicate the following:

1. Location of, and any proposed changes to, existing buildings, roadways, and parking areas.
2. All existing site and zoning restrictions including setbacks, right of ways, boundary lines, wetlands and any flood plains.
3. Existing topography of site and any proposed changes including retaining walls.
4. Front, rear and side elevations of **ALL** building types and identify all materials to be used on building exteriors.
5. Landscaping and planting areas (a plant list is not necessary). If existing site timber or natural areas are to remain throughout construction, the area must be marked as such on the site plans.
6. Locations of site features such as playground(s), gazebos, walking trails, refuse collection areas, postal facilities, and site entrance signage.
7. The location of units, common use areas and other spaces using a minimum scale of 1/16" = 1' for each building.
8. Dimensioned floor plans for all unit types using a minimum scale of 1/4" = 1'.

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9. Net building square footage and heated square footage. See "Definitions" in this Appendix.
10. For projects involving renovation and/or demolition of existing structures, proposed changes to building components and design and also describe removal and new construction methods.
11. For projects involving removal of asbestos and/or lead based paint removal, general notes identifying location and procedures for removal.

II. BUILDING AND UNIT DESIGN PROVISIONS

A. EXTERIOR DESIGN AND MATERIALS

1. Building design must use different roof planes and contours to "break" up roof lines. Wide window and door trim must be used to better accent siding. If horizontal banding is used between floor levels, use separate color tones for upper and lower levels. If possible, use horizontal and vertical siding applications to add detail to dormers, gables, and extended front facade areas.
2. The use of no or very low maintenance materials is required for exterior building coverings on all new construction projects. These include high quality vinyl siding, brick, or fiber cement siding. The use of metal siding is prohibited. Vinyl siding must have a .044" thickness or greater and a limited lifetime warranty.
3. All exterior trim, including fascia and soffits, window and door trim, gable vents, etc, must also be constructed of no or very low maintenance materials.
4. All buildings must include seamless gutters and aluminum drip edge on all gable rakes and fascia boards. Drip edge must extend 2 inches minimum under the shingles.
5. All building foundations must have a minimum of 12 inches exposed brick veneer above finished grade level (after landscaping).
6. Breezeway and stairwell ceilings must be constructed of materials rated for exterior exposure.
7. Buildings and units must be identified using clearly visible signage and numbers. Building and unit identification signage must be well lit from dusk till dawn.
8. Exterior stairs must have a minimum clear width of 40 inches and be completely under roof cover.
9. Exterior railings must be made of vinyl, aluminum, or steel (no wood).
10. Anti-fungal shingles with a minimum 25-year warranty are required for all shingle roof applications.

B. DOORS AND WINDOWS

1. All primary unit entries must either be within a breezeway or have a minimum roof covering of 3 feet deep by 5 feet wide, including a corresponding porch or concrete pad.
2. High durability, insulated doors (such as steel and fiberglass) are required at all exterior locations. Single lever deadbolts and eye viewers are required on all main entry doors to residential units.
3. Exterior doors for fully accessible units ("Type A") must include spring hinges.
4. Insulated, double pane, vinyl windows with a U-factor of ~~0.40~~ 0.32 or below and a SHGC of ~~0.48~~ 0.40 or below are required for new construction.
5. Windows must not be located over tub or shower units.

C. UNIT DESIGN AND MATERIALS

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1. All residential units must meet minimum unit size requirements. The square footage measurements below will be for heated square feet only, measured interior wall to interior wall, and do not include exterior wall square footage. Unheated areas such as patios, decks, porches, stoops, or storage rooms cannot be included.

Single Room Occupancy ("SRO")	250 square feet
Studio	375 square feet
Efficiency	450 square feet
1 Bedroom	660 square feet
2 Bedroom	900 square feet
3 Bedroom	1,100 square feet
4 Bedroom	1,250 square feet

For additional requirements see the "Definitions" section at the end of this Appendix.

2. All units must have a separate dining area, except for SRO, Studio and Efficiency units (see "Definitions" for description).
3. Newly constructed residential units containing two (2) or more bedrooms must have an exterior storage closet with a minimum of 16 unobstructed square feet. The square footage utilized by a water heater in the exterior storage closet may not be included in the 16 square foot calculation.
4. Carpet and pad must meet FHA minimum standards.
5. Kitchens, dining areas, and entrance areas must have vinyl, VCT or other non-carpet flooring.
6. The minimum width of interior hallways in residential units is 40 inches.
7. For new construction, interior doors must be constructed of six panel hardboard, solid core birch or solid core lauan. Hollow core, flat-panel wood doors are prohibited.
8. Bi-fold and by-pass doors are prohibited. Pocket doors are not allowed in elderly properties or handicapped units.
9. Fireplaces are prohibited in residential units.
10. Residential floors and common tenant walls must have sound insulation batts.

D. BEDROOMS

1. The primary bedroom must have at least 130 square feet, excluding the closet(s).
2. Secondary bedrooms must have at least 110 square feet, excluding the closet(s).
3. Every bedroom must have a closet with a shelf, closet rod and door. The average size of all bedroom closets in each unit type must be at least 7 linear feet.

E. BATHROOMS

1. A recessed medicine cabinet must be installed in every full bathroom in each residential unit.
2. Exclusive of fully accessible units, the average size of all vanities in each unit type must be at least 36 inches.
3. Mirrors in bathrooms must be low enough to reach the counter backsplashes.
4. All bathrooms must include an Energy Star rated exhaust fan rated at 7090 CFM vented to the exterior of the building using hard ductwork along the shortest run possible. The exhaust fan must be wired to run whenever the bathroom light is on.

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5. For ceramic tile applications, tile should be applied over cement backer board rather than directly to drywall.
6. All new construction projects must comply with QAP Section IV(F)(3) regarding additional accessible bathrooms, including curbless showers. All curbless showers must have a collapsible water dam or beveled threshold that meets code. All curbless showers must be 34 inches wide and have an adjustable shower rod and weighted curtain installed before occupancy.
7. Approaches to curbless showers must be level, not sloped.
8. All bathroom ceilings and walls must utilize mold and water-resistant wall board.
9. All domestic water line cut off valves must have metal handles, not plastic.
10. In all "Type A" accessible units the grab bars must be installed per building code specifications around toilets in the handicap bathrooms and in all curbless type showers. In curbless showers the shower head with wand must be installed on a sliding bar.

F. KITCHENS

1. New cabinets must include dual side tracks on drawers. Door fronts, styles, and drawer fronts must be made with solid wood or wood/plastic veneer products. Particle board or hardboard doors, stiles, and drawer fronts are prohibited.
2. The minimum aisle width between cabinets and/or appliances is 42 inches.
3. A pantry cabinet or closet in or near each kitchen must be provided (does not include SRO, studio or efficiency units). Pantry cabinet or closet must be 24 inches minimum width.
4. All residential units must have either a dry chemical fire extinguisher mounted and readily visible and accessible in every kitchen, including kitchen in community building if present, or an automatic fire suppression canister mounted in each range hood.
5. Each kitchen must have at the least the following minimum linear footage of countertop, excluding the sink space (only include countertops that are at or below 36 inches in height above finished floor):

SRO	4.5 linear feet
Studio	5.0 linear feet
Efficiency	5.0 linear feet
1 Bedroom	10.0 linear feet
2 Bedroom	12.0 linear feet
3 Bedroom	13.0 linear feet
4 Bedroom	13.0 linear feet

Bar tops may be counted as long as they are 16 inches minimum width and installed no higher than 48 inches above finished floor.

6. All residential units must have a frost-free Energy Star rated refrigerator with a freezer compartment. For fully accessible ("Type A") units the refrigerator must be side by side- or bottom freezer type. Doors must open beyond 90 degrees to allow bin removal. The following are the minimum sizes:

0-2 Bedroom	14 cubic feet
3 Bedroom	16 cubic feet
4 Bedroom	18 cubic feet
7. All residential units must have an Energy Star rated dishwasher (excluding elderly properties).

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8. All handicap (Type "A") kitchen sinks must be rear-draining and have sink bottoms insulated if bottom of sink is at or below 29" above finished floor.
9. Pull-out worktops are prohibited in handicap units. Must use workstations.
10. All "Type A" accessible units must have the wall cabinet mounted over the work station at 48 inches maximum above finished floor to the top of the bottom shelf.

G. LAUNDRY ROOM CLOSETS

1. Laundry room closets must be 36" minimum depth measured from back wall to back of closet doors.
2. Clothes dryer vent connection must be 2" maximum above finished floor.
3. All laundry room ceilings and walls must utilize mold and water resistant wall board.

H. PROVISIONS FOR ALL ELDERLY HOUSING

1. All elderly residential units must be equipped with emergency pull chains in the master bedroom and full bathroom. The pull chains must be wired to an exterior warning device which consists of a strobe light and an audible alarm.
2. Provide loop or "D" shape handles on cabinet doors and drawers.
3. Exhaust vents and lighting above ranges must be wired to a remote switch near the range in an accessible location.
4. Provide solid blocking at all water closets and tub/shower units for grab bar installation.
5. Provide a minimum 12" x 18 inch grab bar in all tub/shower units. The grab bar will be installed centered vertically at 48" A.F.F. on the wall opposite the controls.
6. Corridors in any common areas must have a continuous suitable handrail on one side mounted 34 inches above finished floor, and be 1 ¼ inches in diameter.
7. All doors leading to habitable rooms must have a minimum 3'-0" door and include lever handle hardware.
8. Hallways must have a minimum width of 42 inches.
9. The maximum threshold height at any entry door is ½ inch.

I. PROVISIONS FOR SIGHT AND HEARING IMPAIRED UNITS

Applies ONLY to projects using Rental Production Program funds. Under Section 504 of the Rehabilitation Act of 1973, two percent of the total number of units constructed, or a minimum of one, must be able to be equipped for residents with sight and hearing impairments. These requirements include the following:

1. The unit(s) must be roughed in to allow for smoke alarms with strobe lights in every bedroom and living area.
2. The units must have a receptacle next to phone jacks in units for future installation of TTY devices.
3. Each overhead light fixture and receptacle must be wired to accommodate a 150 watt load.
4. The unit must also be fully accessible ("Type A").

The requirements of this provision can be satisfied by adding the elements described above to the

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additional fully accessible units with curbless showers required by QAP Section IV(F)(3) such that at least two percent (2%) of all units are properly equipped to serve persons with sight and or hearing impairments.

III. MECHANICAL, SITE AND INSULATION PROVISIONS

A. PLUMBING PROVISIONS

1. Zero to two bedroom units require at least one (1) full bathroom.
2. Three bedroom units require at least 1.75 bathrooms (including one bath with upright shower and one bath with full tub).
3. Four bedroom units require at least two (2) full bathrooms.
4. All tubs and showers must have slip resistant floors.
5. All electric water heaters must have an Energy Factor of at least ~~.94~~ 0.93. This can be achieved by using an insulated water heater jacket. All natural gas water heaters must have an Energy Factor of at least .61.
6. All water heater tanks must be placed in an overflow pan piped to the exterior of the building, regardless of location and floor level. The temperature and relief valve must also be piped to the exterior. Water heater must be placed in closets to allow for their removal and inspection by or through the closet door. Water heaters may not be installed over the clothes washer or dryer space.
7. Whirlpool baths or spas are prohibited.
8. A frost-proof exterior faucet must be installed on an exterior wall of the community/office building.
9. All tub/shower control knobs must be single lever handled and offset towards the front of the tub/shower.
10. Provide lever faucet controls for the kitchen and bathroom sinks.
11. All ~~sinks~~faucets, shower heads, and toilets must be low-flow. EPA "Watersense" rated.
12. When using electric tankless water heaters the electrical panel must be rated at 200 amps or greater.
13. Domestic water lines are not allowed in unconditioned spaces.

B. ELECTRICAL PROVISIONS

1. Provide overhead lighting, a ceiling fan, telephone jack and a cable connection in every bedroom and living room. If using ceiling fans with light kits, the fan and light must have separate switches.
2. Any walk-in closets must also have a switched overhead light. A walk in closet is defined as any closet deeper than 36 inches from the back wall to the back of the closet door in the closed position.
3. Switches and thermostats must not be located more than 48 inches above finished floor height.
4. Receptacles, telephone jacks and cable jacks must not be located less than 16 inches above finished floor height.
5. Exterior lighting is required at each unit entry door.
6. Additional exterior light fixtures not specific to a unit will be wired to a "house" panel. The fixtures will be activated by a photo cell placed on the east or north side of the buildings.

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7. All exterior stairways must have light fixtures wired to a "house" panel and activated by a photo cell placed on the east or north side of the buildings.
8. Projects with gas heating and/or appliances must provide a hard-wired carbon monoxide detector with a battery back-up in each residential unit.
9. All non-residential and residential spaces must have separate electrical systems.
10. Initially-installed bulbs in residential units and common areas must be compact fluorescent, LED, (or pin-based lighting in 80% of all fixtures other than in ceiling fans and range hoods).

C. HEATING, VENTILATING AND AIR CONDITIONING PROVISIONS

1. All non-residential areas and residential units must have their own separate heating and air conditioning systems.
2. Through the wall HVAC units are prohibited in all but Studio, Efficiency and SRO units. They are allowed in laundry rooms and management offices where provided.
3. HVAC systems, including the air handler and line sets, must be rated at ~~13.0~~ 14.5 SEER or greater and properly sized for the unit. All HVAC systems must use 410A refrigerant instead of R-22.
4. Connections in duct system must be sealed with mastic and fiberglass mesh.
5. All openings in duct work at registers and grills must be covered after installation to keep out debris during construction.
6. Fresh air returns must be a minimum of 12" above the floor.
7. Electric mechanical condensate pumps are not allowed.
8. Supply ducts in unconditioned attics must be insulated with an R-8 or greater value.

D. BUILDING ENVELOPE AND INSULATION

1. Buildings with residential units must be wrapped with an exterior air and water infiltration barrier.
2. Framing must provide for complete building insulation including the use of insulated headers on all exterior walls, framing roofs and ceilings to allow the full depth of ceiling insulation to extend over the top plate of the exterior walls of the building, and framing all corners and wall intersections to allow for insulation.
3. Seal at doors, windows, plumbing and electrical penetrations to prevent moisture and air leakage.

E. SITWORK AND LANDSCAPING

1. Provide positive drainage at all driveways, parking areas, ramps, walkways and dumpster pads to prevent standing water.
2. Provide a non-skid finish to all walkways.
3. All water from roof and gutter system must be piped away from buildings and discharged no less than 6' from building foundation.
4. Lots must be graded so as to drain surface water away from foundation walls. The grade away from foundation walls must fall a minimum of 6 inches within the first 10 feet.
5. Burying construction waste on-site is prohibited.

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6. No part of the disturbed site may be left uncovered or unstabilized once construction is complete.
7. Minimum landscaping budgets of \$300 per residential unit are required. This allowance is for plants and trees only and may not be used for fine grading, seeding and straw or sod.
8. Plant material must be native to the climate and area.

F. RADON VENTILATION

Passive, "stack effect" systems radon ventilation systems are required for all new construction projects in Zone 1 and 2 counties. For a list of county zones visit <http://www.ncradon.org/zone-counties.htm> These systems reduce soil gas entry into the buildings by venting the gases to the outdoors and must include the following components.

1. Gas Permeable Layer of Aggregate. This layer is placed beneath the slab or flooring system to allow the soil gas to move freely underneath the house and enter an exhaust pipe. In many cases, the material used is a 4-inch layer of clean gravel.
2. Plastic Sheetting/Soil Gas Retarder. This is the primary soil gas barrier and serves to support any cracks that may form after the basement slab is cured. The retarder is usually made of 6 mil polyethylene sheetting, overlapped 12 inches at the seams, fitted closely around all pipe, wire, or other penetrations, and placed over the gas permeable layer of aggregate.
3. PVC Vent Pipe. A straight (no elbows) vertical PVC vent pipe of 3 inch diameter will be connected to a vent pipe "T" which is installed below the slab in the aggregate. The straight vent pipe runs from the gas permeable layer (where the "T" is) through the apartment to the roof to safely vent radon and other soil gases above the roof. A 12 inch perforated PVC pipe must be attached to the "T" on both ends in the aggregate to allow radon gas to easily enter the piping. The straight vent pipe runs vertically through the building and terminates at least 12 inches above the roof's surface in a location at least 10 feet from windows or other openings and adjoining or adjacent buildings. On each floor of the apartment, the pipe should be labeled as a "Radon Reduction System". Sealing and caulking with polyurethane or silicone on all openings in the concrete foundation floor must be used.

Check applicable federal, state and local building codes to see if more stringent codes apply.

IV. ENERGY STAR CERTIFICATION

Developers are required to have their projects certified as compliant with the requirements of the ENERGY STAR program which is administered by the U. S. Environmental Protection Agency. In general, ENERGY STAR qualified homes are at least 1530% more energy efficient than homes built to the 2006 International Energy Conservation Code (IECC). ENERGY STAR qualified homes achieve energy savings through established, reliable building technologies that address 5 critical elements:

- Effective Insulation
- High-Performance Windows
- Tight Construction and Ducts
- Efficient Heating and Cooling Equipment
- Lighting and Appliances

Additionally, to receive ENERGY STAR certification, developers must work with independent, third-party experts who assist with project design, verify construction quality, and test completed units to certify energy efficiency.

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Additional information regarding the requirements for energy star certification can be found on the EPA website. (http://www.energystar.gov/index.cfm?c=new_homes.nh_features)

V. COMMON AREA AND SITE AMENITY PROVISIONS

All common use areas must be fully accessible to those with disabilities in compliance with all applicable State and Federal laws and regulations.

A. REQUIRED SITE AMENITIES

All projects are required to include a minimum of six (6) tenant amenities. There are four (4) amenities that are mandatory and the additional two (2) can be selected from the list below.

The required amenities vary by project type:

Family	Senior
Playground	Indoor or Outdoor Sitting Areas (min. of 3 locations)
Resident Computer Center (min. of 2 computers)	Multi-Purpose Room (250 sq.ft.)
Covered Picnic Area (150 sq.ft. with 2 tables and grill)	Resident Computer Center (min. of 2 computers)
Outdoor Sitting Areas with Benches (min. of 3 locations)	Tenant Storage Areas

In addition to the required amenities, projects must also include at least two (2) of the following additional amenities:

- covered drive-thru or drop-off at entry
- covered patio with seating (150 sq. ft.)
- covered picnic area with two tables and one grille (150 sq. ft.)
- exercise room (must include new equipment)
- raised bed garden plots (50 sq. ft. per plot, 24 inches deep, one plot per 10 residents, elderly projects only)
- gazebo (100 sq. ft.)
- high-speed Internet access (involves both a data connection in the living area of each unit that is separate from the cable/telephone connection and support from a project-wide network or a functional equivalent)
- sunroom with chairs (150 sq. ft.)
- screened porch (150 sq. ft.)
- tot lot (family projects only)
- walking trails (4 ft. wide paved continuous around property)

Dimensions listed are the minimum required. Amenities must be located on the project site.

B. PLAYGROUND AREAS

1. Wherever possible tot lots and playgrounds must be located away from areas of frequent automobile traffic and situated so that the play area is visible from the office and maximum number of residential units.
2. A bench must be provided at playgrounds to allow a child's supervisor to sit. The bench must be anchored permanently, weather resistant and have a back.

C. POSTAL FACILITIES

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1. Postal facilities must be located adjacent to available parking and sited such that tenants will not obstruct traffic while collecting mail.
2. On-site postal facilities must have a roof covering which offers residents ample protection from the rain while gathering mail.
3. Postal facilities must include adequate lighting on from dusk to dawn.

D. LAUNDRY FACILITIES

1. Laundry facilities are required at all projects.
2. There must be a minimum of one washer and one dryer per twelve (12) residential units if washer/dryer hookups are not available in each unit. If hookups are available in each unit, there must be a minimum of one washer and one dryer per twenty (20) units.
3. Laundry facilities must be located on an accessible route.
4. The entrance must have a minimum roof covering of 20 square feet.
5. The threshold height of the entrance door to the laundry room must not exceed ½ inch above finished interior grade level.
6. A “folding” table or countertop must be installed. The working surface must be 28 to 34 inches above the floor, and must have a ~~27~~29 inch high clear knee space below. The working surface must be a minimum 48 inches long, and have a 30 by 48 inch clear floor space around it.
7. The primary entrance door to the laundry must be of solid construction and include a full height tempered glassed panel to allow residents a view of the outside/inside.
8. The laundry room must be positioned on the site to allow for a high level of visibility from residential units or the community building/office.
9. The laundry room must have adequate entrance lighting that is on from dusk to dawn.
10. If the project has only one laundry facility, it must be adjacent to the community building/office (if provided) to allow easy access and provide a handicap parking space(s).
11. One washer and one dryer must be front loading and usable by residents with mobility impairments (front loading), including at least a 30 by 48 inch clear floor space in front of each.

E. COMMUNITY / OFFICE SPACES

1. All projects must have an office on site of at least 200 square feet (inclusive of handicapped toilet facility) and a maintenance room of at least 100 square feet. This includes subsequent phases of a multi-phase development.
2. Projects with twenty four (24) or more units and more than one residential building must have a separate community building.
3. The community building must contain a both a handicapped toilet facility and a kitchen area that includes a refrigerator and sink.
4. The community building/space, including toilet facilities and kitchenette but excluding maintenance room and site office, must contain a minimum of seven (7) square feet for each residential unit.
5. The office must be situated as to allow the site manager a prominent view of the residential units, playground, entrances/exits, and vehicular traffic.

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6. The community building/office must be clearly marked as such by exterior signs, placed at a visible location close to the building. The signs must use contrasting colors and large letters and numbers.

F. PARKING

1. Two parking spaces per unit are required for family projects.
2. Elderly projects require a minimum of two-thirds (2/3) parking space per unit.
3. If local guidelines require less parking, the number of parking spaces required by the Agency may be reduced to meet those standards upon receiving Agency approval.
4. There must be at least one handicap parking space for each designated fully accessible apartment unit and must be the nearest available parking space to the unit.

G. REFUSE COLLECTION AREAS

1. Fencing consistent with the appearance of the residential buildings must screen the collection area. The fencing must be made of PVC or treated lumber and constructed for permanent use.
2. The pad for the refuse collection area, including the approach area, must be concrete (not asphalt).
3. The refuse collection areas may not be at the entrances or exits of the project.
4. Signs must be at all refuse collection areas to prohibit parking in front of collection facilities.
5. A concrete parking bumper, pipe bollards or 8 inch x 8 inch treated timber must be installed behind dumpsters.
6. All projects must include a pad for tenant recycling receptacles as part of the collection area ~~even if recycling is not yet available~~ and participate in a recycling program.

VI. ADDITIONAL PROVISIONS FOR REHABILITATION OF EXISTING HOUSING

The following requirements apply to rehabilitation of existing units. Existing apartments do not need to be physically altered to meet new construction standards. Any replacement of existing materials or components must comply with the design standards for new construction.

- A. Design documents must show all proposed changes to existing and proposed buildings, parking, utilities, and landscaping. An architect or engineer must prepare the design drawings.
- B. Submit a hazardous material report that provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect, building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- C. Submit an ~~engineer's~~ report assessing the structural integrity of the building(s) being renovated from an architect or engineer.
- D. Submit a current termite inspection report.
- E. Show "reserves for replacements" adequate to maintain and replace any existing systems and conditions not being replaced or addressed during rehabilitation.

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VII. ADDITIONAL PROVISIONS FOR ADAPTIVE RE-USE OF EXISTING STRUCTURES

- A. **Mechanical Systems:** All mechanical systems (including HVAC, plumbing, electrical, fire suppression, security system, etc.) must be completely enclosed and concealed. This may be achieved by utilizing existing spaces in walls, floors, and ceilings, constructing mechanical chases or soffits, dropping ceilings in portions of units, or other means. Where structural or other significant limitations make complete enclosure and concealment impossible, the applicant must secure approval from the Agency prior to installation of affected systems.
- B. **Windows:** Retain original window sashes, frames, and trim where possible. All original sashes must be repaired and otherwise upgraded to insure that all gaps and spaces are sealed so as to be weather tight. All damaged or broken window panes must be replaced. Where original window sashes cannot be retained, install replacement sashes be installed into existing frames. In all cases, windows must be finished with a complete coating of paint.
- C. **Floors:** All wood flooring is to be restored as closely to original condition as possible. Where repairs are necessary, flooring salvaged from other areas of the building must be utilized as fill material. If salvaged wood is not available, flooring of similar dimension and species must be used. All repairs must be made by feathering in replacement flooring so as to make the repair as discreet as possible. Cutting out and replacing square sections of flooring is prohibited. Where original flooring has gaps in excess of 1/8 inch, the gaps must be filled with an appropriate filler material prior to the application of final finish.
- D. **Hazardous Materials:** Submit a hazardous material report that provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

VIII. APPLICABLE ACCESSIBILITY REGULATIONS**A. FAIR HOUSING AMENDMENTS ACT**

All new construction projects are required by law to meet the handicap-accessibility standards outlined in the Fair Housing Laws, including the Federal Fair Housing Amendments Act of 1988 (the "Act"). The law provides that failure to design and construct certain residential dwelling units to include certain features of accessible design will be regarded as unlawful discrimination. Renovation projects may be exempt from design guidelines.

The law applies to all housing built after March 13, 1991 with four or more units. All units in buildings with four or more units must meet the requirements of the law if the buildings have one or more elevators. All ground floor units in other buildings containing four or more units must meet the requirements of the law. Certain sites with steep terrain may have some exclusions.

B. THE AMERICANS WITH DISABILITIES ACT

All projects are required by law to meet the handicap accessibility standards outlined in the Americans With Disabilities Act (ADA). The law provides that failure to design and construct

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certain public accommodations to include certain features of accessible design will be regarded as unlawful discrimination.

ADA Legislation became effective on July 26, 1992. Title III deals with non-discrimination on the basis of disability by public accommodations and in commercial facilities. Public accommodations include all new construction effective January 26, 1993 and impacts any rental office, model unit, public bathroom, building entrances, or any other public or common use area. Existing public accommodations must be retrofitted or altered beginning January 26, 1992, unless a financial or administrative burden exists.

The ADA guidelines do not affect residential units, since these are covered under Fair Housing and Section 504 laws.

C. NORTH CAROLINA STATE ACCESSIBILITY CODE

All projects are required by law to meet the handicap accessibility standards as outlined in the North Carolina State Building Code. State and/or local building code officials enforce the design and construction guidelines. Compliance with these guidelines is mandatory in order to receive a Certificate of Occupancy for your proposed development. A main feature of the state accessibility code is the provision requiring all multifamily residential projects intended as full time residences for rent or lease that have eleven or more living units to have a minimum of five percent of the units, or a minimum of one, that meet the requirements. These fully accessible designated units must also be distributed throughout the project, and not placed all in one building or just in one area of the site.

DEFINITIONS

Efficiency Apartment: A unit with a minimum of 450 heated square footage (assuming new construction) in which the bedroom and living area are contained in the same room. Each unit has a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, full size refrigerator) that is located in a separate room.

Heated Square Feet: The floor area of an apartment unit, measured interior wall to interior wall, not including exterior wall square footage. Interior walls are not to be deducted, and the area occupied by a staircase may only be counted once.

Net Square Feet: Total area, including exterior wall square footage, of all conditioned (heated/cooled) space, including hallways and common areas.

One Bedroom Apartment: A unit of at least 660 heated square feet (assuming new construction) containing at least four separate rooms including a living/dining room, full kitchen, a bedroom and full bathroom.

Single Room Occupancy (SRO) Unit: A single room unit with a minimum of 250 heated square feet (assuming new construction) that is the primary residence of its occupant(s). The unit must contain either food preparation or sanitary facilities. At least one component of either a full bathroom (shower, water closet, lavatory) and/or a full kitchen (refrigerator, stove top and oven, sink) is missing. There are shared common areas in each building that contain elements of food preparation and/or sanitary facilities that are missing in the individual units.

Studio Apartment: A unit with a minimum of 375 heated square feet (assuming new construction) in which the bedroom, living area and kitchenette are contained in the same room. Each unit has

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components of a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, refrigerator).

Three Bedroom Apartment: A unit with a minimum of 1,100 heated square feet (assuming new construction) containing at least seven separate rooms including a living/dining room, full kitchen, three bedrooms and 1.75 bathrooms, with each unit including a minimum of one bath with a full tub and one bath with an upright shower stall.

Two Bedroom Apartment: A unit with a minimum of 900 heated square feet (assuming new construction) containing at least five separate rooms including a living/dining room, full kitchen, two bedrooms and full bathroom.

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Appendix F

Monitoring Compliance with Low-Income Housing Tax Credit Requirements

(a) General.

Owners of low-income housing tax credit properties must comply with the following rules and procedures.

(b) Recordkeeping and record retention.

- (1) *Recordkeeping.* Owners must keep records for each qualified low-income building in the project that show for each year in the compliance period—
 - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
 - (ii) the percentage of residential rental units in the building that are low-income units;
 - (iii) the rent charged on each residential rental unit in the building (including any utility allowances);
 - (iv) the number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2);
 - (v) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 - (vi) the annual income certification of each low-income tenant per unit (for an exception to this requirement, see Section 42(g)(8)(B));
 - (vii) documentation to support each low-income tenant's income certification (other than as covered by the special rule for a 100 percent low-income building) as determined under Section 8 or by a public housing authority;
 - (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
 - (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).
- (2) *Record retention.* Owners must retain the records described in paragraph (b)(1) of this section for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- (3) *Inspection record retention.* Owners must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) **Certification and review.**

- (1) *Certification.* Owners must certify at least annually to the Agency that, for the preceding twelve (12) month period—
- (i) the project met the requirements of the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), whichever is applicable to the project;
 - (ii) there was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;
 - (iii) the owner has received an annual income certification from each low-income tenant, and documentation to support that certification consistent with paragraph (b)(1)(vii) of this section;
 - (iv) each low-income unit in the project was rent-restricted under Section 42(g)(2);
 - (v) all units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project (meaning an adverse final decision by HUD, a substantially equivalent state or local fair housing agency or federal court);
 - (vi) the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project (owners must attach any violation report or notice to its annual certification and state whether the violation has been corrected);
 - (vii) there was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or if there was a change, the nature of the change;
 - (viii) all tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;
 - (ix) if a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
 - (x) if the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and
 - (xi) an extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
 - (xii) all low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));
 - (xiii) no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42;

- (xiv) the ownership entity meets the requirements of the nonprofit set-aside if the project was allocated as such; and
 - (xv) no unauthorized changes in ownership or management agent(s) have occurred.
- (2) *Review.*
- (i) The Agency will review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of Section 42.
 - (ii) With respect to each tax credit project—
 - (A) the Agency will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and
 - (B) at least once every three (3) years, the Agency will conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
 - (iii) The Agency will randomly select low-income units and tenant records to be inspected and reviewed.
- (3) *Frequency and form of certification.* The certifications and reviews of paragraph (c)(1) and (2) of this section will be made annually covering each year of the fifteen (15) year compliance period under Section 42(i)(1). The owner certifications will be made under penalty of perjury.

(d) Inspections.

- (1) *In general.* The Agency has the right to perform an on-site inspection of any tax credit project at least through the end of the extended use period.
- (2) *Inspection standard.* For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency will review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) in order to determine whether—
 - (i) the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or
 - (ii) the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A tax credit project under Section 42 must continue to satisfy these codes. The Agency will report any violation of these codes to the Service.

(e) **Notification-of-noncompliance.**

- (1) *In general.* The Agency will give the notice described in paragraph (e)(2) of this section to the owner of a tax credit project and the notice described in paragraph (e)(3) of this section to the Service.
- (2) *Notice to owner.* The Agency will provide prompt written notice to the owner of a tax credit project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- (3) *Notice to Internal Revenue Service.*
 - (i) *In general.* The Agency will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance that will be reported to the Service under this paragraph (e)(3). If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the Agency will file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.
 - (ii) *Agency retention of records.* The Agency will retain records of noncompliance or failure to certify for six (6) years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency will retain the certifications and records described in paragraph (c) of this section for three (3) years from the end of the calendar year the Agency receives the certifications and records.
- (4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period is not to exceed ninety (90) days from the date of the notice to the owner described in paragraph (e)(2) of this section. The Agency may extend the correction period for up to six (6) months for good cause.

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of August 9, 2010, except as specifically described, and
- the North Carolina Administrative Code at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the Code of Federal Regulations, including Title 29, Part 1904-Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses the verbatim adoption that is effective November 8, 2010 concerning:

- Cranes and Derricks in Construction
(75 FR 47906 - 48177, August 9, 2010)

The *Federal Register* (FR), as cited above, contain both technical and economic discussions that explain the basis for the change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0101.

Proposed Effective Date: February 1, 2011

Public Hearing:

Date: October 20, 2010

Time: 10:00 a.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: When the 2009 H1N1 influenza pandemic was first identified, the North Carolina Division of Public Health requested local health departments to voluntary report all confirmed and probable 2009 H1N1 influenza cases, including fatal cases. On September 23, 2009 the State Health Director then issued a temporary order pursuant to G.S. 130A-141.1 requiring physicians licensed to practice medicine in this State to report all influenza-associated deaths in persons 18 years of age or older. (Influenza-associated deaths in persons less than 18 years of age were made reportable in 2004.). The reporting of all influenza-associated deaths was deemed critical to influenza surveillance efforts and was critical in helping public health officials identify and characterize the groups who are at highest risk so that they could design appropriate public health interventions to help save lives. The reporting required pursuant to the order was valid for only 90 days. The temporary order was subsequently adopted by the Rules Review Commission as a temporary rule. The temporary rule expired on September 11, 2010.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for this rule.

Comments may be submitted to: Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 715-5006; email chris.hoke@dhhs.nc.gov

Comment period ends: November 30, 2010

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: A copy of the fiscal note can be obtained from the agency.

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

Fiscal Note posted at:
http://www.osbm.state.nc.us/files/pdf_files/DHHS08272010.pdf

CHAPTER 41 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) anthrax - immediately;
- (3) botulism - immediately;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;

- (9) Creutzfeldt-Jakob disease – 7 days;
 - (10) cryptosporidiosis - 24 hours;
 - (11) cyclosporiasis - 24 hours;
 - (12) dengue - 7 days;
 - (13) diphtheria - 24 hours;
 - (14) Escherichia coli, shiga toxin-producing - 24 hours;
 - (15) ehrlichiosis - 7 days;
 - (16) encephalitis, arboviral - 7 days;
 - (17) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours;
 - (18) gonorrhea - 24 hours;
 - (19) granuloma inguinale - 24 hours;
 - (20) Haemophilus influenzae, invasive disease - 24 hours;
 - (21) Hantavirus infection – 7 days;
 - (22) Hemolytic-uremic syndrome – 24 hours;
 - (23) Hemorrhagic fever virus infection – immediately;
 - (24) hepatitis A - 24 hours;
 - (25) hepatitis B - 24 hours;
 - (26) hepatitis B carriage - 7 days;
 - (27) hepatitis C, acute - 7 days;
 - (28) human immunodeficiency virus (HIV) infection confirmed - 24 hours;
 - (29) influenza virus infection causing death in persons less than 18 years of age 24 hours;
 - (30) legionellosis - 7 days;
 - (31) leprosy – 7 days;
 - (32) leptospirosis - 7 days;
 - (33) listeriosis – 24 hours;
 - (34) Lyme disease - 7 days;
 - (35) lymphogranuloma venereum - 7 days;
 - (36) malaria - 7 days;
 - (37) measles (rubeola) - 24 hours;
 - (38) meningitis, pneumococcal - 7 days;
 - (39) meningococcal disease - 24 hours;
 - (40) monkeypox – 24 hours;
 - (41) mumps - 7 days;
 - (42) nongonococcal urethritis - 7 days;
 - (43) novel influenza virus infection – immediately;
 - (44) plague - immediately;
 - (45) paralytic poliomyelitis - 24 hours;
 - (46) pelvic inflammatory disease – 7 days;
 - (47) psittacosis - 7 days;
 - (48) Q fever - 7 days;
 - (49) rabies, human - 24 hours;
 - (50) Rocky Mountain spotted fever - 7 days;
 - (51) rubella - 24 hours;
 - (52) rubella congenital syndrome - 7 days;
 - (53) salmonellosis - 24 hours;
 - (54) severe acute respiratory syndrome (SARS) – 24 hours;
 - (55) shigellosis - 24 hours;
 - (56) smallpox – immediately;
 - (57) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours;
 - (58) streptococcal infection, Group A, invasive disease - 7 days;
 - (59) syphilis - 24 hours;
 - (60) tetanus - 7 days;
 - (61) toxic shock syndrome - 7 days;
 - (62) trichinosis - 7 days;
 - (63) tuberculosis - 24 hours;
 - (64) tularemia - immediately;
 - (65) typhoid - 24 hours;
 - (66) typhoid carriage (Salmonella typhi) - 7 days;
 - (67) typhus, epidemic (louse-borne) - 7 days;
 - (68) vaccinia – 24 hours;
 - (69) vibrio infection (other than cholera) - 24 hours;
 - (70) whooping cough - 24 hours;
 - (71) yellow fever - 7 days.
- (b) For purposes of reporting confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.
- (c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report:
- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - (C) Bacillus anthracis, the cause of anthrax.
 - (D) Bordetella pertussis, the cause of whooping cough (pertussis).
 - (E) Borrelia burgdorferi, the cause of Lyme disease (confirmed tests).
 - (F) Brucella spp., the causes of brucellosis.
 - (G) Campylobacter spp., the causes of campylobacteriosis.
 - (H) Chlamydia trachomatis, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (I) Clostridium botulinum, a cause of botulism.
 - (J) Clostridium tetani, the cause of tetanus.
 - (K) Corynebacterium diphtheriae, the cause of diphtheria.

- (L) *Coxiella burnetii*, the cause of Q fever.
 - (M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
 - (N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
 - (O) *Ehrlichia* spp., the causes of ehrlichiosis.
 - (P) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
 - (Q) *Francisella tularensis*, the cause of tularemia.
 - (R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
 - (S) Human Immunodeficiency Virus, the cause of AIDS.
 - (T) *Legionella* spp., the causes of legionellosis.
 - (U) *Leptospira* spp., the causes of leptospirosis.
 - (V) *Listeria monocytogenes*, the cause of listeriosis.
 - (W) Monkeypox.
 - (X) *Mycobacterium leprae*, the cause of leprosy.
 - (Y) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
 - (Z) Poliovirus (any), the cause of poliomyelitis.
 - (AA) Rabies virus.
 - (BB) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (CC) Rubella virus.
 - (DD) *Salmonella* spp., the causes of salmonellosis.
 - (EE) *Shigella* spp., the causes of shigellosis.
 - (FF) Smallpox virus, the cause of smallpox.
 - (GG) *Staphylococcus aureus* with reduced susceptibility to vancomycin.
 - (HH) *Trichinella spiralis*, the cause of trichinosis.
 - (II) Vaccinia virus.
 - (JJ) *Vibrio* spp., the causes of cholera and other vibrioses.
 - (KK) Yellow fever virus.
 - (LL) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) *Chlamydia psittaci*, the cause of psittacosis.
 - (iv) *Coxiella burnetii*, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) *Ehrlichia* spp., the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) *Chlamydia psittaci*
 - (ii) Hepatitis A virus.
 - (iii) Hepatitis B virus core antigen.
 - (iv) Rubella virus.
 - (v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes that have a level below that specified by the Centers for Disease Control and Prevention as the criteria used to define an AIDS diagnosis.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Labor intends to repeal the rules cited as 13 NCAC 07F .0901-.0927.

Proposed Effective Date: February 1, 2011

Public Hearing:

Date: October 19, 2010

Time: 10:00 a.m.

Location: 4 West Edenton Street, 2nd Floor Room 205, Raleigh, NC 27601

Reason for Proposed 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. Proposed temporary repeals were filed simultaneously with these proposed permanent repeals.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, NC 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted during the public hearing conducted on these rules, which are noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on November 30, 2010.*

Comments may be submitted to: *Erin T. Gould, 1101 Mail Service Center, Raleigh, NC 27699-1101; phone (919) 733-7885; fax (919) 733-4235; email erin.gould@labor.nc.gov*

Comment period ends: *November 30, 2010*

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 07 - 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 (e) 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.

Authority G.S. 95-131.

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. 81st 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.

Authority G.S. 95-131.

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.~~

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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.~~
 - (vi) ~~This Section, including applicable incorporated materials.~~

(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.~~

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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.~~

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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.~~

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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.~~~~

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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.~~

(c) ~~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.~~

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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.~~

(c) ~~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~~
 - (ii) ~~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.

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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(ee) (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).
 - (c) 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.~~
- (e) ~~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.~~

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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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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(c) 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.

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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.

(e) 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 (e)(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(e)(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.~~

- ~~(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.~~~~~~

(d) Equipment While Traveling.

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

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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.)

Authority G.S. 95-131.

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 derrick.
 - (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

- ~~(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.

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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 eorrected.~~
- (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 (e) 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.~~

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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.

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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)~~
 - (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.~~

Authority G.S. 95-131.

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.~~

Authority G.S. 95-131.

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.~~

Authority G.S. 95-131.

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 1/2 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 1/2 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 distribute 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.~~
 - (c) ~~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)(e), (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 overhaul 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.

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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.
- (c) 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.

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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, stifleleg, 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.

(c) 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 (c)(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) Anchorages:~~

~~(A) Anchorages, 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.

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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 (c) 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, bits, chocks, 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 (l)(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)	90mph

- (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.
- (1) 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 (1)(3) and (1)(4) of this Rule are met.
 - (2) The rated capacity modification required in Subparagraph (1)(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 (1)(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 elamps 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 (1)(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.

Authority G.S. 95-131.

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".~~

Authority G.S. 95-131.

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.~~

Authority G.S. 95-131.

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).~~

Authority G.S. 95-131.

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.
- (e) Rigging devices and their use, such as:
 - (i) Slings.
 - (ii) Spreaders.
 - (iii) Lifting beams.
 - (iv) Wire rope fittings, such as clips, shackles and wedge sockets.
 - (v) Saddles (softeners).
 - (vi) Clamps (beams).
- (d) The technical limitations of protective 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.~~~~

Authority G.S. 95-131.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 54 – NORTH CAROLINA PSYCHOLOGY BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend the rule cited as 21 NCAC 54 .2001.

Proposed Effective Date: *February 1, 2011*

Public Hearing:

Date: *December 2, 2010*

Time: *9:00 a.m.*

Location: *Comfort Suites, 7619 Thorndike Road, Greensboro, NC 27409*

Reason for Proposed Action: *To require supervisors to obtain three hours of training in licensing act and rules concerning supervision. The Board believes that this change is important because of the abundance of supervision rules infractions in recent years. Often, psychologists have appeared not to comply with supervision requirements because of ignorance of the law. The Board intends to reduce this problem by instituting the supervision training requirement.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to this Rule may be submitted, in writing, to Rebecca Osborne, Communication Specialist, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607; email to Rebecca@ncpsychologyboard.org; fax to Rebecca Osborne at (828) 265-8611; or at the public hearing. Persons wishing to make oral presentations at the hearing are requested to notify Ms. Osborne of such no later than 5:00 p.m. on November 29, 2010.*

Comments may be submitted to: *Rebecca Osborne, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607; fax (828) 265-8611; email rebecca@ncpsychologyboard.org*

Comment period ends: *December 2, 2010*

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 .2000 - SUPERVISION

21 NCAC 54 .2001 SUPERVISOR

(a) Except as provided in Paragraph (b) of this Rule, the following individuals shall be recognized as appropriate contract supervisors for individuals requiring supervision to practice psychology:

- (1) a licensed psychologist, permanent;
- (2) any person who was in a psychology position with the State of North Carolina on December

31, 1979, and who is still so employed, provided that such supervision is, and was on December 31, 1979, within the psychologist's regular job description and is only for activities which are part of the regular duties and responsibilities of the supervisee within his or her regular position at a State agency or department;

- (3) a doctoral level licensed psychologist who is licensed in the jurisdiction where the supervisee is practicing psychology; or
- (4) a licensed psychological associate as provided for in Rule .2005 in this Section.

(b) The Board may disapprove an otherwise qualified supervisor for the following reasons:

- (1) evidence that the supervisor is not competent or qualified to supervise the supervisee;
- (2) evidence that the supervisor has failed to adhere to legal or ethical standards;
- (3) evidence that there is a lack of congruence between the supervisor's training, experience, and area of practice and the supervisee's proposed area(s) of practice; or
- (4) evidence that the supervisor has a license against which disciplinary or remedial action has been ~~taken~~ taken; or
- (5) evidence that the supervisor has not completed the training described, and within the time frame set, in Paragraph (c) of this Rule.

(c) A licensee who engages in the supervision of an applicant for licensure, a Licensed Psychological Associate, or a Licensed Psychologist-Provisional must complete a three-hour training session, the content of which shall be determined and approved by the Board, which meets the following requirements:

- (1) is sponsored or co-sponsored by an entity designated and approved by the Board;
- (2) is presented by an individual or individuals designated and approved by the Board; and
- (3) addresses how to properly supervise in accordance with Board rules regarding supervision requirements.

The sponsor or co-sponsor of a training session shall submit a list of attendees who complete the three-hour training session to the Board no later than 30 days following the training session. The training shall be completed, and documentation of completion received in the Board's office, no later than February 1, 2012. If the training is not completed by February 1, 2012, a licensee shall not enter into a supervision contract with an applicant, a Licensed Psychological Associate, or a Licensed Psychologist-Provisional until he or she completes the training and the Board receives documentation of such. In the discretion of the Board, the training may be required to be repeated by a licensee in any case in which there is evidence of problems in the licensee's competence to supervise or adherence to supervision requirements. A licensee who successfully completes the training shall be permitted to count the hours toward the minimum continuing education hours required in 21 NCAC 54 .2104.

~~(e)~~(d) Each supervisor shall:

- (1) carefully assess his or her ~~own~~ ability to meet the supervisory needs of supervisees and potential supervisees;
- (2) offer and provide supervision only within the supervisor's own area(s) of competence and assure that the professional expertise and experience of the supervisor shall be congruent with the practice of the supervisee;
- (3) enter into a written agreement with the supervisee on a Board adopted supervision contract form which details the supervisee's obligations as well as the supervisor's responsibilities to the supervisee;
- (4) direct the supervisee to practice psychology only within areas for which he or she shall be qualified by education, training, or supervised experience;
- (5) establish and maintain a level of supervisory contact consistent with ~~established professional standards that described in the supervision contract form on file with the Board~~ and be accessible to the supervisee;
- (6) direct the supervisee to keep the supervisor informed of services performed by the supervisee;
- (7) advise the Board if the supervisor has reason to believe that the supervisee is practicing in a manner which indicates that ethical or legal violations have been committed;
- (8) maintain a clear and accurate record of supervision with a supervisee which documents the following:
 - (A) dates and appointment times of each supervision session, including the length of time of each session;
 - (B) summary content of each session including treatment issues addressed, concerns identified by the supervisor and supervisee, recommendations of the supervisor, and intended outcome for recommendations of the supervisor; and
 - (C) fees charged, if any, to the supervisee for ~~supervision~~; supervision.
- (9) ~~Except~~ except when prevented from doing so by circumstances beyond the supervisor's control, ~~the supervisor shall~~ retain securely and confidentially the records reflecting supervision with a supervisee for at least seven years from the date of the last session of supervision with a supervisee. If there are pending legal or ethical matters or if there is otherwise any other compelling circumstance, the supervisor shall retain the complete record of supervision securely and confidentially for an indefinite period of time.
- (9)(10) report on the required form to the Board that agreed upon supervision has occurred; and

(10)(11) file a final supervision report within two weeks of termination of supervision.

(d)(e) To maintain the professional nature of the supervision, a familial or strongly personal relationship shall not exist between the supervisor and supervisee, except in extraordinary circumstances, such as the lack of availability of any other qualified supervisor. In such cases, the Board shall require documentation that no other supervision is available and reference letters from colleagues commenting on the appropriateness of the proposed supervisory relationship.

Authority G.S. 90-270.5; 90-270.9.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to amend the rule cited as 21 NCAC 54 .2104.

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: December 2, 2010

Time: 9:00 a.m.

Location: Comfort Suites, 7619 Thorndike Road, Greensboro, NC 27409

Reason for Proposed Action: To change the continuing education requirements for individuals renewing their licenses for the 2014-16 biennium and thereafter. North Carolina's mandate for CE is appreciably below the national average, and the Board believes that the current requirement is inadequate in a rapidly evolving profession.

Procedure by which a person can object to the agency on a proposed rule: Objections to this Rule may be submitted, in writing, to Rebecca Osborne, Communication Specialist, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607; email to Rebecca@ncpsychologyboard.org; fax to Rebecca Osborne at (828) 265-8611; or at the public hearing. Persons wishing to make oral presentations at the hearing are requested to notify Ms. Osborne of such no later than 5:00 p.m. on November 29, 2010.

Comments may be submitted to: Rebecca Osborne, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607; fax (828) 265-8611; email rebecca@ncpsychologyboard.org

Comment period ends: December 2, 2010

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 .2100 - RENEWAL

21 NCAC 54 .2104 CONTINUING EDUCATION (AS OF JANUARY 1, 2013)

(a) The purpose of continuing education is to provide for the continuing professional education of all psychologists licensed by the North Carolina Psychology Board consistent with the purpose of the Board which is to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

(b) This Rule applies to all individuals licensed by the Board who choose to renew their licenses. Compliance with this Rule shall be is a condition for license renewal. A license shall be suspended automatically by operation of law in accordance with G.S. 90-270.15(f) if a licensee fails to meet continuing education requirements specified in this Rule. No exceptions to the continuing education requirements specified in this Rule shall be granted. This Rule shall apply to all individuals licensed by the North Carolina Psychology Board who choose to renew their licenses in North Carolina. Licensees who would otherwise not be required to be licensed, be exempt from licensure, e.g., not practicing psychology in North Carolina, may relinquish their licenses if they do not wish to comply with the requirements specified in this Rule.

(c) Definitions.

- (1) Continuing education hour – one hour of instructional or contact time as specified by an acceptable program sponsor, as defined in Subparagraph (3) of this Paragraph.
- (2) Biennial renewal period – the period of time from the first day of October in each even numbered year, continuing for the following 2 years and 60 days (i.e., until the last day in November in the next even numbered year).
- (3) Program sponsor –
 - (A) North Carolina Psychology Board;
 - (B) American Psychological Association (APA);
 - (C) American Psychological Association approved sponsors; or
 - (D) North Carolina Area Health Education Centers (NCAHEC).

(d) During each renewal period, a licensee must complete a minimum of 24 continuing education hours that meet all of the following requirements:

- (1) The continuing education hours must be obtained through in-person attendance at programs, or through completion of on-line or correspondence courses, that are sponsored or cosponsored by a program sponsor as defined in Subparagraph (c)(3) of this Rule.
- (2) The program sponsor must award a certificate of completion which documents the following information:
 - (A) name of sponsor and any cosponsor of program;
 - (B) number of contact hours credited explicitly for psychologists;
 - (C) title of program;
 - (D) date of program; and
 - (E) in the case of an APA approved sponsor, a statement that the entity is APA approved to provide the program as continuing education to psychologists.
- (3) A minimum of three continuing education hours must be in the area of ethics in the professional practice of psychology. To be credited as fulfillment of this requirement, the word "ethics" or a derivative of the word "ethics" must be in the title of the program, and the program must include such content.
- (4) Except as specified in Subparagraph (3) of this Paragraph, continuing education hours must be in the maintenance and enrichment of professional skills and competencies within the licensee's scope of practice in psychology, including, but not limited to:
 - (A) training in empirically supported treatment;
 - (B) the application of research to the practice of psychology;
 - (C) legal issues in psychology;
 - (D) training in how to properly supervise in accordance with Board rules regarding supervision requirements, as described in 21 NCAC 54 .2001(c); and
 - (E) training in best practice standards and guidelines.
- (5) Continuing education hours credited for license renewal in one biennium shall not be credited for license renewal in another biennium.

(e) To renew a licensee, a licensee shall submit the following to document that he or she has met the continuing education requirements specified in this Rule:

- (1) a signed attestation form created by the Board; and

(2) copies of certificates of completion which include the information specified in Subparagraph (d)(2) of this Rule.

(f) An individual licensed on or before October 1, 2012, must attest on the license renewal application for the 2014-2016 biennial renewal period, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule. An individual licensed after October 1, 2012, must attest on the second license renewal application following licensure, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule.

(g) An applicant for reinstatement of licensure must document that he or she has completed a minimum of 24 continuing education hours as specified in this Rule within the two years preceding the date of application for reinstatement of licensure and must attest on each subsequent biennial renewal application to having met the mandatory continuing education requirements specified in this Rule.

(e) A continuing education hour is defined as one hour of instructional or contact time.

(d) Category A requirements shall be met through attendance at formally organized courses, seminars, workshops, symposiums, and postdoctoral institutes; or through completion of on-line or correspondence courses. Programs shall relate to topics listed in Paragraph (g) of this Rule; be identified as offering continuing education for psychologists; and be sponsored or co-sponsored by the North Carolina Psychology Board, by the American Psychological Association, by American Psychological Association approved sponsors, or by North Carolina Area Health Education Centers. Contact hours shall be specified by the sponsor.

(e) Category B requirements shall be met through attendance at colloquia, presentations of invited speakers, grand rounds, and in-house seminars; attendance at programs offered at meetings of professional or scientific organizations which are not approved for Category A credit; participation in formally organized study groups or journal clubs; and self study (e.g., reading articles or books for professional growth or in preparation for publishing, teaching, or making a presentation). One continuing education hour shall be credited for each hour of participation in Category B activities.

(f) A licensee shall complete a minimum of 18 continuing education hours in each biennial renewal period which begins on the first day of October in each even numbered year. Continuing education hours shall not carry over from one renewal period to the next. At least nine continuing education hours shall be in Category A activities which shall include a minimum of three continuing education hours in the area of ethical and legal issues in the professional practice of psychology.

(g) Topics for Category A and Category B requirements shall fall within the following areas:

- (1) ethical and legal issues in the professional practice of psychology, and
- (2) the maintenance and upgrading of professional skills and competencies within the psychologist's scope of practice. This includes, but is not limited to, training in empirically supported treatments, the

application of research to practice, and training in best practice standards and guidelines.

(h) Continuing education hours shall not be allowed for the following activities:

- (1) business meetings or presentations, professional committee meetings, and meetings or presentations concerned with the management of a professional practice;
- (2) membership, office in, or participation on boards and committees of professional organizations;
- (3) research;
- (4) teaching, presentations, and publication, except as allowed as self study in preparation for these activities as provided under Paragraph (e) of this Rule; and
- (5) personal psychotherapy or personal growth experience.

(i) An individual licensed on or before October 1, 2002, shall attest on the license renewal application for the 2004-2006 biennial renewal period, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two years preceding the October 1st renewal date. An individual licensed after October 1, 2002, shall attest on the second license renewal application following licensure, and on each subsequent biennial renewal application, to having met the mandatory continuing education requirements specified in this Rule during the two years preceding the October 1st renewal date.

(j) An applicant for reinstatement of licensure shall document that he or she has completed a minimum of 18 continuing education hours as specified in this Rule within the two years preceding the date of application for reinstatement of licensure and shall attest on each subsequent biennial renewal application to having met the mandatory continuing education requirements specified in this Rule.

(k) For Category A, a licensee shall maintain certificates from Category A programs and written documentation of the following for a minimum of seven years:

- (1) date of program;
- (2) number of contact hours;
- (3) name of sponsor of program;
- (4) title of program; and
- (5) location of program.

(l) For Category B, a licensee shall maintain applicable written documentation of the following for Category B activities consistent with this Rule for a minimum of seven years:

- (1) date of program or activity;
- (2) number of instructional or contact hours as defined in Paragraphs (d) and (e) of this Rule;
- (3) description of activity;
- (4) name of presenter, facilitator, or leader;
- (5) name of sponsor;
- (6) location;
- (7) full citation of article; and
- (8) summary of content.

The nature of the Category B activity determines the applicable documentation. For example, name of presenter, facilitator, or

leader; name of sponsor; and location are not required when a licensee documents reading a journal article.

~~(m) A licensee shall provide certificates, documentation, and a signed attestation form designed by the Board within 30 days after receiving written notification from the Board that proof of completion of continuing education hours is required. The Board may randomly verify the documentation of required continuing education hours for a percentage of licensees and~~

~~may do so during the investigation of any complaints. A licensee shall not submit documentation of continuing education obtained unless directed to do so by the Board. The Board shall not serve as a depository for continuing education materials prior to its directing that documentation must be submitted.~~

Authority G.S. 90-270.9; 90-270.14(a)(2).

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on August 19, 2010.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

INSURANCE, DEPARTMENT OF

<u>Definitions</u>	11	NCAC	05A	.0101	24:22 NCR
<u>Eligible Members</u>	11	NCAC	05A	.0301	24:22 NCR
<u>Certification of Eligibility</u>	11	NCAC	05A	.0302*	24:22 NCR
<u>Administration of Firefighters' Relief Fund</u>	11	NCAC	05A	.0303*	24:22 NCR
<u>Drills and Meeting Requirements</u>	11	NCAC	05A	.0505*	24:22 NCR
<u>Records and Documents</u>	11	NCAC	05A	.0507*	24:22 NCR
<u>Requirements</u>	11	NCAC	05A	.0603*	24:22 NCR
<u>Requirements for Units Required to Match Grants</u>	11	NCAC	05A	.0703*	24:22 NCR

LABOR, DEPARTMENT OF

<u>Scope</u>	13	NCAC	07F	.0901*	24:03 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Nutrient Offset Payments</u>	15A	NCAC	02B	.0240*	24:16 NCR
<u>Nutrient Offset Payment Rates for the NC Ecosystem</u>	15A	NCAC	02B	.0274*	24:16 NCR
<u>Catawba River Basin</u>	15A	NCAC	02B	.0308*	24:12 NCR
<u>Prevention of Significant Deterioration</u>	15A	NCAC	02D	.0530*	24:17 NCR
<u>Sources In Nonattainment Areas</u>	15A	NCAC	02D	.0531*	24:17 NCR
<u>Applicability</u>	15A	NCAC	02D	.0902*	24:17 NCR
<u>Compliance Schedules for Sources In Nonattainment Areas</u>	15A	NCAC	02D	.0909*	24:17 NCR
<u>Automobile and Light Duty Truck Manufacturing</u>	15A	NCAC	02D	.0917	24:17 NCR
<u>Paper Coatings</u>	15A	NCAC	02D	.0920	24:17 NCR
<u>Fabric and Vinyl Coating</u>	15A	NCAC	02D	.0921	24:17 NCR
<u>Metal Furniture Coatings</u>	15A	NCAC	02D	.0922*	24:17 NCR
<u>Surface Coating of Large Appliance Parts</u>	15A	NCAC	02D	.0923*	24:17 NCR
<u>Coating of Miscellaneous Metal Parts and Products</u>	15A	NCAC	02D	.0934	24:17 NCR
<u>Factory Surface Coating of Flat Wood Paneling</u>	15A	NCAC	02D	.0935*	24:17 NCR
<u>Graphic Arts</u>	15A	NCAC	02D	.0936	24:17 NCR
<u>Miscellaneous Volatile Organic Compound Emissions</u>	15A	NCAC	02D	.0951	24:17 NCR
<u>Petition for Alternative Controls for RACT</u>	15A	NCAC	02D	.0952	24:17 NCR
<u>Offset Lithographic Printing and Letterpress Printing</u>	15A	NCAC	02D	.0961*	24:17 NCR
<u>Industrial Cleaning Solvents</u>	15A	NCAC	02D	.0962*	24:17 NCR
<u>Fiberglass Boat Manufacturing Materials</u>	15A	NCAC	02D	.0963*	24:17 NCR
<u>Miscellaneous Industrial Adhesives</u>	15A	NCAC	02D	.0964*	24:17 NCR
<u>Flexible Package Printing</u>	15A	NCAC	02D	.0965*	24:17 NCR

APPROVED RULES

<u>Paper, Film and Foil Coatings</u>	15A	NCAC	02D	.0966*	24:17 NCR
<u>Miscellaneous Metal and Plastic Parts Coatings</u>	15A	NCAC	02D	.0967*	24:17 NCR
<u>Automobile and Light Duty Truck Assembly Coatings</u>	15A	NCAC	02D	.0968*	24:17 NCR
<u>Permits Requiring Public Participation</u>	15A	NCAC	02Q	.0306*	24:17 NCR

WILDLIFE RESOURCES COMMISSION

<u>Beaufort County</u>	15A	NCAC	10F	.0303*	24:19 NCR
<u>Carteret County</u>	15A	NCAC	10F	.0330*	24:19 NCR
<u>Pitt County</u>	15A	NCAC	10F	.0354*	24:19 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>Premises: Miscellaneous Vermin Control</u>	15A	NCAC	18A	.2633*	24:15 NCR
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COSMETIC ART EXAMINERS, BOARD OF

<u>Application/Licensure/Individuals Who Have Been Convicted...</u>	21	NCAC	14I	.0401*	24:12 NCR
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ELECTROLYSIS EXAMINERS, BOARD OF

<u>Address</u>	21	NCAC	19	.0101	24:17 NCR
<u>Definitions</u>	21	NCAC	19	.0103*	24:17 NCR
<u>Advertising</u>	21	NCAC	19	.0104*	24:17 NCR
<u>Fees</u>	21	NCAC	19	.0201*	24:17 NCR
<u>Application for Licensure</u>	21	NCAC	19	.0202*	24:17 NCR
<u>Application for Renewal Reinstatement or Reactivation of</u>	21	NCAC	19	.0204*	24:17 NCR
<u>---</u>					
<u>Offices</u>	21	NCAC	19	.0403*	24:17 NCR
<u>Supervising Physician</u>	21	NCAC	19	.0501*	24:17 NCR

FORESTERS, BOARD OF REGISTRATION FOR

<u>Code of Ethics</u>	21	NCAC	20	.0115*	24:20 NCR
<u>Petition for Rule-Making--Declaratory Rulings</u>	21	NCAC	20	.0125*	24:20 NCR

FUNERAL SERVICE, BOARD OF

<u>Report to General Assembly</u>	21	NCAC	34A	.0203*	24:19 NCR
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RESPIRATORY CARE BOARD

<u>Definitions</u>	21	NCAC	61	.0103*	24:21 NCR
<u>License Renewal</u>	21	NCAC	61	.0302*	24:21 NCR
<u>Continuing Duty to Report</u>	21	NCAC	61	.0308	24:21 NCR
<u>Continuing Education Requirements</u>	21	NCAC	61	.0401*	24:21 NCR

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Remote Location Telepractice</u>	21	NCAC	64	.0219*	24:17 NCR
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TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 05A .0101 DEFINITIONS

As used in this Subchapter:

- (1) "ISO" means the Insurance Services Office, Inc., or any successor organization.
- (2) "North Carolina Fire Suppression Rating Schedule" or "NCFSRS" means the ISO Fire Suppression Rating Schedule. The NCFSRS is incorporated into this Subchapter by reference, including subsequent amendments or editions. The NCFSRS may be obtained from the ISO at <http://www.iso.com/> for fifty-five dollars (\$55.00). Fire chiefs and local government chief administrative officials may request a single copy of the FSRS, or on-line access to the FSRS and commentaries, free of charge.
- (3) "NFIRS" means the National Fire Incident Reporting System administered by the United States Fire Administration (USFA) and coordinated and collected in North Carolina by the Office of the State Fire Marshal. The NFIRS can be accessed electronically and free software and copies of the program may be obtained by contacting the NC Office of the State Fire Marshal at:
Office of the State Fire Marshal
P.O. Box 1202 Mail Service Center
Raleigh, NC 27699-1202
or by contacting the USFA at <http://www.usfa.dhs.gov>.
- (4) "Office of State Fire Marshal" or "OSFM" means the Office of State Fire Marshal of the North Carolina Department of Insurance.

History Note: Authority G.S. 58-2-40; 58-79-45; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. September 1, 2010; October 1, 2006; July 1, 1986.

11 NCAC 05A .0301 ELIGIBLE MEMBERS

The certification provided by the North Carolina State Firemen's Association to the Department under G.S. 58-84-40(b) shall contain the balance in each local fund, and a verification that a financial statement and status of fire department membership was submitted.

History Note: Authority G.S. 58-2-40(1); 58-84-40; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. September 1, 2010; October 1, 2006; February 1, 1993; July 1, 1986.

11 NCAC 05A .0302 CERTIFICATION OF ELIGIBILITY

The certification form required by G.S. 58-84-46 shall be entitled "Report of Fire Conditions" and shall, in addition to the information required by G.S. 58-84-46, include the following:

- (1) The name of the city, fire district, or sanitary district;
- (2) Names of the "board of trustees of the local Firefighters' Relief Fund"; and
- (3) Identity of the treasurer of the local Firefighters' Relief Fund.

History Note: Authority G.S. 58-2-40(1); 58-84-46; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. September 1, 2010; October 1, 2006; July 1, 2002; February 1, 1993; July 1, 1986.

11 NCAC 05A .0303 ADMINISTRATION OF FIREFIGHTERS' RELIEF FUND

(a) The Fire and Rescue Services Division shall compile and maintain accurate records utilizing computer or paper records, including the following information:

- (1) Certifications of the "Report of Fire Conditions" filed by the local clerks or finance officers;
- (2) Certifications of the member fire departments, the fund balance of each fund, and the bond amount covering each fund, filed by the North Carolina State Firemen's Association each year;
- (3) Amount of Firefighters' Relief Fund tax assigned by the North Carolina Department of Revenue; and
- (4) Amount of property tax values for each rated fire district as filed by each County.

(b) If a fire department dissolves, the following procedures apply:

- (1) If a neighboring fire department elects to expand its boundaries to include the area served by the dissolved fire department, the Firefighters' Relief Fund account shall be transferred to the expanding fire department.
- (2) If no neighboring fire department elects to include the dissolved fire department's territory into its own, the dissolved fire department shall not be certified and shall forfeit its right to future annual payments from the funds mentioned in Article 84 of Chapter 58.

(c) If a rated fire department that is serving two or more rated districts divides into separate fire departments, the original rated fire department shall retain the relief fund for each rated district. Any new fire department resulting from the division shall be entitled to receive relief fund money when it has been rated.

(d) Fire department checks shall be disbursed by the Department of Insurance to the finance officer of the local government entity.

History Note: Authority G.S. 58-2-40(1); 58-84-25; 58-84-40; 58-84-50; 58-85-1; 58-86-25; Eff. February 1, 1976; Readopted Eff. May 12, 1978;

Amended Eff. September 1, 2010; February 1, 1993; July 1, 1986.

11 NCAC 05A .0505 DRILLS AND MEETING REQUIREMENTS

- (a) All members of fire departments shall comply with the drills and meetings requirements of G.S. 58-86-25.
- (b) The chief officer of each fire department shall:
 - (1) within one year of appointment, complete a class on basic management of fire department operations and records approved by the North Carolina Fire and Rescue Commission for chief officer based upon National Fire Protection Association (NFPA) standards for chief officer. NFPA Standard 1021 is incorporated into this Subchapter by reference, including but not limited to subsequent amendments or editions. NFPA Standard 1021 is available from the National Fire Protection Association at <http://www.nfpa.org/> for thirty-seven dollars (\$37.00); and
 - (2) complete the course as described in Subparagraph (1) of this Paragraph, which shall be titled "Chief 101" a minimum of every five years.

History Note: Authority G.S. 58-2-40; 58-36-10; 58-78-5; 58-86-25; Eff. September 1, 1985; Amended Eff. October 1, 2010; October 1, 2006; July 1, 1992.

11 NCAC 05A .0507 RECORDS AND DOCUMENTS

- (a) In addition to personnel records, the city or county manager or fire department chief or county fire marshal shall keep records on dates, times and locations of emergencies on the current version of the National Fire Incident Reporting System (NFIRS) as prescribed in 11 NCAC 05A .0101(3), inventory of equipment, and maintenance of apparatus; and shall submit the following documents to the Department of Insurance: roster, charter, contract(s) with city and county, service test report, weight tickets, current map and written description of the map, an inventory of protective clothing, and verification from the county approving the fire district boundaries.
- (b) Whenever a fire department responds to a fire, a chief of that department shall complete or cause to be completed a fire incident report on the current version of the National Fire Incident Reporting System (NFIRS) in accordance with 11 NCAC 05A .0101(3) and otherwise comply with G.S. 58-79-45.

History Note: Authority G.S. 58-2-40; 58-36-10(3); 58-79-45; 58-86-25; Eff. September 1, 1985; Amended Eff. September 1, 2010; October 1, 2006; July 1, 1992.

11 NCAC 05A .0603 REQUIREMENTS

- (a) The Volunteer Fire Department Fund application forms for requesting grants for equipment purchases and capital expenditures, shall be made available by the Division to all

departments registered with the Division and approved by the Division by the first business day of January of each year.

- (b) Applications shall be submitted to the Division and be postmarked or electronic date stamped no later than March 1. Applications bearing postmarks or electronic date stamps later than March 1 are disqualified. The names of grant recipients shall be announced on May 15. If May 15 falls on a weekend, the announcement shall be made on the following Monday.
- (c) Any application received by the Division that is incorrect or incomplete shall be returned to the department with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the department. The failure of the department to return the requested correct or complete information shall result in the forfeiture by the department of its eligibility for a grant during that grant cycle.
- (d) If the application includes a request for a motor vehicle, the vehicle specifications and, if used, the previous year's maintenance records shall accompany the application.
- (e) The following documents shall accompany a grant application:
 - (1) A contract verification form showing an agreement between the department and a county for the department to provide fire protection to a district;
 - (2) A current roster comprising a list of eligible firemen as defined in G.S. 58-86-25;
 - (3) A statement verifying the population that the department serves;
 - (4) A financial statement of the department; and
 - (5) A statement verifying that the department is financially able to match the grant.

(f) Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b), payment agreements, and equipment invoices shall be received by the Division no later than September 30 following the announcement of grant recipients. Departments submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, on or before September 30 shall be contacted by the Division and given 10 business days to submit correct documents. The failure of any department to comply shall result in the department forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a department before May 15 or equipment that is back-ordered by a vendor for a department or equipment not received by a department on or before September 30 shall not be funded by grants from the Fund.

(g) Equipment purchased with grants is subject to inspection by Division personnel.

History Note: Authority G.S. 58-2-40(1); 58-36-10(3); 58-87-1; 143C-6-23(b); Eff. February 1, 1993; Amended Eff. September 1, 2010; January 1, 2007.

11 NCAC 05A .0703 REQUIREMENTS FOR UNITS REQUIRED TO MATCH GRANTS

- (a) The Volunteer Rescue/EMS Fund application forms for requesting grants for equipment purchases and capital expenditures, shall be made available by the Division to all

departments registered with Division and approved by the Division by the first business day of August of each year.

(b) Applications shall be submitted to the Division and be postmarked or electronic date stamped no later than October 1. Applications bearing postmarks or electronic date stamps later than October 1 are disqualified. The names of the grant recipients shall be announced on December 15. If December 15 falls on a weekend, the announcement shall be made on the following Monday.

(c) Any application received by the Division that is incorrect or incomplete shall be returned to the unit with a request that the correct or complete information be sent to the Division within 10 business days after receipt by the unit. The failure by the unit to return the requested correct or complete information shall result in the forfeiture by the unit of its eligibility for a grant during that grant cycle.

(d) If the application includes a request for a vehicle, the vehicle specifications and, if used, the previous year's maintenance records shall accompany the application.

(e) The following documents shall accompany a grant application;

- (1) A Rescue Provider Statement showing that a county recognizes the unit as providing rescue or rescue/EMS services to a specified district. As used in this Subparagraph, "rescue provider statement" means a statement, signed by representatives of a unit and the county in which the rescue or rescue/EMS services are provided, that the unit provides rescue or rescue/EMS services within the county;
- (2) A current roster of unit members;
- (3) A statement verifying that the unit is financially able to match the amount of the grant; and
- (4) A financial statement of the unit.

(f) Statements that there are no overdue taxes, conflict of interest statements as defined in G.S. 143C-6-23(b), payment agreements, and equipment invoices shall be received by the Division no later than April 30. Units submitting incorrect invoices, such as sales orders, acknowledgements, and packing slips, before April 30 shall be contacted by the Division and given 10 business days to submit the correct documents. The failure of any unit to comply shall result in the unit forfeiting its eligibility for a grant from the Fund. Equipment or capital improvements that are ordered by a unit before December 15 or equipment that is back-ordered by a vendor for a unit or equipment not received by a unit on or before April 30 shall not be funded by grants from the Fund.

(h) Equipment purchased with grants is subject to inspection by Division personnel.

History Note: Authority G.S. 58-2-40(1); 58-87-5; 143C-6-23(b); Eff. February 1, 1993; Amended Eff. September 1, 2010; January 1, 2007.

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.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0240 NUTRIENT OFFSET PAYMENTS

(a) The purpose of this Rule is to establish procedures for the optional payment of nutrient offset fees to the NC Ecosystem Enhancement Program, subsequently referred to as the Program, or to other public or private parties where the Program or such parties implement projects for nutrient offset purposes and accept payments for those purposes, and where either of the following applies:

- (1) The following rules of this Section allow offsite options or nutrient offset payments toward fulfillment or maintenance of nutrient reduction requirements:
 - (A) .0234 and .0235 of the Neuse nutrient strategy,

- (B) .0258 of the Tar-Pamlico nutrient strategy, and
- (C) applicable rules of the Jordan nutrient strategy, which is described in Rule .0262; and

(2) Other rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements.

(b) Offset fees paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following geographic restrictions:

- (1) Load reductions shall be located within the same 8-digit cataloguing unit, as designated by the US Geological Survey, as the loading activity that is being offset;
- (2) The Division shall track impacts by 10-digit watershed, as designated by the US Geological Survey and providers shall locate projects proportional to the location of impacts to the extent that the projects would meet the least cost alternative criterion per S.L. 2007-438. The location of load reduction projects shall be reviewed during the approval process described in Paragraph (c) of this Rule;
- (3) Impacts that occur in the watershed of Falls Lake in the upper Neuse River Basin may be offset only by load reductions in the same watershed; Impacts in the Neuse 01 8-digit cataloguing unit below the Falls watershed, as designated by the US Geological Survey, may be offset only by load reductions in that same lower watershed;
- (4) Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 02B .0262; and
- (5) Any further restrictions established by the Commission through rulemaking.

(c) The Program and other parties shall obtain Division approval of proposed nutrient offset projects prior to construction. Other parties shall sell credits in compliance with approved credit release schedules and with the requirements of this Rule. Project approval shall be based on the following standards:

- (1) Load reductions eligible for credit shall not include reductions used to satisfy other requirements under the same nutrient strategy;
- (2) The Program and other parties shall agree to provide adequate financial assurance to protect and maintain load reductions for the stated duration, including for maintenance, repair and renovation of the proposed measure;
- (3) The Program and other parties shall agree that once credits are established for a measure and until they are exhausted, they shall provide a credit/debit ledger to the Division at regular intervals;
- (4) The Program and other parties shall agree that the party responsible for a measure shall allow

- the Division access to it throughout its lifetime for compliance inspection purposes;
- (5) The Program or other party seeking approval shall obtain a site review from Division staff prior to Division approval to verify site conditions suitable to achieve the proposed load reductions through the proposed measure; and
 - (6) The Program shall submit a proposal, and other parties shall submit a proposal or a draft banking instrument, addressing the following items regarding a proposed load-reducing measure:
 - (A) Identify the location and site boundaries of the proposed measure, the geographic area to be served by credits in compliance with the requirements of Paragraph (b) of this Rule, existing conditions in the contributing drainage area and location of the measure, and the nature of the proposed measure with sufficient detail to support estimates of load reduction required in this Paragraph;
 - (B) Provide calculations of the annual magnitudes of load reductions and identify final credit values incorporating any delivery factors or other adjustments required under rules identified in Paragraph (a) of this Rule;
 - (C) Define the duration of load reductions, and provide a conservation easement or similar legal mechanism to be recorded with the County Register of Deeds and that is sufficient to ensure protection and maintenance of load reductions for the stated duration;
 - (D) Identify the property owner and parties responsible for obtaining all permits and other authorizations needed to establish the proposed measure, for constructing and ensuring initial performance of the proposed measure, for reporting on and successfully completing the measure, for holding and enforcing the conservation easement, and for ensuring protection and maintenance of functions for its stated duration;
 - (E) Provide a plan for implementing the proposed measure, including a timeline, a commitment to provide an as-built plan and report upon establishment of the measure, elements to be included in the as-built plan and report, a commitment to provide a bond or other financial assurance sufficient to cover all aspects of establishment and initial performance prior to the release of any credits, and criteria for successful completion; and
 - (F) Provide a monitoring and maintenance plan designed to achieve successful completion, that commits to annual reporting to the Division until success is achieved, that recognizes the Division's authority to require extension or re-initiation of monitoring depending on progress toward success, and that commits to a final report upon completion. The final report shall reaffirm the party that shall hold and enforce the conservation easement or other legal instrument.
 - (d) The Program shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments accepted by the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21
 - (e) Persons who seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules, the requirements of Paragraph (b) of this Rule, and the following:
 - (1) A non-governmental entity shall purchase nutrient offset credit from a party other than the Program if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and shall otherwise demonstrate to the permitting authority that such credit is not available before seeking to make payment to the Program;
 - (2) Offset payments made to the Program shall be contingent upon acceptance of the payment by the Program. The financial, temporal and technical ability of the Program to satisfy the mitigation request will be considered to determine whether the Program will accept or deny the request;
 - (3) Where persons seek to offset more than one nutrient type, they shall make payment to address each type;
 - (4) The offset payment shall be an amount sufficient to fund 30 years of nutrient reduction.
 - (5) Persons who seek offsets to meet new development stormwater permitting requirements shall provide proof of offset credit purchase to the permitting authority prior to approval of the development plan; and
 - (6) A wastewater discharger that elects to purchase offset credits for the purpose of fulfilling or maintaining nutrient reduction requirements shall submit proof of offset credit acquisition or a letter of commitment from the

Program or third party provider with its request for permit modification. Issuance of a permit that applies credits to nutrient limits shall be contingent on receipt of proof of offset credit acquisition. A discharger may propose to make incremental payments for additional nutrient allocations, contingent upon receiving a letter of commitment from the Program or third party provider to provide the offset credit needed for permit issuance. In that event the Division may issue or modify that permit accordingly, and shall condition any flow increase associated with that incremental purchase on payment in full for the additional allocation. Offset responsibility for nutrient increases covered under this Paragraph shall be transferred to the Program or third party provider when it has received the entire payment.

(f) Credits associated with load reducing activities funded under this Rule shall be awarded exclusively to the person, municipality, discharger, or group of dischargers who paid the offset fee.

History Note: Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;

Eff. August 1, 1998;

Amended Eff. August 1, 2006;

Amended Eff. September 1, 2010.

15A NCAC 02B .0274 NUTRIENT OFFSET PAYMENT RATES FOR THE NC ECOSYSTEM ENHANCEMENT PROGRAM

(a) The purpose of this Rule is to establish actual cost rates for the payment of nutrient offset fees to the NC Ecosystem Enhancement Program, subsequently referred to as the Program, where rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements and where the Program implements projects to achieve nutrient reductions. Wherever the term "cost" or "costs" is used in this Rule, it means the Program's costs associated with nutrient offset projects in a given rate area, as described below. For this purpose, the Program shall operate according to the requirements in this Rule.

(b) The Program shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and special rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the actual and complete per-pound nutrient reduction costs incurred by implementing projects in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rule requirements for each river basin.

(d) Special Watershed Rates. The Program shall apply special watershed rates to:

- (1) The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and

- (2) Any eight digit cataloging unit or smaller watershed subject to nutrient management rules where costs are 40 percent greater than costs in the larger watershed or river basin in which that cataloging unit is located.

The initial rate for a special watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a special watershed the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

(e) Once an area has been established as an area with Special Watershed Rates, it shall remain a Special Watershed Rate area.

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be adjusted quarterly whenever the rate increases ten percent above the existing rate. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 1 on the Program's Web site, www.nceep.net, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April as applicable, and shall be published on the same Web site two weeks prior to that date.

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per pound values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) Actual Costs_{PresentDay} means the sum of all costs adjusted for inflation as described in this Sub-Item. Costs are project costs and administrative costs. Projects in the calculation are completed projects, terminated projects and projects in process. At the time the rate is set, to ensure that collected payments are sufficient to implement new projects, all completed land acquisition contracts and expenditures shall be adjusted to present day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process are calculated using the Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the

Program's per credit contract costs of the same type adjusted to the inflated future value when the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from either the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values or the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three year period;

(2) As used in this Rule:

- (A) Project Costs are the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance and long-term stewardship;
- (B) Administrative Costs are costs associated with administration of the Program including staffing, supplies and rent; and
- (C) The cost for projects in process is the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;

(3) Total Pounds Offset_{PresentDay} means the total number of pounds of a nutrient reduced by projects in the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted; and

(4)

$$\text{AdjustmentFactor} = \frac{(\text{ActualCosts} - \text{ActualReceipts})}{\text{NumberofPoundsPaidDuringAdjustmentPeriod}}$$

Where:

- (A) The Adjustment Factor is a per-pound value used to bring actual costs and actual receipts into balance, ensuring that future payments are sufficient to

cover the cost of implementing the Program in the rate area. The Adjustment Factor shall be applied in only those calculation periods where actual costs are calculated to be greater than actual receipts;

(B) Actual Costs are the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that existing contracts and completed land acquisitions are not adjusted for inflation;

(C) Actual Receipts are the sum of all offset payments made to the Program to date in the rate area at the time of calculation; and

(D) Number of Pounds Paid during Adjustment Period is the average number of pounds of a nutrient paid to the Program over the last three years in the rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be set to 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.

(5) Adjustment Period is one to four years determined as follows for a rate area:

(A) One year if Actual Costs exceed Actual Receipts by less than five percent;

(B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;

(C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and

(D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

(h) When individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for each nutrient being offset by the project.

(i) In cases where an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment for each nutrient.

History Note: Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2006, c. 215; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486; Eff. September 1, 2010.

15A NCAC 02B .0308 CATAWBA RIVER BASIN

(a) The Catawba River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/> <http://h2o.enr.state.nc.us/csu/>; and
 - (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North Carolina
 - (B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina
 - (C) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.
- (b) Unnamed Streams. Such streams entering South Carolina are classified "C."
- (c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:
- (1) March 1, 1977;
 - (2) August 12, 1979;
 - (3) April 1, 1982;
 - (4) January 1, 1985;
 - (5) August 1, 1985;
 - (6) February 1, 1986;
 - (7) March 1, 1989;
 - (8) May 1, 1989;
 - (9) March 1, 1990;
 - (10) August 1, 1990;
 - (11) August 3, 1992;
 - (12) April 1, 1994;
 - (13) July 1, 1995;
 - (14) September 1, 1996;
 - (15) August 1, 1998;
 - (16) April 1, 1999;
 - (17) August 1, 2000;
 - (18) August 1, 2004;
 - (19) May 1, 2007;
 - (20) September 1, 2010.
- (d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:
- (1) Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.
- (e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:
- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C.
 - (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.
- (f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:
- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
 - (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.
- (g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:
- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B.
 - (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.
- (i) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.
- (j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:
- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
 - (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV&B CA.
- (k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the South Fork Catawba River [Index No. 11-129-

(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] from Class WS-IV to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:

- (1) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class C Tr HQW; and
- (2) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries, from Class C Tr to Class C Tr HQW and from Harris Creek to McDowell County SR 1434, including all tributaries, from Class C to Class C HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 with the reclassification of a portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31) from Class WS-IV & B and WS-IV to Class WS-V & B and WS-V.

(n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 with the reclassification of Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW.

(o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended April 1, 1999 as follows:

- (1) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV&B to Class WS-IV&B CA; and
- (2) The primary classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
- (3) The primary classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.

(r) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(s) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended September 1, 2010 with the reclassification of the Catawba River [Index No. 11-(1)] and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from C Tr to C Tr HQW.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);

Eff. February 1, 1976;

Amended Eff. September 1, 2010; May 1, 2007; August 1, 2004; August 1, 2000; April 1, 1999; August 1, 1998; September 1, 1996; July 1, 1995; April 1, 1994; August 3, 1992; August 1, 1990.

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply except the definition of "baseline actual emissions." For the purposes of this Rule:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the

Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6.

- (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant.

- (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.

- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.

- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) is seven years.

- (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply.

(c) All areas of the State are classified as Class II except that the following areas are Class I:

- (1) Great Smoky Mountains National Park;
- (2) Joyce Kilmer Slickrock National Wilderness Area;
- (3) Linville Gorge National Wilderness Area;
- (4) Shining Rock National Wilderness Area; and
- (5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated

as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install best available control technology for NO_x and SO₂, regardless of applicability of the rest of this Rule.

(i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures apply:

- (1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

- (2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project,
- (2) identification of sources whose emissions could be affected by the project,
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c),
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated, and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(v) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated

in this Rule is that as of June 13, 2007 and does not include any subsequent amendments or editions to the referenced material.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;

Eff. June 1, 1981;

Amended Eff. December 1, 1992; August 1, 1991;

Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is effective, whichever is sooner;

Amended Eff. September 1, 2010; May 1, 2008; July 28, 2006; July 1, 1997; February 1, 1995; July 1, 1994.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 apply except the definition of "baseline actual emissions." For the purposes of this Rule:

- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any

- emission limitation that was legally enforceable during the consecutive 24-month period.
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions.
 - (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6.
 - (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant.
 - (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
 - (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years.
- (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.
 - (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.
 - (d) This Rule is not applicable to:
 - (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
 - (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
 - (3) emission of pollutants for which the source or modification is not major;
 - (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
 - (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.
 - (e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;
- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;
- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate technology for NO_x and SO₂, regardless of the applicability of the rest of this Rule.

(h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL

level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(l) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(m) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the

- application, an explanation of his decision or notice where the explanation can be obtained;
- (4) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and
 - (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, the owner or operator shall notify the director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project,
- (2) identification of sources whose emissions could be affected by the project,
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3),
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated, and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to

the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(o) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is that as of June 13, 2007 and does not include any subsequent amendments or editions to the referenced material.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);

Eff. June 1, 1981;

Amended Eff. December 1, 1993; December 1, 1992;

Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;

Amended Eff. September 1, 2010; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994.

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day.

(c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of emissions of volatile organic compounds.

(d) This Section does not apply to:

- (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
- (2) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the

startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations;
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
- (9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(f) The Rules in this Section apply to facilities with the potential to emit greater than or equal to 100 tons of volatile organic compounds per year in the following areas:

- (1) Cabarrus County;
- (2) Gaston County;
- (3) Lincoln County;
- (4) Mecklenburg County;
- (5) Rowan County;
- (6) Union County; and
- (7) Davidson Township and Coddle Creek Township in Iredell County.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Section before the redesignation to attainment shall continue to comply with this Section.

(h) If EPA reclassifies the Charlotte-Gastonia-Rock Hill ozone nonattainment area as serious for ozone under Section 182 of the federal Clean Air Act, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons of volatile organic compounds per year. Within 60 days of the reclassification, the Director shall notice the applicability of these Rules to these facilities in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .0909 of this Section.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to

emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. September 1, 2010; January 1, 2009; July 1, 2007; March 1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.

15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (f) or (h) of Rule .0902 of this Section.

(b) Exceptions. This Rule does not apply to sources required to comply with the requirements of this Section under Paragraph (e) of Rule .0902 of this Section.

(c) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any source subject to this Rule because of the application of Paragraph (h) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
 - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
 - (B) The compliance schedule shall contain the following increments of progress:
 - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
 - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
 - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
 - (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that

- resolves a violation of the ambient air quality standard for ozone.
- (2) if compliance is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
- (B) The compliance schedule shall contain the following increments:
- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed to assure compliance;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin; and
- (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (3) The owner or operator shall certify to the Director within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.
- (d) Nonattainment areas. The owner or operator of any source subject to this Rule because of the application of Paragraph (f) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:
- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
- (B) The compliance schedule shall contain the following increments of progress:
- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (2) if compliance is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
- (B) The compliance schedule shall contain the following increments:
- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin; and
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (3) The owner or operator shall certify to the Director within five days after the deadline, for

each increment of progress in this Paragraph, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) Sources already in compliance.

(1) Maintenance area and Charlotte ozone nonattainment area contingency plan. Paragraph (c) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) Nonattainment areas. Paragraphs (d) of this Rule does not apply to sources in an area named in Paragraph (f) of Rule .0902 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.

(g) New sources.

(1) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any new source of volatile organic compounds not in existence or under construction before the date that the Director notices in the North Carolina Register in accordance with Paragraph (h) of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

(2) Nonattainment areas. The owner or operator of any new source of volatile organic compounds not in existence or under construction before March 1, 2007 in an area identified in Paragraph (f) of Rule .0902 shall comply with all applicable rules in this Section upon start-up of the source.

History Note Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. September 1, 2010; January 1, 2009; July 1, 2007; March 1, 2007; July 1, 2000; April 1, 1997; July 1, 1995; July 1, 1994; July 1, 1988; January 1, 1985.

15A NCAC 02D .0917 AUTOMOBILE AND LIGHT DUTY TRUCK MANUFACTURING

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; April 1, 1986; January 1, 1985;
Repealed Eff. September 1, 2010.

**15A NCAC 02D .0920 PAPER COATINGS
 15A NCAC 02D .0921 FABRIC AND VINYL COATING**

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985;
Repealed Eff. September 1, 2010.

15A NCAC 02D .0922 METAL FURNITURE COATINGS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.
- (2) "Coating unit" means one or more coating areas and any associated drying area or oven wherein a coating is applied, dried, or cured.
- (3) "Metal furniture coatings" means paints, sealants, caulks, inks, adhesives, and maskants.

(b) This Rule applies to each metal furniture surface coating unit source whose emissions of volatile organic compounds exceeds the threshold established in Paragraph (b) of Rule .0902 of this Section.

(c) With the exception stated in Paragraph (f) of this Rule, emissions of all volatile organic compounds from metal furniture coating unit subject to this Rule shall not exceed:

- (1) 2.3 pounds of volatile organic compounds per gallon of coating excluding water and exempt compounds (3.3 pounds of volatile organic compounds per gallon of solids) delivered from general, one component or general, multi-component types of coating operations; and
- (2) 3.0 pounds of volatile organic compounds per gallon of coating excluding water and exempt compounds (5.1 pounds of volatile organic compounds per gallon of solids) delivered from any other types of coating operations.

(d) EPA Method 24 (40 CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at metal furniture surface coating units unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Emissions limits established in Subparagraph (c)(2) of this Rule do not apply to stencil coatings, safety-indicating coatings,

solid film lubricants, electric-insulating and thermal-conducting coatings, touch up and repair coatings, coating application utilizing hand-held aerosol cans, or cleaning operations.

(f) Any coating unit which has chosen to use add-on control for coating operations rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a coating unit to meet limits established in Paragraph (c) of this Rule.

(g) The owner or operator of any facility subject to this rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. September 1, 2010; July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985.

15A NCAC 02D .0923 SURFACE COATING OF LARGE APPLIANCE PARTS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Application area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.
- (2) "Coating" means paints, sealants, caulks, inks, adhesives, and maskants.
- (3) "Coating unit" means a unit that consists of a series of one or more coating applicators and any associated drying area or oven where a coating is dried, or cured.
- (4) "Large appliance part" means any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form a large appliance product.
- (5) "Large appliance product" means any organic surface-coated metal range, oven, microwave oven, refrigerator, freezer, washer, dryer, dishwasher, water heater, or trash compactor manufactured for household, commercial, or recreational use.

(b) This Rule applies to each large appliance coating unit source whose volatile organic compounds emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section.

(c) Emissions of all volatile organic compounds from any large appliance coating unit subject to this Rule shall not exceed:

- (1) 2.3 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds (3.3 pounds of volatile organic compounds per gallon of solids) delivered from general, one component coating or general, multi-component types of coating operations; and
- (2) 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds (4.5 pounds of volatile organic compounds per gallon of solids) delivered from any other types of coating operations.

(d) EPA Method 24 (40 CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at surface coating of large appliances parts facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Emissions limits established in Subparagraph (c)(2) of this Rule do not apply to stencil coatings, safety-indicating coatings, solid film lubricants, electric-insulating and thermal-conducting coatings, touch up and repair coatings, coating applications utilizing hand-held aerosol cans, or any cleaning material.

(f) Any coating unit which has chosen to use add-on controls for coating operations rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a coating unit to meet limits established in Paragraph (c) of this Rule.

(g) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. September 1, 2010; July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985.

15A NCAC 02D .0934 COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. July 1, 1996; July 1, 1991; December 1, 1989; January 1, 1985; Repealed Eff. September 1, 2010.

15A NCAC 02D .0935 FACTORY SURFACE COATING OF FLAT WOOD PANELING

(a) For the purpose of this Rule, the following definitions apply:

- (1) Flat wood paneling coatings means wood paneling product that are any interior, exterior or tileboard (class I hardboard) panel to which a protective, decorative, or functional material or layer has been applied.
- (2) "Hardboard" is a panel manufactured primarily from inter-felted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.
- (3) "Tileboard" means a premium interior wall paneling product made of hardboard that is used in high moisture area of the home.

(b) This Rule applies to each flat wood paneling coatings source whose volatile organic compounds emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section at the facilities with flat wood paneling coating applications for the following products:

- (1) class II finishes on hardboard panels;
- (2) exterior siding;
- (3) natural finish hardwood plywood panels;

- (4) printed interior panels made of hardwood, plywood, and thin particleboard; and
- (5) tileboard made of hardboard.

(c) Emissions of volatile organic compounds from any factory finished flat wood product operation subject to this Rule shall not exceed 2.1 pounds of volatile organic compounds per gallon material excluding water and exempt compounds (2.9 pounds of volatile organic compounds per gallon solids.)

(d) EPA Method 24 (40 CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at surface coating of flat wood paneling facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(e) Any facility that meet definition of Paragraph (b) of this Rule and which has chosen to use add-on controls for flat wood paneling coating operation rather than the emission limits established in Paragraph (c) of this Rule shall install control equipment with an overall control efficiency of 90 percent or use a combination of coating and add-on control equipment on a flat wood paneling coating operation to meet limits established in Paragraph (c) of this Rule.

(f) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. September 1, 2010; July 1, 1996; December 1, 1989; January 1, 1985.

15A NCAC 02D .0936 GRAPHIC ARTS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1980; Amended Eff. December 1, 1993; December 1, 1989; January 1, 1985; June 1, 1981; Repealed Eff. September 1, 2010.

15A NCAC 02D .0951 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses, or that mix, blend, or manufacture volatile organic compounds for which there is no other applicable emissions control rule in this Section except Rule .0958 of this Section. If the only other applicable emissions control rule for the facility in this Section is Rule .0958, then both this Rule and Rule .0958 apply.

(b) This Rule does not apply to architectural or maintenance coating.

(c) The owner or operator of any facility to which this Rule applies shall:

- (1) install and operate reasonable available control technology; or
- (2) limit emissions of volatile organic compounds from coating lines not covered by Rules .0922,

.0923, .0924, .0934, .0935, .0936, or .0961 through .0968 from this Section to no more than 6.7 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator.

(d) If the owner or operator of a facility chooses to install reasonable available control technology under Subparagraph (c)(1) of this Rule, the owner or operator shall submit:

- (1) the name and location of the facility;
- (2) information identifying the source for which a reasonable available control technology limitation or standard is being proposed;
- (3) a demonstration that shows the proposed reasonable available control technology limitation or standard satisfies the requirements for reasonable available control technology; and
- (4) a proposal for demonstrating compliance with the proposed reasonable control technology limitation or standard.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1994; Amended Eff. September 1, 2010; July 1, 2000; July 1, 1996.

15A NCAC 02D .0952 PETITION FOR ALTERNATIVE CONTROLS FOR RACT

(a) This Rule applies to all sources covered under this Section.
 (b) If the owner or operator of any source of volatile organic compounds subject to the requirements of this Section, can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director.

(c) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction that will be achieved, and the quantity and composition of volatile organic compounds that will be emitted if the alternative operational or equipment controls are instituted;

- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound emissions from other source operations at the facility, further than that required under the Rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;
- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(d) The Director shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (d) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility;
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations; and
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable.

(e) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1994; Amended Eff. September 1, 2010; January 1, 2009; April 1, 2003; July 1, 1995; May 1, 1995.

15A NCAC 02D .0961 OFFSET LITHOGRAPHIC PRINTING AND LETTERPRESS PRINTING

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as volatile organic compounds. Volatile organic compounds composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^n \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_c}{MW_c} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

Where:

W_i = Weight of the "i" volatile organic compound, in grams

W_w = Weight of water, in grams

W_c = Weight of exempt compound, in grams

MW_i = Molecular weight of the "i" volatile organic compound, in g/g-mole

MW_w = Molecular weight of water, in g/g-mole

MW_c = Molecular weight of exempt compound, in g/g-mole

PP_c = Volatile organic compounds composite partial vapor pressure at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

VP_i = Vapor pressure of the "i" volatile organic compound at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

(2) "First installation date" means the actual date when this control device becomes operational. This date does not change if the control device is later redirected to a new press.

(3) "Fountain solution" means water-based solution that applies to lithographic plate to render the non-image areas unreceptive to the ink.

(4) "Heatset" means any operation in which heat is required to evaporate ink oils from the printing ink, excluding ultraviolet (UV) curing, electron beam curing and infrared drying.

(5) "Letterpress printing" means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

(6) "Non-heatset" means a lithographic printing process where the printing inks are set by absorption or oxidation of the ink oil, not by evaporation of the ink oils in a dryer. For the purposes of this Rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

(7) "Offset lithography" means an indirect method of printing when ink transferred from the lithographic plate to a rubber-covered intermediate "blanket" cylinder and then transferred from the blanket cylinder to the substrate.

(8) "Press" means a printing production assembly composed of one or more units used to produce a printed substrate including any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

- (9) "Sheet-fed printing" means an indirect method of printing when ink transferred from the lithographic plate to a rubber-covered intermediate "blanket" cylinder and then transferred from the blanket cylinder to the substrate.

- (10) "Web printing" means printing when continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

(b) This Rule applies to any offset lithographic and any letterpress printing operations sources whose emissions of volatile organic compounds exceed the threshold established in Paragraphs (b) and (f) of Rule .0902 of this Section and is not covered by Subparagraph (c)(1) of Rule .0966 of this Section.

(c) Volatile organic compounds content in the fountain solution from on-press (as-applied) for heatset web offset lithographic printing shall not exceed 1.6 percent alcohol (by weight) in the fountain solution or equivalent. This level of control for volatile organic compounds shall be achieved by:

- (1) reducing the on-press (as-applied) alcohol content to 1.6 percent alcohol or less (by weight);
- (2) use three percent alcohol or less (by weight) the on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or
- (3) use five percent alcohol substitute or less (by weight) the on-press (as-applied) and no alcohol in the fountain solution.

(d) Volatile organic compounds content in the fountain solution from on-press (as-applied) sheet-fed lithographic printing shall not exceed five percent alcohol (by weight) in the fountain or equivalent. This level of control for volatile organic compounds shall be achieved by:

- (1) reducing the on-press (as-applied) alcohol content to five percent alcohol or less (by weight);
- (2) use 8.5 percent alcohol or less (by weight) the on-press (as-applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or
- (3) use five percent alcohol substitute or less (by weight) the on-press (as-applied) and no alcohol in the in the fountain solution.

(e) Volatile organic compounds content in the fountain solution from on-press (as-applied) non-heatset web offset lithographic printing shall not exceed five percent alcohol substitute (by weight) and no alcohol in the fountain solution.

(f) Emissions of volatile organic compounds from any single letterpress printing heatset press subject to this Rule shall not exceed 25 tons per year. This level of control shall be achieved by using petroleum ink oil with volatile organic compounds content 31.25 tons per year volatile organic compounds or less because of the 20 percent ink oil retention.

(g) EPA Method 25A (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of the materials used at offset lithographic printing and letterpress printing facilities unless the facility maintains records to

document the volatile organic compounds content of the materials from the manufacturer.

(h) Any single letterpress printing heatset dryer owner or operator subject to this Rule, who has chosen to use add-on control for letterpress printing operation rather than to comply with the emission limits established in Paragraph (f) of this Rule shall install control equipment with:

- (1) 90 percent control efficiency for a control device whose first installation date was prior to July 1, 2010;
- (2) 95 percent control efficiency for a control device whose first installation date was on or after July 1, 2010.

(i) When the inlet of volatile organic compounds concentration is low or there is no identifiable measurable inlet, the control device outlet concentration shall be reduced to 20 parts per million by volume as hexane on a dry basis.

(j) Volatile organic compounds capture efficiency can be demonstrated by showing that the dryer is operating at negative pressure relative to the surrounding pressroom. The capture efficiency for volatile organic compounds can be assumed to be 100 percent of the volatile organic compounds (ink oils) volatilized in the dryer. Capture efficiency test is not required in this situation.

(k) The control limits established in:

- (1) Paragraph (d) shall not be applied to sheet-fed presses with maximum sheet size 11x 17 inches or smaller;
- (2) Paragraphs (c), (d), and (e), shall not be applied to any press with total fountain solution reservoir of less than one gallon;
- (3) Paragraph (f) shall not be applied to a press with a potential to emit below 25 tons per year used for book printing, and presses with maximum web width of 22 inches or less; and
- (4) Paragraph (f) shall not be applied to a heatset press used for book printing, and a headset press with maximum web width of 22 inches or less.

(l) All cleaning materials used in amount more than 110 gallons per year for cleaning a press, press parts, or to remove dried ink from areas around the press shall contain less than 70 weight percent volatile organic compounds or have volatile organic compounds composite vapor pressure less than 10 mm Hg at 20 degrees Celsius.

(m) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0962 INDUSTRIAL CLEANING SOLVENTS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Organic solvent" means a liquid hydrocarbon, such as methyl ethyl ketone or toluene, used to dissolve paints, varnishes, grease, oil, or other hydrocarbons.

- (2) "Solvent cleaning" means the process of removing the excess penetrant from the surface or a part by wiping, flushing, or spraying with a solvent for the penetrant.
- (b) This Rule applies to sources whose volatile organic compound emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section from the following cleaning operations:
 - (1) spray gun cleaning;
 - (2) spray booth cleaning;
 - (3) large manufactured components cleaning;
 - (4) parts cleaning;
 - (5) equipment cleaning;
 - (6) line cleaning;
 - (7) floor cleaning;
 - (8) tank cleaning; and
 - (9) small manufactured components cleaning.
- (c) Cleaning operations covered by Rules .0921, .0923, .0930, .0934, .0935, .0936, .0961, .0963, .0964, .0965, .0966, .0967, and .0968 of this Section are exempted from the requirements of this Rule.
- (d) Any cleaning material of the nine cleaning operations listed in Paragraph (b) of this Rule shall have:
 - (1) volatile organic compounds content that does not exceed 0.42 pounds per gallon; or
 - (2) composite vapor limit of eight millimeters of mercury (mmHg) at 20 degrees Celsius.
- (e) EPA Method 24 (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used in industrial cleaning solvents operations unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.
- (f) Facilities which have chosen to use add-on control rather than to comply with the emission limits established in Paragraph (d) of this Rule shall install control equipment with 85 percent overall efficiency.
- (g) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0963 FIBERGLASS BOAT MANUFACTURING MATERIALS

- (a) For the purpose of this Rule, the following definitions apply:
 - (1) "Closed molding" means any fabrication techniques in which pressure is used to distribute the resin through the reinforcing fabric placed between two mold surfaces to either saturate the fabric or fill the mold cavity.
 - (2) "Monomer" means a volatile organic compound that partly combines with itself, or other similar compounds, by a cross-linking reaction to become a part of the cured resin.
 - (3) "Open molding" means the open mold which is first spray-coated with a clear or pigmented polyester resin known as a gel coat. The gel coat will become the outer surface of the finished part.
- (b) This Rule applies to a facility that manufactures hulls or decks of boats and related parts, builds molds to make fiberglass boat hulls or decks and related parts from fiberglass, or makes polyester resin putties for assembling fiberglass parts; and whose volatile organic compounds emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section from sources for the following operations:
 - (1) open molding and gel coat operations (including pigmented gel coat, clear gel coat, production resin, tooling gel coat, and tooling resin);
 - (2) resins and gel coat mixing operations; and
 - (3) resins and gel coat application equipment cleaning operations.
- (c) The following activities are exempted from the provisions of this Rule:
 - (1) surface coatings applied to fiberglass boats;
 - (2) surface coatings for fiberglass and metal recreational boats (pleasure craft); and
 - (3) industrial adhesives used in the assembly of fiberglass boats.
- (d) Volatile organic compounds content limits in resin and gel coat that are used for any molding operations listed in Paragraph (b) of this Rule and closed molding operations that do not meet the definition of monomer established in Subparagraph (a)(2) of this Rule, such as vacuum bagging operations, shall not exceed monomer volatile organic compounds limits established in Table 1:

Table 1 Organic Hazardous Air Pollutants Content Requirements for Open Molding Resin and Gel Coat Operations (40 CFR 63, Subpart VVVV.)

Material	Application Method	Limit of Weighted-Average Monomer VOC Content (weight percent)
Production resin	Atomized (spray)	28
Production resin	Nonatomized	35
Pigmented gel coat	Any method	33
Clear gel coat	Any method	48
Tooling resin	Atomized	30
Tooling resin	Nonatomized	39

Tooling gel coat	Any method	40
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The average monomer volatile organic compounds contents listed in the Table 1 shall be determined by using Equation 1:

$$\text{Weighted Average Monomer VOC Content} = \frac{\sum_{i=1}^n (M_i \text{ VOC}_i)}{\sum_{i=1}^n (M_i)}$$

Where: M_i = mass of open molding resin or gel coat i used in the past 12 month in an operation, megagrams.
 VOC_i = monomer volatile organic compounds content, by weight percent, of open molding resin or gel coat i used in the past 12 month in an operation.
 n = number of different open molding resins or gel coats used in the past 12 month in an operation.

(e) Molding monomer and non-monomer volatile organic compounds limits established in Paragraph (d) of this Rule are not applicable to:

- (1) production resins (including skin coat resins) that meet specifications for use in military vessels or are approved by the U.S. Coast Guard for the use in the construction of lifeboats, rescue boats, and other life saving appliances approved under 46 CFR Subchapter Q, or the construction of small passenger vessels regulated by 46 CFR Subchapter T. Production resins that meet these criteria shall be applied with nonatomizing resin application equipment;
- (2) production and tooling resins; and pigmented, clear, and tooling gel coat used for part or mold repair and touch up. Total resin and gel coat materials that meet these criteria shall not exceed one percent by weight of all resin and gel coat used at a facility on a 12-month rolling-average basis; or
- (3) pure, 100-percent vinylester resin used for skin coats that are applied with nonatomizing resin application equipment and with the total amount of the resin materials not exceeding five percent by weight of all resin used at a factory on 12-month rolling-average basis.

(f) Any molding resin and gel coat operations listed in Paragraph (b) of this Rule, that a facility chooses to include into average emissions among different operations to meet numerical monomer volatile organic compounds emission rate limits rather than to comply with the emission limits established in Paragraph (d) of this Rule shall use:

- (1) Equation 2 to estimate a facility-specific monomer volatile organic compounds mass emission limit (12-month rolling average). Estimations of emissions average shall be determined on 12-month rolling average basis at the end of every month (12 times per year).

Equation 2:
 Monomer VOC Limit = $46(M_R) + 159(M_{PG}) + 291(M_{CG}) + 54(M_{TR}) + 214(M_{TG})$
 Where:

Monomer VOC Limit = total allowable monomer volatile organic compounds that can be emitted from the open molding operations included in the average, kilograms per 12-month period.

M_R = mass of production resin used in the past 12 month excluding any materials that are exempt, megagrams.

M_{PG} = mass of pigmented gel coat used in the past 12 month, excluding any materials that are exempt, megagrams.

M_{CG} = mass of clear gel coat used in the past 12 month, excluding any materials that are exempt, megagrams.

M_{TR} = mass of tooling resin coat used in the past 12 month, excluding any materials that are exempt, megagrams.

M_{TG} = mass of tooling gel coat used in the past 12 month, excluding any materials that are exempt, megagrams.

The numerical coefficients associated with each term on the right hand side of Equation 2 are the allowable monomer volatile organic compounds emission rate for that particular material in units of kilograms of VOC per megagrams of material used.

- (2) Equation 3 to demonstrate that the monomer volatile organic compounds emissions from the operations included in the average do not exceed the emission limit calculated using Equation 2 from Subparagraph (f)(1) of this Rule for the same 12-month period. This demonstration shall be conducted at the end of the first 12-month averaging period and at the end of every subsequent month for only those operations and materials that included in the average.

Equation 3:
 Monomer VOC emissions = $(PV_R)(M_R) + (PV_{PG})(M_{PG}) + (PV_{CG})(M_{CG}) + (PV_{TR})(M_{TR}) + (PV_{TG})(M_{TG})$

Where:

Monomer VOC emissions = monomer volatile organic compounds emissions calculated using the monomer volatile organic compounds emission equation for each operation included in the average, kilograms.

PV_R = weighted-average monomer volatile organic compounds emission rate for production resin used in the past 12 month, kilograms per megagram.

M_R = Mass of production resin used in the past 12 month, megagrams.

PV_{PG} = weighted-average monomer volatile organic compounds emission rate for pigmented gel coat used in the past 12 month, kilograms per megagram.

M_{PG} = mass of pigmented gel coat used in the past 12 month, megagrams.

PV_{CG} = weighted-average monomer volatile organic compounds emission rate for clear gel coat used in the past 12 month, kilograms per megagram.

M_{CG} = Mass of clear gel coat used in the past 12 month, megagrams.

PV_{TR} = Weighted-average monomer volatile organic compounds emission rate for tooling resin used in the past 12 month, kilograms per megagram.

M_{TR} = Mass of tooling resin used in the past 12 month, megagrams.

PV_{TG} = Weighted-average monomer volatile organic compounds emission rate for tooling gel coat used in the past 12 month, kilograms per megagram.

M_{TG} = Mass of tooling gel coat used in the past 12 month, megagrams.

(3) Equation 4 to compute the weighted-average monomer volatile organic compounds emission rate for the previous 12 month for each open molding resin and gel coat operation included in the average to apply the results in Equation 3.

Equation 4:

$$PV_{OP} = \frac{\sum_{i=1}^n (M_i PV_i)}{\sum_{i=1}^n (M_i)}$$

Where:

PV_{OP} = weighted-average monomer volatile organic compounds emission rate for each open molding operation (PV_R , PV_{PG} , PV_{CG} , PV_{TR} , and PV_{TG}) included in the average, kilograms of monomer volatile organic compounds per megagram of material applied.

M_i = mass of resin or gel coat i used within an operation in the past 12 month, megagrams.

n = number of different open molding resins and gel coats used within an operation in the past 12 month.

PV_i = the monomer volatile organic compounds emission rate for resin or gel coat i used within an operation in the past 12 month, kilograms of monomer volatile organic compounds per megagram of material applied. Equations in Table 2 shall be used to compute PV .

Table 2 Compliant Materials Monomer Volatile Organic Compounds Content for Open Molding Resin and Gel Coat.

For this material	and this application method	Use this formula to calculate the monomer VOC emission rate
1. Production resin, tooling resin	a. Atomized	$0.014 \times (\text{Resin VOC}\%)^{2.425}$
	b. Atomized, plus vacuum bagging with roll-out	$0.01185 \times (\text{Resin VOC}\%)^{2.425}$
	c. Atomized, plus vacuum bagging without roll-out	$0.00945 \times (\text{Resin VOC}\%)^{2.425}$
	d. Nonatomized	$0.014 \times (\text{Resin VOC}\%)^{2.275}$
	e. Nonatomized, plus vacuum bagging with roll-out	$0.0110 \times (\text{Resin VOC}\%)^{2.275}$
	f. Nonatomized, plus vacuum bagging without roll-out	$0.0076 \times (\text{Resin VOC}\%)^{2.275}$
2. Pigmented gel coat, clear gel coat, tooling gel coat	All methods	$0.445 \times (\text{Gel coat VOC}\%)^{1.675}$

(g) If the owner or operator of any facility with molding resin and gel coat operations listed in Paragraph (b) of this Rule, chooses to use of higher-monomer volatile organic compounds materials rather than to comply with the emission limits established in Paragraph (d) of this Rule he shall:

- (1) install control equipment to meet the emission limit determined by Equation 2 in Subparagraph (f)(1) of this Rule, applying the mass of each material used during the control device performance test in Equation 2 to determine the emission limit (in kilogram of monomer VOC) that is applicable during the test, instead of using the mass of each material as it established in Subparagraph (f)(1) of this Rule;
- (2) monitor and record relevant control device and capture system operating parameters during the control device performance test to use the

recorded values to establish operating limits for those parameters; and

- (3) monitor the operating parameters for the control device and emissions capture system and maintain the parameters within the established limits.

(h) Any molding resin and gel coat operations that use a filled production resin or filled tooling resin shall calculate the emission rate for the filled production resin or filled tooling resin on as applied basis using Equation 5. If the filled resin:

- (1) is used as a production resin then the value of PV_F calculated by Equation 5 shall not exceed 46 kilograms of monomer VOC per megagram of filled resin applied;
- (2) is used as a tooling resin then the value of PV_F calculated by Equation 5 shall not exceed 54 kilograms of monomer VOC per megagram of filled resin applied; and
- (3) is included in the emissions averaging procedure then the facility shall use the value of PV_F calculated by Equation 5 for the value PV_i in Equation 4 in Subparagraph (f)(3) of this Rule.

Equation 5:

$$PV_F = \frac{PV_U \times (100 - \% \text{Filler})}{100}$$

Where: PV_F = The as-applied monomer volatile organic compounds emission rate for the filled production resin or tooling resin, kilograms monomer VOC per megagram of filled material.

PV_U = The monomer volatile organic compounds emission rate for the neat (unfilled) resin before filler is added, as calculated using the formulas in Table 2 of Subparagraph (f)(3) of this Rule.

$\% \text{Filler}$ = The weight-percent of filler in the as-applied filled resin system.

(i) All resins and gel coats included in volatile organic compounds limits described in Paragraphs (d) through (h) shall meet non-monomer volatile organic compounds content limit of five percent.

(j) If the non-monomer volatile organic compounds content of a resin or gel coat exceeds five percent, then the excess non-monomer volatile organic compounds over five percent shall be counted toward the monomer volatile organic compounds content.

(k) SCAQMD Method 312-91, Determination of Percent Monomer in Polyester Resins, revised April 1996 shall be used to determine the monomer volatile organic compounds content of resin and gel coat materials unless the facility maintains records to document the volatile organic compounds content of resin and gel coat materials from the manufacturer.

(l) All resin and gel coat mixing containers with a capacity equal to or greater than 55 gallons, including those used for on-

site mixing of putties and polyputties, shall have a cover with no visible gaps in place at all times except the following operations:

- (1) when material is being manually added to or removed from a container; or
- (2) when mixing or pumping equipment is being placed or removed from a container.

(m) Volatile organic compounds cleaning solvents for routine application equipment cleaning shall contain no more than five percent volatile organic compounds by weight, or have a composite vapor pressure of no more than 0.50 mm Hg at 68 degrees Fahrenheit.

(n) Only non-volatile organic compounds solvents shall be used to remove cured resin and gel coat from application equipment.

(o) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

Eff. September 1, 2010.

15A NCAC 02D .0964 MISCELLANEOUS INDUSTRIAL ADHESIVES

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Air-assisted airless spray" means a system that consists of an airless spray gun with a compressed air jet at the gun tip to atomize the adhesive.
- (2) "Airless spray" means the application of an adhesive through an atomizing nozzle at high pressure (1,000 to 6,000 pounds per square inch) by a pump forces.
- (3) "Application process" means a process that consists of a series of one or more adhesive applicators and any associated drying area or oven where an adhesive is applied, dried and cured.
- (4) "Dip Coating" means application where substrates are dipped into a tank containing the adhesive. The substrates are then withdrawn from the tank and any excess adhesive is allowed to drain.
- (5) "Electrocoating" means a specialized form of dip coating where opposite electric charges are applied to the waterborne adhesive and the substrate.
- (6) "Electrostatic spray" means application where the adhesive and substrate are oppositely charged.
- (7) "Flow coating" means conveying the substrate over an enclosed sink where the adhesive is applied at low pressure as the item passes under a series of nozzles.
- (8) "HVLP" means a system with specialized nozzles that provide better air and fluid flow than conventional air atomized spray systems at low air pressure, shape spray pattern, and guide high volumes of atomized adhesive particles to the substrate using lower air

- pressure (10 pounds per square inch or less at the spray cap).
- (9) "Miscellaneous industrial adhesives" means adhesives (including adhesive primers used in conjunction with certain types of adhesives) used at industrial manufacturing and repair facilities for a wide variety of products and equipment that operate adhesives application processes.
- (10) "Roll coating", "brush coating", and "hand application" means application of high viscosity adhesives onto small surface area.
- (b) Control of volatile organic compounds emissions from miscellaneous industrial adhesives product categories covered by Rules .0921, .0923, .0934, .0935, .0936, .0961, .0962, .0963, .0965, .0966, .0967, and .0968 of this Section are exempted from the requirements of this Rule.
- (c) This Rule applies to miscellaneous industrial adhesive application sources whose volatile organic compounds emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section.
- (d) With the exception established in Paragraph (b) of this Rule, all volatile organic compounds containing materials applied by each miscellaneous industrial adhesive application processes before control shall:
- (1) not exceed limits established in Table 1 of this Paragraph; and
 - (2) be used in one of the following application methods in conjunction with using low volatile organic compounds adhesives or adhesive primers:
 - (A) electrostatic spray;
 - (B) HVLP spray;
 - (C) flow coat;
 - (D) roll coat or hand application, including non-spray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;
 - (E) dip coat (including electrodesposition);
 - (F) airless spray;
 - (G) air-assisted airless spray; or
 - (H) other adhesive application method capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.
- (e) Emission limits established in Subparagraph (d)(1) of this Rule shall be:
- (1) met by averaging the volatile organic compounds content of materials used on a single application unit for each day; and
 - (2) calculated as mass of volatile organic compounds per volume of adhesive primer excluding water and exempt compounds, as applied.
- (f) If an adhesive is used to bond dissimilar substrates together in general adhesive application process (Table 1), then the applicable substrate category with the highest volatile organic compounds emission limit shall be established as the limit for such application.

Table 1. Volatile Organic Compounds Emission Limits for General and Specialty Adhesive Application Process.

General Adhesive Application Processes	VOC Emission Limit (lb/gal)
Reinforced Plastic Composite	1.7
Flexible vinyl	2.1
Metal	0.3
Porous Material (Except Wood)	1
Rubber	2.1
Wood	0.3
Other Substrates	2.1
Specialty Adhesive Application Processes	VOC Emission Limit (lb/gal)
Ceramic Tile Installation	1.1
Contact Adhesive	2.1
Cove Base Installation	1.3
Floor Covering Installation (Indoor)	1.3
Floor Covering Installation (Outdoor)	2.1
Floor Covering Installation (Perimeter Bonded Sheet Vinyl)	5.5
Metal to Urethane/Rubber Molding or Casting	7.1
Motor Vehicle Adhesive	2.1
Motor Vehicle Weatherstrip Adhesive	6.3
Multipurpose Construction	1.7
Plastic Solvent Welding (ABS)	3.3

Plastic Solvent Welding (Except ABS)	4.2
Sheet Rubber Lining Installation	7.1
Single-Ply Roof Membrane Installation/Repair (Except EPDM)	2.1
Structural Glazing	0.8
Thin Metal Laminating	6.5
Tire Repair	0.8
Waterproof Resorcinol Glue	1.4
Adhesive Primer Application Processes	VOC Emission Limit ¹ (lb/gal)
Motor Vehicle Glass Bonding Primer	7.5
Plastic Solvent Welding Adhesive Primer	5.4
Single-Ply Roof Membrane Adhesive Primer	2.1
Other Adhesive Primer	2.1

- (g) Any miscellaneous industrial adhesive application processes subject to this Rule, which chooses to use add-on control for adhesive application processes rather than to comply with the emission limits established in Paragraph (d) of this Rule, shall install control equipment with overall control efficiency of 85 percent or use a combination of adhesives and add-on control equipment on an application process to meet limits established in Paragraph (d) of this Rule.
- (h) EPA Method 24 or 25A (40 CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of adhesives, other than reactive adhesives, and the procedure established in Appendix A of the NESHAP for surface coating of plastic parts (40 CFR Part 63, Subpart PPPP) shall be used to determine the volatile organic compounds content of reactive adhesives unless the facility maintains records to document the volatile organic compounds content of adhesives from the manufacturer.
- (i) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0965 FLEXIBLE PACKAGE PRINTING

- (a) For the purpose of this Rule, the following definitions apply:
- (1) "First installation date" means the actual date when the equipment or control device becomes operational. This date does not change if the equipment or control device is later moved to a new location.
 - (2) "Flexible Packaging" means any package or part of a package the shape of which can be readily changed.
 - (3) "Flexographic printing" means a printing process in which an image is raised above the printing plate, and the image carrier is made of rubber or other elastomeric materials.
 - (4) "Rotogravure press" means an unwind or feed section, which may include:
 - (A) more than one unwind or feed station (such as on a laminator);
 - (B) series of individual work stations, one or more of which is a rotogravure print station;
 - (C) any dryers associated with the work stations; and
 - (D) a rewind, stack, or collection section.
 - (5) "Rotogravure printing" means a printing process in which an image (type and art) is

etched or engraved below the surface of a plate or cylinder.

- (b) This Rule applies to flexible packaging printing press sources whose emissions of volatile organic compounds exceed the threshold established in Paragraph (b) of Rule .0902 of this Section.
- (c) Volatile organic compounds content of materials used on any single flexible packaging printing press subject to this Rule shall not exceed 0.8 pounds volatile organic compounds per one pound of solids applied, or 0.16 pounds volatile organic compounds per one pound of materials applied limits. These volatile organic compounds content limits are consistent with 80 percent overall emissions reduction level and reflect similar control levels as the capture and control option.
- (d) Any flexible packaging printing press which has chosen to use add-on control for coating operations rather than to comply with the emission limits established in Paragraph (c) of this Rule shall install control equipment with:
 - (1) 65 percent overall control based on a capture efficiency of 75 percent and a control device efficiency of 90 percent for a press that was first installed prior to March 14, 1995 and that is controlled by an add-on control device whose first installation date prior to July 1, 2010;
 - (2) 70 percent overall control based on a capture efficiency of 75 percent and a control device efficiency of 95 percent for a press that was first installed prior to March 14, 1995 and that

is controlled by an add-on control device whose first installation date was on or after July 1, 2010;

- (3) 75 percent overall control based on a capture efficiency of 85 percent and a control device efficiency of 95 percent for a press that was first installed on or after March 14, 1995 and that is controlled by an add-on control device whose first installation date was prior July 1, 2010; and
- (4) 80 percent overall control based on a capture efficiency of 85 percent and a control device efficiency of 95 percent for a press that was first installed on or after March 14, 1995 and that is controlled by an add-on control device whose first installation date was on or after July 1, 2010.

(e) EPA Method 24 or 25A (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at flexible package printing facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(f) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0966 PAPER, FILM AND FOIL COATINGS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Paper, film, and foil coating line" means a series of coating applicators, flash-off areas, and any associated curing/drying equipment between one or more unwind/feed stations and one or more rewind/cutting stations.
- (2) "Flexographic coating" means that the area to be coated is delineated by a raised surface on a flexible plate.
- (3) "Rotary screen or flat screen coating" means the application of a coating material to a substrate by means of masking the surface and applying a color or finish using a screen either in flat form or rotary form.
- (4) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

(b) With the exception in Paragraph (c) of this Rule, this Rule applies to paper, film and foil surface coating operations sources, including related cleaning activity, whose emissions of volatile organic compounds exceed the threshold established in Paragraph (b) of Rule .0902 of this Section, at a facility that applies:

- (1) paper, film, or foil surfaces in the manufacturing of products for pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels; photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of non-woven polymer substrates for use in flexible packaging); and
- (2) coatings during coating applications for production of corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

(c) The following types of coatings are not covered by this Rule:

- (1) coatings performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or
- (2) size presses and on machine coaters that function as part of an in- line papermaking system.

(d) With the exception stated in Paragraph (c) of this Rule, emissions of volatile organic compounds from:

- (1) pressure sensitive tape and label surface coating lines with the potential to emit, prior to controls, less than 25 tons per year of volatile organic compounds from coatings shall not exceed 0.20 pounds volatile organic compounds per pound of solids applied (0.067 pounds volatile organic compounds per pound of coating applied);
- (2) paper, film, and foil surface coating lines with the potential to emit, prior to controls less than 25 tons per year of volatile organic compounds from coatings shall not exceed 0.40 pounds of volatile organic compounds per pound of solids (0.08 pounds volatile organic compounds per pound of coating applied); and
- (3) The volatile organic compounds content limits shall be determined in accordance with Subparagraphs (c)(2) and (c)(3) of Rule .0912 of this Section.

(e) EPA Method 24 or 25A (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at paper, film and foil coatings facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(f) Any individual paper, film, and foil coating line with the potential to emit, prior to controls, at least 25 tons per year of volatile organic compounds from coatings shall apply control with overall volatile organic compounds efficiency of 90 percent rather than the emission limits established in Paragraph (d) of

this Rule or use a combination of coating and add-on control equipment on a coating unit to meet limits that are equivalent to 90 percent overall control efficiency.

(g) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0967 MISCELLANEOUS METAL AND PLASTIC PARTS COATINGS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Air dried coating" a means coating that is cured at a temperature below 90 degrees Celsius (194 degrees Fahrenheit).
- (2) "Baked coating" means a coating that is cured at a temperature at or above 90 degrees Celsius (194 degrees Fahrenheit).
- (3) "Clear coat" means a colorless coating which contains binders, but no pigment, and is formulated to form a transparent film.
- (4) "Coating unit" means series one or more coating applicators and any associated drying area and oven wherein a coating is applied, dried, and cured.
- (5) "Drum" means any cylindrical metal shipping container larger than 12 gallons capacity but no larger than 110 gallons capacity.
- (6) "Electric dissipating coating" means a coating that rapidly dissipates a high voltage electric charge.
- (7) "Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.
- (8) "Etching filler" means a coating that contains less than 23 percent solids by weight and at least 1/2-percent acid by weight, and is used instead of applying a pretreatment coating followed by a primer.
- (9) "Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degrees meter.
- (10) "Extreme-performance coating" means a coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to the following:
 - (A) Chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures or solutions;
 - (B) Repeated exposure to temperatures in excess of 250 degrees Fahrenheit; or

(C) Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers or scouring agents. Extreme performance coatings include coatings applied to locomotives, railroad cars, farm machinery, and heavy duty trucks.

(11) "High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

(12) "Miscellaneous metal product and plastic parts surface coatings" means the coatings that are applied to the surfaces of a varied range of metal and plastic parts and products. Such parts or products are constructed either entirely or partially from metal or plastic. These miscellaneous metal products and plastic parts include metal and plastic components of the following types of products as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and other industrial and household products.

(13) "Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form a dry film.

(14) "One-component coating" means a coating that is ready for application as it comes out of its container to form a dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

(b) This Rule applies to miscellaneous metal and plastic parts surface coating units whose volatile organic compounds emissions exceed the threshold established in Paragraph (b) of

APPROVED RULES

Rule .0902 of this Section for coating and related cleaning activities of the following types of products:

- (1) fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment;
- (2) automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods;
- (3) toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavy vehicles, lawn and garden equipment;

- (4) business machines, laboratory and medical equipment; and
- (5) electronic equipment, steel drums metal pipes, and other industrial and household products.

(c) This Rule does not apply to:

- (1) coatings that are applied to test panels and coupons as part of research and development, quality control;
- (2) performance testing activities at paint research or manufacturing facility; or
- (3) sources covered by Rules .0921, .0922, .0923, .0935, .0936, .0961 .0962, .0963, .0964, .0965, .0966, and .0968 of this Section.

(d) With the exception stated in Paragraph (c) of this Rule, emissions of volatile organic compounds before control for surface coating of:

- (1) Metal parts and products shall not exceed limits as established in Table 1;

Table 1. Metal Parts and Products Volatile Organic Compounds Content Limits

Coating Category	Air Dried lb VOC/gal coating	Baked lb VOC/gal coating
General One Component; General Multi Component; Military Specification	2.8	2.3
Camouflage; Electric-Insulating Varnish; Etching Filler; High Temperature; Metallic; Mold-Seal; Pan Backing; Pretreatment Coatings; Drum Coating, New, Interior; Drum Coating, Reconditioned, Exterior; Silicone Release; Vacuum-Metalizing	3.5	3.5
Extreme High-Gloss; Extreme Performance; Heat-Resistant; Repair and Touch Up; Solar-Absorbent	3.5	3.0
High Performance Architectural	6.2	6.2
Prefabricated Architectural Multi-Component; Prefabricated Architectural One-Component	3.5	2.3
Drum Coating, New, Exterior	2.8	2.8
Drum Coating, Reconditioned, Interior	4.2	4.2

- (2) Plastic parts and products shall not exceed limits as established in Table 2;

Table 2. Plastic Parts and Products Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
General One Component	2.3
General Multi Component; Metallic	3.5
Electric Dissipating Coatings and Shock-Free Coatings; Optical Coatings; Vacuum-Metalizing	6.7
Extreme Performance	3.5 (2-pack coatings)
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7

- (3) automotive/transportation and business machine plastic parts shall not exceed limits as established in Table 3;

Table 3. Automotive/Transportation and Business Machine Plastic Parts Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Automotive/Transportation Coatings	
I. High Bake Coatings – Interior and Exterior Parts	

APPROVED RULES

Non-flexible Primer	3.5
Base Coats; Non-basecoat/clear coat; Flexible Primer	4.3
Clear Coat	4.0
II. Low Bake/Air Dried Coatings – Exterior Parts	
Primers; Basecoat; Non-basecoat/clearcoat	4.8
Clearcoats	4.5
III. Low Bake/Air Dried Coatings – Interior Parts	
IV. Touchup and Repair Coatings	
Business Machine Coatings	
Primers; Topcoat Texture Coat; Touchup and repair	2.9
Fog Coat	2.2

(4) pleasure craft shall not exceed limits as established in Table 4;

Table 4. Pleasure Craft Surface Coating Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Extreme High Gloss Topcoat	4.1
High Gloss Topcoat Finish; Primer/Surfacer; All other pleasure craft surface coatings for metal or plastic	3.5
Pretreatment Wash Primers	6.5
High Build Primer Surfacer; Other Substrate Antifoulant Coating	2.8
Aluminum Substrate Antifoulant Coating	4.7

(5) motor vehicle materials shall not exceed limits as established in Table 5.

Table 5. Motor Vehicle Materials Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal coating
Motor vehicle cavity wax; Motor vehicle sealer; Motor vehicle deadener; Motor vehicle underbody coating; Motor vehicle trunk interior coating	5.4
Motor vehicle gasket/gasket sealing material; Motor vehicle bedliner	1.7
Motor vehicle lubricating wax/compound	5.8

(e) With the exception of motor vehicle materials coatings, any miscellaneous metal and plastic parts coatings operations facility may choose a combination of low volatile organic compounds coatings and add-on control equipment on a coating unit. Emissions of volatile organic compounds before control with such combination shall not exceed limits for surface coating of:

(1) Metal parts and products as established in Table 6;

Table 6. Metal Parts and Products Volatile Organic Compounds Content Limits

Coating Category	Air Dried	Baked
	lb VOC/gal solids	lb VOC/gal solids
General One Component; General Multi Component; Military Specification;	4.52	3.35
Etching Filler; High Temperature; Metallic; Mold-Seal; Pan Backing; Pretreatment Coatings; Silicone Release; Drum Coating, New, Interior; Drum Coating, Reconditioned, Exterior; Vacuum-Metalizing	6.67	6.67
Extreme High-Gloss; Extreme Performance; Heat-Resistant; Solar-Absorbent	6.67	5.06
High Performance Architectural	38.0	38.0
Prefabricated Architectural Multi-Component	6.67	3.35
Prefabricated Architectural One-Component	6.67	3.35
Solar-Absorbent	6.67	5.06
Drum Coating, New, Exterior	4.52	4.52
Drum Coating, Reconditioned, Interior	6.67	9.78

(2) plastic parts and products as established in Table 7;

Table 7. Plastic Parts and Products Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
General One Component	3.35
General Multi Component; Metallic	6.67
Electric Dissipating Coatings and Shock-Free Coatings Optical Coatings; Vacuum-Metalizing	74.7
Extreme Performance	6.67 (2-pack)
Military Specification	4.52 (1 pack) 6.67 (2 pack)
Mold-Seal	43.7
Multi-colored Coatings	25.3

(3) automotive/transportation and business machine plastic parts as established in Table 8;

Table 8. Automotive/Transportation and Business Machine Plastic Parts Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
Automotive/Transportation Coatings I	
I. High Bake Coatings – Interior and Exterior Parts	
Flexible Primer	11.58
Non-flexible Primer; Non-basecoat/clear coat	6.67
Base Coats	10.34
Clear Coat	8.76
II. Low Bake/Air Dried Coatings – Exterior Parts	
Primers	13.8
Basecoat; Non-basecoat/clearcoat	15.59
Clearcoats:	11.58
III. Low Bake/Air Dried Coatings – Interior Parts	15.59
IV. Touchup and Repair Coatings	17.72
Business Machine Coatings	
Primers; Topcoat; Texture Coat; Touchup and repair	4.8
Fog Coat	3.14

(4) pleasure craft surface coatings as established in Table 9;

Table 9. Pleasure Craft surface Coatings Volatile Organic Compounds Content Limits

Coating Category	lbs VOC/gal solids
Extreme High Gloss Topcoat	9.2
High Gloss Topcoat; Finish Primer/Surfacer; All other pleasure craft surface coatings for metal or plastic	6.7
Pretreatment Wash Primers	55.6
Aluminum Substrate Antifoulant Coating	12.8
High Build Primer Surfacer; Other Substrate Antifoulant Coating	4.4

(f) EPA Method 24 or 25A (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used at miscellaneous metal and plastic part coating facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(g) With the exception of motor vehicle materials coatings, any miscellaneous metal and plastic parts coatings operations facility may choose to use add-on control equipment with an overall control efficiency of 90 percent in lieu of using low-VOC coatings and specified application methods.

(h) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02D .0968 AUTOMOBILE AND LIGHT DUTY TRUCK ASSEMBLY COATINGS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Automobile" means a motor vehicle designed to carry up to eight passengers, excluding vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property.
- (2) "Automobile Topcoat Protocol" means Protocol For Determining The Daily Volatile Organic Compound Emission Rate Of Automobile and Light-duty Truck Topcoat Operations (EPA-450/3-88-018).
- (3) "Electrodeposition" means a process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides coverage of recessed areas. It is a dip coating method that uses an electrical field to apply or deposit the conductive coating onto the part. The object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank.
- (4) "Final repair" means the operations performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating.
- (5) "Light-duty truck" means vans, sport utility vehicles, and motor vehicles designed primarily to transport light loads of property with gross vehicle weight rating of 8,500 pounds or less.
- (6) "Primer-surfacer" means an intermediate protective coating applied over the electrodeposition primer (EDP) and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish.
- (7) "Solids turnover ratio (R_T)" means the ratio of total volume of coating solids that is added to the EDP system in a calendar month divided by the total volume design capacity of the EDP system.

(b) This Rule applies to automobile and light-duty truck assembly coating operations and related cleaning activities whose emissions of volatile organic compounds exceed the threshold established in Paragraph (b) of Rule .0902 of this Section at:

- (1) automobile or light-duty assembly plants during the vehicle assembly processes with the following primary coating product applications:
 - (A) new automobile or new light-duty truck bodies, or body parts for new automobiles or new light-duty trucks;
 - (B) other parts that are coated along with these bodies or body parts; or
 - (C) additional coatings which include glass bonding primer, adhesives, cavity wax, sealer, deadener, gasket/gasket sealing material, underbody coating, trunk interior coating, bedliner, weatherstrip adhesive, and lubricating waxes/compounds; and
- (2) facilities that perform coating operations on a contractual basis other than plastic or composites molding facilities.

(c) This Rule does not apply to:

- (1) aerosol coatings of automobile and light-truck assembly coatings;
- (2) coatings that are applied to other parts intended for use in new automobiles or new light-duty trucks (e.g., application of spray primer, color and clear coat to fascia or bumpers) on coating lines that are not related to the vehicle assembly process at automobile or light-duty assembly plants. They are covered by Rules .0964, and .0967 of this Section; and
- (3) aftermarket repair or replacement parts for automobiles or light-duty trucks that are covered by Rules .0964, and .0967 of this Section.

(d) With the exception of materials supplied in containers with a net volume of 16 ounces or less, or a net weight of one pound or less, emissions of volatile organic compounds before control for:

- (1) automobile and light-duty truck assembly coatings shall not exceed limits established in Table 1.

Table 1. Volatile Organic Compounds emission limits for automobile and light-duty truck assembly coatings.

Assembly Coating Process	Volatile Organic Compounds Emission Limit		
	Electrodeposition primer (EDP) operations (including application area, spray/rinse stations, and curing oven)	When solids turnover ratio (R_T) ≥ 0.16 ;	When $0.040 \leq R_T < 0.160$;
0.7lb/gal coatings solids applied.		$0.084^{0.160-R_T} \times 8.34$ lb/gal coating solids applied.	No VOC emission limit.

APPROVED RULES

Primer-surfacer operations(including application area, flash-off area, and oven)	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol
Topcoat operations (including application area, flash-off area, and oven)	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol
Final repair operations	4.8 lb VOC/gallon of coating less water and less exempt solvents on a daily weighted average basis or as an occurrence weighted average.
Combined primer-surfacer and topcoat operations	12.0 lb VOC/gal deposited solids on a daily weighted average basis as determined by following the procedures in the revised Automobile Topcoat Protocol

(2) materials used at automobile and light-duty truck assembly coatings facilities shall not exceed limits established in Table 2.

Table 2. Volatile Organic Compounds emission limits for miscellaneous materials used at automobile and light-duty

Material	VOC Emission Limit
Automobile and light-duty truck glass bonding primer	900
Automobile and light-duty truck adhesive	250
Automobile and light-duty truck cavity wax	650
Automobile and light-duty truck sealer	650
Automobile and light-duty truck deadener	650
Automobile and light-duty truck gasket/gasket sealing material	200
Automobile and light-duty truck underbody coating	650
Automobile and light-duty truck trunk interior coating	650
Automobile and light-duty truck bedliner	200
Automobile and light-duty truck weatherstrip adhesive	750
Automobile and light-duty truck lubricating wax/compound	700

(e) EPA Method 24 or 25A (40 CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coatings, other than reactive adhesives used at automobile and light-duty truck coating facilities unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

(f) The emission limits established in Paragraph (d) of this Rule may be achieved with a combination of higher-solid solvent-borne coatings, efficient application equipment and bake oven exhaust control.

(g) The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. September 1, 2010.

15A NCAC 02Q .0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity for the public to request a public hearing on draft permits for the following:

- (1) any source that may be designated by the Director based on public interest relevant to air quality;
- (2) a source to which 15A NCAC 02D .0530 or .0531 applies;
- (3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 02D .0533(a)(4)(A), (B), or (C);
- (4) a source required to have controls more stringent than the applicable emission standards in 15A NCAC 02D .0500 according to 15A NCAC 02D .0501 when necessary to

- (5) comply with an ambient air quality standard under 15A NCAC 02D .0400;
- (6) alternative controls different than the applicable emission standards in 15A NCAC 02D .0900 according to 15A NCAC 02D .0952;
- (7) a limitation on the quantity of solvent borne ink that may be used by a printing unit or printing system according to 15A NCAC 02D .0961 and .0965;
- (8) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with 15A NCAC 02D .1204(c)(2)(B) and .1208 (b)(2)(B);
- (9) an alternative mix of controls under 15A NCAC 02D .0501(f);

- (9) a source that is subject to the requirements of 15A NCAC 02D .1109 or .1112;
- (10) a source seeking exemption from the 20-percent opacity standard in 15A NCAC 02D .0521 under 15A NCAC 2D .0521(f);
- (11) a source using an alternative monitoring procedure or methodology under 15A NCAC 02D .0606(g) or .0608(g); or
- (12) when the owner or operator requests that the draft permit go to public notice with an opportunity to request a public hearing.

- (5) the navigable portion of Nevils Creek extending upstream from its mouth at the Pamlico River; and
- (6) that portion of Blounts Creek beginning 50 yards on the south side and 300 yards on the north side of the Blounts Creek Bridge;
- (7) that portion of Tranters Creek beginning at a line, shore to shore, from a point at 35.56925 N, 77.09138 W and ending at a line, shore to shore, to a point at 35.56703 N, 77.08981 W as delineated by appropriate markers.

(b) On the Division's website, the Director shall post a copy of the draft permit that changes classification for a facility by placing a physical or operational limitation in it to avoid the applicability of rules in 15A NCAC 02Q .0500. Along with the draft permit, the Director shall also post a public notice for comments with an opportunity to request a public hearing on that draft permit. The public notice shall contain the information specified in Paragraph (c) of Rule .0307 of this Section and shall allow at least 30 days for public comment.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Beaufort County and the City Council of the City of Washington are designated as suitable agencies for placement and maintenance of the markers implementing this Rule.

(c) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

History Note: Authority G.S. 75A-3; 75A-15; Eff. February 1, 1976; Amended Eff. September 1, 2010; June 1, 1998; April 1, 1997; June 1, 1989; March 1, 1987; April 1, 1986; March 4, 1979;

History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. September 1, 2010; January 1, 2007; August 1, 2004; July 1, 2000; July 1, 1999; July 1, 1998.

15A NCAC 10F .0303 BEAUFORT COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Beaufort County:

- (1) that portion of Broad Creek bounded on the north by a line running due east and west across Broad Creek through a point 1400 feet due north of Red Marker No. 6, on the south by a line running east and west across Broad Creek through the location of Red Marker No. 4, on the east and west by the high-water mark on Broad Creek;
- (2) that portion of Blounts Creek 100 yards on either side of the SR 1112 Bridge;
- (3) that portion of Blounts Creek beginning 100 yards below the Old Crist Landing and extending upstream to the NC 33 bridge;
- (4) the waters of Battalina Creek, within the territorial limits of the Town of Belhaven;

15A NCAC 10F .0330 CARTERET COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
- (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
- (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
- (4) the waters of Bogue Sound in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackelford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;
- (5) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (6) the waters of Cedar Island Bay and Harbor from U.S. 70 to Cedar Island Bay Channel Light 8;
- (7) the waters of the small cove on the west side of Radio Island immediately south of the B & M Railroad and US 70 Bridges across the Intracoastal Waterway in which Radio Island Marina and Morehead Sports Marina are located as delineated by appropriate markers;

- (8) the waters of the Newport River beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (9) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- (10) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;
- (11) the waters of the Newport River at Bogue Sound including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers; and
- (12) the waters of Morgans Creek as delineated by appropriate markers;
- (13) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W as delineated by appropriate markers.

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), (10), (12) and (13) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule, and the Board of Commissioners of Morehead City, with respect to Subparagraph (4) and (9) of Paragraph (a) of this Rule, and the North Carolina Sate Ports Authority, with respect to the regulated area designed in Subparagraph (11) of Paragraph (a) of this Rule are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15; Eff. March 4, 1979; Amended Eff. October 1, 1997; May 1, 1995; June 1, 1994; February 1, 1994; July 1, 1993; Temporary Amendment Eff. February 1, 1998; Amended Eff. July 1, 1998; Temporary Amendment Eff. March 1, 1999; November 1, 1998; Amended Eff. September 1, 2010; July 1, 2000.

15A NCAC 10F .0354 PITT COUNTY

(a) Regulated Areas. This Rule applies to the waters described in this Paragraph:

- (1) The entire inlet of Hardee Creek from the Tar River in Pitt County;
- (2) The Seine Beach area of the Tar River beginning at Chicod Creek and extending to the east side of the Grimesland Bridge as marked by appropriate markers; and
- (3) that portion of Tranter's Creek beginning at a line, shore to shore, from a point at 35.56925 N, 77.09138 W and ending at a line, shore to

shore, to a point at 35.56703 N, 77.08981 W as delineated by appropriate markers.

(b) Speed Limit. No person shall operate a motorboat or vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Pitt County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. May 1, 1988; Amended Eff. September 1, 2010; July 1, 1995; April 1, 1992.

15A NCAC 18A .2633 PREMISES: MISCELLANEOUS: VERMIN CONTROL

(a) None of the operations in a food service establishment shall be conducted in any room used for domestic purposes. A domestic kitchen shall not be used in connection with the operation of a food service establishment.

(b) When a meat market is located in the same room with a grocery store or other establishment, the area in which the meat, meat food products, poultry, or poultry products are stored, handled, and displayed shall be kept free from other merchandise, and the grocery store or other establishment shall be kept clean and free of vermin.

(c) Soiled linens, coats, and aprons shall be kept in containers provided for this purpose. Laundered table linen and cleaning cloths shall be stored in a clean place until used.

(d) Toxic materials, cleaners, sanitizers, or similar products used in a food service establishment shall be labeled with the common name or manufacturer's label.

(e) An area for storage of toxic materials shall be provided and marked as toxic materials. This requirement does not apply to cleaners and sanitizers used frequently in the operation of the food service establishment that are stored for availability and convenience if the materials are stored to prevent the contamination of food, equipment, utensils, linens and single-service items.

(f) Storage shall be provided for mops, brushes, brooms, hoses, and other items in routine use.

(g) Effective measures such as fly repellent fans, self-closing doors, screens, and routine use of pesticides identified in Paragraph (i) of this Rule shall be taken to keep insects, rodents, animals and other public health pests out of the establishment and to prevent their breeding or presence on the premises.

(h) Except as specified below, live animals are not allowed on the premises of a food service establishment. Live animals are allowed in the following situations if the owner or operator does not permit animals to physically contact food, serving dishes, utensils, tableware, linens, unwrapped single-service and single-use articles or other food service items that may result in contamination of food or food contact surfaces and does not permit animals to physically contact employees engaged in the preparation or handling of food:

- (1) fish or crustacea in aquariums or display tanks;

- (2) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas; and sentry dogs in outside fenced areas;
- (3) service animals accompanying persons with disabilities in areas that are not used for food preparation; and
- (4) dogs (*Canis lupus familiaris*) and cats (*Felis catus*) in outdoor dining areas; provided that dogs and cats are physically restrained, and do not pass through any indoor areas of the food service establishment.

Except for service animals described in Subparagraph (3) of this Paragraph, nothing in this Rule prohibits a food service establishment from prohibiting dogs and cats in outdoor dining areas.

(i) Only those pesticides that have been registered with the U.S. Environmental Protection Agency and with the North Carolina Department of Agriculture and Consumer Services shall be used. These pesticides shall be used as directed on the label and shall be handled to avoid health hazards.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. September 1, 2010; October 1, 2004; August 1, 1998; May 1, 1991.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14I .0401 APPLICATION/LICENSURE/INDIVIDUALS WHO HAVE BEEN CONVICTED OF FELONY

(a) Any applicant convicted of a felony or charged with a felony that is still pending may apply for Board approval upon enrollment in a cosmetic art school. All documentation submitted shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license; is not binding on the Board with respect to any future application from the individual reviewed; and is not a final agency decision.

(b) The applicant shall supply the following:

- (1) A statement of facts of the crime accompanied by a certified copy of the indictment (or, in the absence of an indictment, a copy of the "information" that initiated the formal judicial process), the judgment and any commitment order for each felony for which there has been a conviction;
- (2) A copy of the applicant's restoration of rights certificate, if applicable;
- (3) At least three letters attesting to the applicant's character from individuals unrelated by blood or marriage. If available, one of these letters

must be from someone familiar with the applicant's cosmetology training and experience, one from the applicant's probation or parole officer, and one from the applicant's vocational rehabilitation officer. If letters from persons in these positions are unavailable, the applicant shall submit an explanatory statement as to why they are unavailable;

- (4) The name and address of the applicant's current employer;
- (5) A summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service;
- (6) Records of any cosmetology, esthetics, natural hair care or manicurist school disciplinary actions;
- (7) A description of any pending criminal charges with a copy of the indictment or, if there is not yet an indictment, the arrest warrant for each pending charge; and
- (8) Any other information which in the opinion of the applicant would be useful or pertinent to the consideration by the Board of the applicant's request;

(c) If a felony conviction was for an offense involving drugs or alcohol, the applicant shall also provide evidence showing that he or she is drug/alcohol free. Examples of evidence which will be considered are:

- (1) enrollment in an on-going licensed treatment program;
- (2) drug analysis test results; and
- (3) certification of completion of a licensed treatment program.

History Note: Authority G.S. 88B-4; 88B-24(1); Eff. June 1, 1995; Amended Eff. September 1, 2010; December 1, 2008; April 1, 2001; August 1, 1998.

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

21 NCAC 19 .0101 ADDRESS

The mailing address of the Board is: North Carolina Board of Electrolysis Examiners, 2 Centerview Drive, Pinehurst Building, Suite 60, Greensboro, NC 27407.

History Note: Authority G.S. 88A-6; Eff. January 1, 1992; Amended Eff. September 1, 2010; December 1, 1993.

21 NCAC 19 .0103 DEFINITIONS

In this Chapter, "continuing education unit" or "CEU" means 10 contact hours of participation in an organized continuing education experience that is:

- (1) related to the practice of electrolysis or laser light-based hair reduction;
- (2) obtained after the original granting of licensure;
- (3) in compliance with the International Association for Continuing Education and Training (IACET) standards; and
- (4) approved by the board at least 30 days prior to the event according to the standards set out in Item (3) of this Rule and in G.S. 88A-13.

History Note: Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18; Eff. March 1, 1995; Amended Eff. September 1, 2010.

21 NCAC 19 .0104 ADVERTISING

No advertisement by an electrologist for the services of any electrologist shall be false or misleading. An electrologist who fails to correct such an advertisement or who fails to cause it to be corrected within 10 days after receipt of written notice by the Board is subject to disciplinary action in accordance with G.S. 88A-21.

History Note: Authority G.S. 88A-6; 88A-2; Eff. December 1, 1995; Amended Eff. September 1, 2010.

21 NCAC 19 .0201 FEES

(a) The following fees are payable to the Board for licensure as an electrologist:

- (1) Application for licensure \$125.00
- (2) Initial licensure \$125.00
- (3) Renewal of licensure \$125.00

(b) The following fees are payable to the Board for licensure as a laser hair practitioner:

- (1) Application for licensure \$125.00
- (2) Initial licensure \$125.00
- (3) Renewal of licensure \$125.00

(c) The following fees are payable to the Board for certification as an instructor:

- (1) Application for Electrology instructor \$150.00
- (2) Renewal of Electrology instructor \$125.00
- (3) Application for laser hair practitioner instructor \$150.00
- (4) Renewal of laser hair practitioner instructor \$125.00

(d) The following fees are payable to the Board for certification as a Board approved school:

- (1) IN STATE SCHOOL
 - (A) Application for certification as an Electrology school \$250.00
 - (B) Renewal of certification as an Electrology school \$150.00
 - (C) Application for certification as a laser, light source, or pulse light treatment school \$250.00

- (D) Renewal of certification for a laser, light source, or pulse light treatment school \$150.00

(2) OUT-OF-STATE SCHOOL

- (A) Application for certification as an Electrology school \$350.00
- (B) Initial certification as an Electrology school \$ 75.00
- (C) Renewal of certification for an Electrology school \$100.00
- (D) Application for certification as a laser, light source, or pulse light treatment school \$350.00
- (E) Initial certification as a laser, light source, or pulse light treatment school \$ 75.00

(e) The following other fees are payable to the Board:

- (1) Examination or reexamination \$125.00
- (2) Office inspection or re-inspection \$100.00
- (3) License by reciprocity \$125.00
- (4) Late renewal charge \$ 50.00
- (5) Reinstatement of expired license \$250.00
- (6) Reactivation of license \$150.00
- (7) Duplicate license \$ 25.00

(f) All fees shall be paid by check or money order, made payable to "The North Carolina Board of Electrolysis Examiners."

History Note: Authority G.S. 88A-9; Temporary Adoption Eff. December 1, 1991 for a period of 62 days to expire on February 1, 1992; Eff. Jan 1, 1992; Temporary Amendment Eff. September 17, 2001; Amended Eff. October 9, 2010; December 4, 2002.

21 NCAC 19 .0202 APPLICATION FOR LICENSURE

(a) All applicants for licensure as an electrologist shall submit an application on the form provided by the Board, accompanied by proof of being 21 years of age, a passport acceptable photograph taken within the past two years, the required application fee, any information required by Paragraphs (b), (c) and (d) of this Rule, and certification of completion from each electrology institution attended with verification of the number of hours completed in theory and clinical training.

(b) All applications for licensure under G.S. 88A-11(2) must be accompanied by:

- (1) the address of the licensing agency in the other state or jurisdiction;
- (2) any information such as a license number needed to identify the applicant in correspondence with that agency; and
- (3) a statement authorizing that agency to certify to the Board that the applicant is currently licensed or certified by the other state or jurisdiction and is in good standing, to inform the Board whether there are any pending complaints about the applicant, and to provide

the Board with a copy of the licensing requirements in that state or jurisdiction.

(c) Proof of age shall be shown by certified copy of a birth certificate. If the applicant cannot obtain a certified copy of the birth certificate, the applicant shall attach an explanation as to why no birth certificate is obtainable and shall submit other proof of age. Other proof of age includes passports, current life insurance policies held for at least one year showing date of birth, entries in family bibles, medical or school records showing date of birth, and marriage licenses showing age.

(d) Applicants from states that do not license electrologists or applicants from states that require less than 600 hours of certified education shall submit proof of practice as required by G.S. 88A-11(2) supported by tax records or a copy of a privilege license that will document previous practice of electrolysis prior to date of application.

(e) All new electrologist applicants must take and pass both a written and a practical examination except for applicants meeting the requirements of G.S. 88A-11(2).

(f) In addition to maintaining an active electrologist license from the Board, a laser hair practitioner shall submit:

(1) a certification of 30 hours of laser, light source, or pulsed light treatment certification course approved by the Board that encompasses the laser or light device being used by the laser hair practitioner.

(2) a "Supervisory Agreement" between the laser hair practitioner and a "Supervising Physician" licensed with the North Carolina Medical Board as defined under G.S. Article 1 Chapter 90. The elements of this agreement shall contain:

- (A) the supervising physician's name and address;
- (B) an attestation that the supervisor is licensed to practice medicine in North Carolina and plans to maintain licensure during the time frame of the agreement;
- (C) an attestation that the supervising physician is knowledgeable in the use of the specifically listed devices;
- (D) an attestation that the supervising physician ensures the laser hair practitioner has training to safely and effectively perform laser hair reduction with the listed devices;
- (E) an attestation that the supervising physician will provide personal and responsible direction to the laser hair practitioner; and
- (F) a list of devices, makes, and models being used by the laser hair practitioner;

(g) A copy of the "Supervisory Agreement" form shall be filed with the Board and a copy shall be available in the office of the "Supervising Physician" and the laser hair practitioner for inspection.

(h) The Board shall reject an incomplete or partial application.

History Note: Authority G.S. 88A-6; 88A-9; 88A-10; 88A-11(1); 88A-11(2); 88A-11.1; 88A-21;

Temporary Adoption Eff. December 1, 1991 for a period of 62 days to expire on February 1, 1992;

Eff. February 1, 1992;

Temporary Amendment Eff. October 13, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. September 1, 2010; February 1, 1994.

21 NCAC 19 .0204 APPLICATION FOR RENEWAL, REINSTATEMENT, OR REACTIVATION OF A LASER HAIR PRACTITIONER LICENSE

(a) Unless the applicant's laser hair practitioner license expired more than 90 days prior to the filing of an application for renewal, each applicant for license renewal pursuant to G.S. 88A-12 shall pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with 21 NCAC 19 .0701(a).

(b) A laser hair practitioner whose license has been expired for more than 90 days but less than five years shall apply for reinstatement by sending the Board a written request for reinstatement, paying the reinstatement fee, and providing proof of competence pursuant to 21 NCAC 19 .0701(c).

(c) A laser hair practitioner who has been on the inactive list for less than five years who desires to be returned to active status shall send the Board a written request for return to the active list, pay the renewal fee, and provide proof of competence pursuant to 21 NCAC 19 .0701(b).

(d) Proof of compliance with 21 NCAC 19 .0701 may be provided either:

- (1) by affidavit of the applicant listing the programs or courses taken, the entity that offered the program or course, the CEUs obtained, and the date and location of the program or course; or
- (2) by copies of a certificate of completion issued by the entity that offered the program or course, identifying the course and showing the date, location, and number of hours taken by the applicant.

History Note: Authority G.S. 88A-6; 88A-12; 88A-13; 88A-14; 88A-18;

Eff. September 1, 2010.

21 NCAC 19 .0403 OFFICES

(a) Each Electrolysis office, wherever located, shall:

- (1) have a treatment table or other piece of furniture for placing clients for treatment;
- (2) have at least one circuline type lamp, halogen lamp, or other type or magnifying lamp;
- (3) have hand washing facilities on the same floor and toilet facilities in the same building, both with a supply of either soap or a germicidal skin preparation for washing hands;
- (4) have a supply of labeled non-sterile examination gloves, cotton balls and antiseptic product for cleaning client's skin, materials for

cleaning instruments and other items, materials for cleaning the workplace or documentation of cleaning contract, paper or cotton towels, and puncture resistant containers and plastic bags for used materials;

- (5) have sterilization equipment and supplies needed for the sterilization methods used;
- (6) have a covered trash can and, if linens are used, a laundry bag or closed container for laundry, readily available to each workplace area; and
- (7) have storage facilities sufficient to contain the equipment, instruments and supplies of the electrolysis practice.

(b) In addition to the items required in Paragraph (a) of this Rule, each laser practitioner office shall have the following:

- (1) all doors leading to laser room shall have laser-specific American National Standard Institute (ANSI) Z136.1 safety signs displayed;
- (2) no uncovered mirrors or reflective surfaces;
- (3) laser safety eyewear which is labeled with the same wavelength and optical density as the laser device operated and which is worn while treatment is administered;
- (4) all windows protected from laser beam with either an opaque material or white blinds;
- (5) a readily available fire extinguisher in the treatment room;
- (6) face masks to be worn while treatment is administered; and
- (7) an air filter.

(c) A laser or light-based hair removal practice shall be maintained in accordance with local zoning regulations.

(d) Lasers and light-based devices shall be maintained and operated in accordance with Occupational Safety and Health Administration (OSHA) standards.

(e) A copy of the current "Supervisory Agreement" shall be available in the office for inspection upon request.

History Note: Authority G.S. 88A-16; Eff. June 1, 1993; Amended Eff. September 1, 2010.

21 NCAC 19 .0501 SUPERVISING PHYSICIAN

(a) A laser hair practitioner shall not operate any laser equipment without a signed "Supervisory Agreement" in accordance with 21 NCAC 19 .0202 in place and on file with the Board.

(b) Before commencing practice a laser hair practitioner must submit to the Board the name of the supervising physician, business address, business phone number, North Carolina Medical Board medical license number and a copy of the signed "Supervisory Agreement".

(c) A laser hair practitioner shall notify the Board within 30 days of the termination of the "Supervisory Agreement" with the supervising physician.

History Note: Authority G.S. 88A-11.1;

Eff. September 1, 2010.

CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTERS

21 NCAC 20 .0115 CODE OF ETHICS

In their signed affidavits, all applicants shall indicate their agreement to adhere to the following Code of Ethics. The code shall be used by the Board to help govern its decisions in adjudicating flagrant misconduct in the practice of forestry under G.S. 89B-13.

Code of Ethics

- (1) A Registered Forester shall practice forestry consistent with ecologically sound principles and all applicable laws.
- (2) A Registered Forester shall not engage in unlawful acts or business practices.
- (3) A Registered Forester shall present truthful, accurate, and complete information while practicing forestry.
- (4) A Registered Forester shall practice forest management in accordance with landowner objectives and Forestry Best Management Practices as described in the "North Carolina Forestry Best Management Practices Manual to Protect Water Quality" published by the Department of Environment and Natural Resources, or will advise landowners of the consequences of deviating from Forestry Best Management Practices.
- (5) A Registered Forester shall advertise and perform only those services for which the Registered Forester is qualified.
- (6) A Registered Forester shall indicate on whose behalf any public statements are made, and keep proprietary information confidential unless the appropriate person authorizes its disclosure.
- (7) A Registered Forester must avoid conflicts of interest or even the appearance of such conflicts. If, despite such precaution, a conflict of interest is discovered, it must be disclosed to the Registered Forester's employer or client, and the Registered Forester must attempt to resolve the conflict.
- (8) A Registered Forester shall: act in a civil and professional manner; respect the needs, contributions, and viewpoints of others, and; give credit to others for their methods, ideas, or assistance.
- (9) A Registered Forester shall not accept compensation or expenses from more than one employer for the same service, unless the parties involved are informed and consent.
- (10) A Registered Forester having evidence of violation of this code by another Registered Forester shall present the information and

charges to the State Board of Registration for Foresters.

History Note: Authority G.S. 89B-6; 89B-9; 89B-13; Eff. February 1, 1976; Amended Eff. May 1, 1989; February 1, 1985; Temporary Amendment Eff. June 1, 2001; Amended Eff. September 1, 2010; August 1, 2002.

21 NCAC 20 .0125 PETITION FOR RULE-MAKING

(a) Any person may petition the State Board of Registration for Foresters (NCBRF) to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to NCBRF. The petition must be titled "Petition for Rulemaking" and must include the following information:

- (1) the name and address of the person submitting the petition;
(2) a citation to any rule for which an amendment or repeal is requested;
(3) a draft of any proposed rule or amended rule;
(4) an explanation of why the new rule or amendment or repeal of an existing rule is requested and the effect of the new rule, amendment, or repeal on the procedures of NCBRF; and
(5) any other information the person submitting the petition considers relevant.

(b) In making the decision to grant or deny the petition, the Board shall consider the information submitted with the petition and any other relevant information.

History Note: Authority G.S. 150B-20; Eff. September 1, 2010.

CHAPTER 34 - BOARD OF FUNERAL SERVICE

21 NCAC 34A .0203 REPORT TO GENERAL ASSEMBLY

(a) No later than October 31 of each calendar year, the Board shall file the reports required by G.S. 93B-2. If the Board fails to timely file a report, all funds received after October 31 shall be deposited into an escrow account with a financial institution, as such term is defined in G.S. 90-210.60(2), until the report has been filed. The Board may resume the expenditure of funds in accordance with G.S. 93B-2 immediately upon depositing the report into the custody of the U.S. Postal Service as certified mail return receipt requested.

(b) Any period of suspension under G.S. 93B-2(d) shall have no effect upon the right of a license or permit applicant to the issue or renewal of any license or permit upon meeting all legal requirements; provided, however, that this Rule shall not impose any duty upon the Board to issue any license or permit outside its normal operating procedures.

History Note: Authority G.S. 90-210.23(a); 93B-2(d); Eff. September 1, 2010.

CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0103 DEFINITIONS

The definitions of terms contained in G.S. 90-648 apply to this Chapter. In addition, the following definitions apply with regard to these Rules:

- (1) Assessment means a clinical evaluation of the individual patient and the suitability and efficacy of a respiratory care procedure or treatment, including an assessment of the suitability and efficacy of equipment for the individual patient if equipment is to be used in the procedure or treatment. Assessment can be performed by physician, Respiratory Care Practitioner (RCP) or other licensed health care provider within their scope of practice.
(2) Respiratory care includes any acts, tests, procedures, treatments or modalities that are routinely taught in educational programs or in continuing education programs for respiratory care practitioners and are routinely performed in respiratory care practice settings.
(3) The practice of respiratory care includes the application of a range of evaluation and treatment procedures related to the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics. In addition to the general activities identified in G.S. 90-648(10), each of the following specific activities constitutes the practice of Respiratory care:
(a) the performance of pulmonary diagnostic and sleep related testing;
(b) the administration of pharmacologic agents related to respiratory care procedures;
(c) establishment and maintenance of arterial lines for hemodynamic monitoring;
(d) therapeutic evaluation and assessment relating to mechanical or physiological ventilatory support, including positive pressure support apparatus;
(e) airway clearance techniques, postural drainage and chest percussion;
(f) assistance with bronchoscopy;
(g) asthma and respiratory disease management;
(h) cardiopulmonary rehabilitation;
(i) alleviating respiratory impairment and functional limitation by

- (j) designing, implementing, and modifying therapeutic care plans; patient instruction in respiratory care, functional training in self-care and home respiratory care management, and the promotion and maintenance of respiratory care fitness, health, and quality of life;
- (k) those advanced practice procedures that are recognized by the Board in declaratory rulings as being within the scope of respiratory care, when performed by an RCP with appropriate training; and
- (l) managing the clinical delivery of respiratory care services through the on-going supervision, teaching and evaluation of respiratory care.

History Note: Authority G.S. 90-652; Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. September 1, 2010; January 1, 2007; March 1, 2006.

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) 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) 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) 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.

History Note: Authority G.S. 90-652(1),(2),(4) and (13); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. September 1, 2010; November 1, 2004.

21 NCAC 61 .0308 CONTINUING DUTY TO REPORT

- (a) All licensed respiratory care practitioners and provisional licensees are under a continuing duty to report to the Board any and all:
 - (1) convictions of, or pleas of guilty or nolo contendere to:
 - (A) any felony;
 - (B) any misdemeanor or other offense, such as fraud, when an element of the crime involves conduct by the licensee which indicates a lack of honesty, integrity, or competence directly relating to the licensee's delivery of respiratory care, including crimes whose elements include violations of Rule .0307(2), (5), (7), (10), (19), (21), (22), (23), (24) and (25) of this Chapter; and
 - (2) the existence of any civil suit which arises out of or is related to the licensee's practice of respiratory care.
- (b) All supervising respiratory care practitioners are under a continuing duty to report to the Board any and all:
 - (1) terminations of any respiratory care practitioner for violations of the practice act or Board rules; and
 - (2) violations of the practice act or Board rules by any respiratory care practitioner under his or her supervision.
- (c) The reports required by this Rule must be made within 15 days of the occurrence, but a failure to make a report within 15 days does not bar the Board from investigating or taking action on the matter when it is reported.

History Note: Authority G.S. 90-652(2); Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Amended Eff. September 1, 2010; July 1, 2005.

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

- (a) Upon application for license renewal, a licensee shall attest to having completed one or more of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:
 - (1) Completion of a minimum of 12 hours of Category I Continuing Education (CE) activities directly related to the licensee's practice of respiratory care and currently approved by the Board, the American Association for Respiratory Care (AARC) or the Accreditation Council for Continuing

- Medical Education (ACCME). "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following:
- (A) Lecture – a discourse given for instruction before an audience or through teleconference;
 - (B) Panel – a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;
 - (C) Workshop – a series of meetings for intensive, hands-on study, or discussion in a specific area of interest;
 - (D) Seminar – a directed advanced study or discussion in a specific field of interest;
 - (E) Symposium – a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters; and
 - (F) Distance Education – includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package;
- (2) Retake the Certified Respiratory Therapist Examination (CRT), administered by the National Board for Respiratory Care (NBRC), and achieve a passing score as determined by the NBRC or take any of the following examinations and achieve a passing score as determined by the sponsor of the examination: the Registry Examination for Advanced Respiratory Therapists (RRT), administered by the NBRC; the Neonatal/Pediatric Respiratory Care Specialty Examination (NPS), administered by the NBRC; the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), administered by the NBRC; the Registry Examination for Advanced Pulmonary Function Technologist (RPFT), administered by the NBRC; the Sleep Disorders Specialty (SDS) exam, administered by the NBRC; the Registry Examination for Polysomnographic Technologist (RPSGT), administered by the Board of Registered Polysomnographic Technologists (BRPT); or the Asthma Educators Certification Examination (AE-C), administered by the National Asthma Educator Certification Board (NAECB);
- (3) Completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs;
- (4) Completion of a minimum of three semester hours of post-licensure respiratory care academic education leading to a baccalaureate or masters degree in Respiratory Care;
 - (5) Presentation of a Respiratory Care Research study at a continuing education conference; and
 - (6) Authoring a published Respiratory Care book or Respiratory Care article published in a medical peer review journal.
- (b) The completion of certification or recertification in any of the following: Advanced Cardiac Life Support (ACLS) by the American Heart Association, Pediatric Advanced Life Support (PALS) by the American Heart Association, and Neonatal Resuscitation Program (NRP) by the American Academy of Pediatrics, shall count for a total of five hours of continuing education for each renewal period; but no more than five hours of total credit will be recognized for each renewal period for the completion of any such certification or recertification.
- (c) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (a) of this Rule for a period of no less than three years.
- (d) A licensee shall maintain a file at his or her practice facility that contains a copy of the RCP license, a copy of a current Basic Cardiac Life Support (BCLS) certification, a copy of advanced life support certifications and a copy of all credentials issued by the National Board for Respiratory Care.
- (e) A licensee is subject to random audit for proof of compliance with the Board's requirements for continuing education.
- (f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Evidence of completion of the requirements of Paragraph (a) of this Rule shall be submitted to the Board no later than 30 days of receipt of the audit notice.
- (g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-666.
- (h) The Board shall charge twenty dollars (\$20.00) per approved hour of CE with a maximum of one hundred and fifty dollars (\$150.00) per application for providers of continuing education who apply for approval of continuing education programs.
- (i) The Board shall grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.
- (1) Having served in the regular armed services of the United States at least six months of the 12 months immediately preceding the license renewal date; or
 - (2) Having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the 12 months immediately preceding the licensee renewal date.

History Note: Authority G.S. 90-652(2)(13); 90-658; 90-660(b)(9);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. September 1, 2010; July 1, 2007; April 1, 2004.

**CHAPTER 64 - BOARD OF EXAMINERS FOR SPEECH
AND LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS**

21 NCAC 64 .0219 TELEPRACTICE

(a) Licensees may evaluate and treat patients receiving clinical services in North Carolina by utilizing telepractice. Telepractice means the use of telecommunications and information technologies for the exchange of encrypted patient data, obtained

through real-time interaction, from one site to another for the provision of speech and language pathology and audiology services to patients through hardwire or internet connection.

(b) Telepractice shall be obtained in real time and in a manner sufficient to ensure patient confidentiality.

(c) Telepractice is subject to the same standard of practice as if the person being treated were physically present with the licensee. Telepractice is the responsibility of the licensee and shall not be delegated.

(d) Licensees and staff involved in telepractice must be trained in the use of telepractice equipment.

History note: Authority G.S. 90-304-(a)(3);
Eff. September 1, 2010.

RULES REVIEW COMMISSION

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 2nd 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

October 21, 2010 November 18, 2010
December 16, 2010 January 20, 2011

AGENDA

RULES REVIEW COMMISSION
Thursday, October 21, 2010 9:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Structural Pest Control Committee – 02 NCAC 34 .0331, .1103 (Bryan)
 - B. HHS – Division of Health Service Regulation – 10A NCAC 14A .0103 (Bryan)
 - C. Commission for Public Health – 10A NCAC 41C .0904 (Bryan)
 - D. Department of Insurance – 11 NCAC 13 .0528 (DeLuca)
 - E. Department of Environment and Natural Resources – 15A NCAC 28 .0502 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between August 23, 2010 and September 20, 2010
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
 - Next meeting: November 18, 2010

Commission Review

Log of Permanent Rule Filings
August 23, 2010 through September 20, 2010

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2R are organizational rules, policies and procedures including general provisions (.0100); structure (.0200); publications, records and copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local ABC Boards: relationship with state commission (.1100); opening and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase-transportation permits for individuals and mix beverages for permittees (.1800); and sales of liquor to mixed beverages permittees (.1900).

<u>Definitions</u>	04 NCAC 02R .0103
Amend/*	
<u>Distribution, Inspection and Copies of ABC Laws</u>	04 NCAC 02R .0303
Amend/*	
<u>Fee for Computer Services</u>	04 NCAC 02R .0304
Amend/*	
<u>Definition</u>	04 NCAC 02R .0601
Repeal/*	
<u>Request for Declaratory Ruling</u>	04 NCAC 02R .0603
Amend/*	
<u>Standards for Commission and Employees</u>	04 NCAC 02R .0701
Amend/*	
<u>Daily Deposits</u>	04 NCAC 02R .0905
Amend/*	
<u>Annual Independent Financial Audit</u>	04 NCAC 02R .0907
Amend/*	
<u>Warehouse: Presence of Unauthorized Person Prohibited</u>	04 NCAC 02R .1005
Amend/*	
<u>Conflicts of Interest</u>	04 NCAC 02R .1008
Amend/*	
<u>Audits to be Forwarded to Commission</u>	04 NCAC 02R .1103
Repeal/*	
<u>Approval of New Stores</u>	04 NCAC 02R .1203
Amend/*	
<u>Definitions</u>	04 NCAC 02R .1301
Repeal/*	
<u>Commemorative Bottles</u>	04 NCAC 02R .1405
Amend/*	
<u>Payment</u>	04 NCAC 02R .1407
Amend/*	
<u>Markup Formula</u>	04 NCAC 02R .1502
Amend/*	
<u>Removal of Beverages from ABC Stores</u>	04 NCAC 02R .1701
Amend/*	
<u>Purchase-Transportation Permits</u>	04 NCAC 02R .1708
Amend/*	
<u>Credit Card Sales</u>	04 NCAC 02R .1710
Repeal/*	
<u>Purchase-Transportation Permits: Wine: Liquor</u>	04 NCAC 02R .1801
Amend/*	
<u>Mixed Beverage Permit/Invoice Form</u>	04 NCAC 02R .1802
Amend/*	
<u>Cabinet Permittees: Purchase-Transportation Permits</u>	04 NCAC 02R .1803

Amend/*

Designation of Store

04 NCAC 02R .1902

Repeal/*

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); end stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and hospice inpatient facilities and hospice residential care facilities (.4000).

<u>Information Required of Applicant</u>	10A NCAC 14C .1202
Amend/*	
<u>Information Required of Applicant</u>	10A NCAC 14C .1402
Amend/*	
<u>Performance Standards</u>	10A NCAC 14C .1403
Amend/*	
<u>Definitions</u>	10A NCAC 14C .1701
Amend/*	
<u>Performance Standards</u>	10A NCAC 14C .1703
Amend/*	
<u>Information Required of Applicant</u>	10A NCAC 14C .1902
Amend/*	
<u>Information Required of Applicant</u>	10A NCAC 14C .2102
Amend/*	
<u>Performance Standards</u>	10A NCAC 14C .2103
Amend/*	
<u>Support Services</u>	10A NCAC 14C .2104
Amend/*	
<u>Staffing and Staff Training</u>	10A NCAC 14C .2105
Amend/*	
<u>Facility</u>	10A NCAC 14C .2106
Amend/*	
<u>Information Required of Applicant</u>	10A NCAC 14C .2202
Amend/*	
<u>Performance Standards</u>	10A NCAC 14C .2203
Amend/*	
<u>Definitions</u>	10A NCAC 14C .2701
Amend/*	

STATE REGISTRAR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41H concern vital records including general provisions (.0100); local registrars, deputy registrars, subregistrars (.0200); birth registration (.0300); delayed registration of births (.0400); death registration (.0500); certified copies (.0600); fees and refunds (.0700); change of names (.0800); corrections and amendments (.0900); new certificates (.1000); legitimations (.1100); removal of graves (.1200); access to records (.1300); and divorce and annulment (.1400).

<u>Routine Requests for Certified Copies</u>	10A NCAC 41H .0701
Amend/*	
<u>Research Requests</u>	10A NCAC 41H .0702
Amend/*	

ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C. Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Determination of Experience</u>	12 NCAC 11 .0106
Amend/*	

LABOR, DEPARTMENT OF

The rules in Chapter 14 are from the Apprenticeship and Training Division.

The rules in Subchapter 14A are the rules that were effective February 1, 1984 through March 14, 2010.

<u>Apprenticeship Council</u>	13 NCAC 14A .0103
Repeal/*	
<u>Certification</u>	13 NCAC 14A .0105
Repeal/*	
<u>Public Access to Records</u>	13 NCAC 14A .0108
Repeal/*	

The rules in Subchapter 14B are the rules effective March 15, 2010 including general provisions (.0100); apprenticeship programs (.0200); on-the-job training (OJT) programs (.0300); de-registration and withdrawal of approval (.0400); complaints (.0500); equal opportunity (.0600); and apprenticeship fees (.0700).

<u>Name: Address</u>	13 NCAC 14B .0101
Amend/*	
<u>Registration Agency</u>	13 NCAC 14B .0102
Amend/*	
<u>Veterans Training Assistance Allowances</u>	13 NCAC 14B .0103
Amend/*	
<u>Definition</u>	13 NCAC 14B .0104
Amend/*	
<u>Criteria for Apprenticeable Occupations</u>	13 NCAC 14B .0201
Amend/*	
<u>Standards for Apprenticeship</u>	13 NCAC 14B .0202
Amend/*	
<u>Program Performance Standards</u>	13 NCAC 14B .0203
Adopt/*	
<u>Registration Request Procedure</u>	13 NCAC 14B .0204
Amend/*	
<u>Eligibility and Procedure for Registration of an Apprenti...</u>	13 NCAC 14B .0205
Amend/*	

<u>Apprenticeship Agreement</u> Amend/*	13 NCAC 14B .0208
<u>Registration of Apprentice and Agreement</u> Amend/*	13 NCAC 14B .0209
<u>Revision of Apprenticeship Standards or Agreement</u> Amend/*	13 NCAC 14B .0211
<u>Termination and Extension of Agreements</u> Amend/*	13 NCAC 14B .0212
<u>Certification or Certificate of Completion</u> Amend/*	13 NCAC 14B .0213
<u>Standards for OJT Programs</u> Amend/*	13 NCAC 14B .0301
<u>Registration Request Procedure for OJT Programs</u> Amend/*	13 NCAC 14B .0302
<u>Eligibility and Procedure for Registration of OJT Programs</u> Amend/*	13 NCAC 14B .0303
<u>OJT Agreement</u> Amend/*	13 NCAC 14B .0305
<u>Registration of OJT Agreements</u> Amend/*	13 NCAC 14B .0306
<u>Revision of OJT Standards or Agreement</u> Amend/*	13 NCAC 14B .0308
<u>Termination and Extension of Agreements</u> Amend/*	13 NCAC 14B .0309
<u>Quality Assurance Assessments</u> Amend/*	13 NCAC 14B .0401
<u>De-Registration of Program</u> Amend/*	13 NCAC 14B .0402
<u>Voluntary De-Registration</u> Amend/*	13 NCAC 14B .0403
<u>De-Registration</u> Amend/*	13 NCAC 14B .0404
<u>De-Registration for Inactivity</u> Amend/*	13 NCAC 14B .0405
<u>Reinstatement of Registration</u> Amend/*	13 NCAC 14B .0406
<u>De-Registration of Agreement</u> Amend/*	13 NCAC 14B .0407
<u>Complaint Procedure</u> Amend/*	13 NCAC 14B .0503
<u>Analysis: Underutilization</u> Amend/*	13 NCAC 14B .0604
<u>Records</u> Amend/*	13 NCAC 14B .0610
<u>Compliance Reviews</u> Amend/*	13 NCAC 14B .0611
<u>Sanctions</u> Amend/*	13 NCAC 14B .0612
<u>Noncompliance with Federal and State Equal Opportunity Re...</u> Adopt/*	13 NCAC 14B .0616

ARCHITECTURE, BOARD OF

The rules in Chapter 2 are from the Board of Architecture and include general provisions (.0100); practice of architecture (.0200); examination procedures (.0300); rules, petitions, and hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600); administrative hearings: decisions and related rights (.0700); judicial review (.0800); and continuing education (.0900).

<u>Fees</u>	21	NCAC 02	.0108
Amend/*			
<u>Definitions</u>	21	NCAC 02	.0109
Adopt/*			
<u>Architect and Firm Contact Information as on File with th...</u>	21	NCAC 02	.0201
Amend/*			
<u>Forms of Practice</u>	21	NCAC 02	.0204
Amend/*			
<u>Name of Firm</u>	21	NCAC 02	.0205
Amend/*			
<u>Requirement for and Use of Professional Seal</u>	21	NCAC 02	.0206
Amend/*			
<u>Dishonest Conduct</u>	21	NCAC 02	.0208
Amend/*			
<u>Unprofessional Conduct</u>	21	NCAC 02	.0209
Amend/*			
<u>Individual Licenses</u>	21	NCAC 02	.0213
Amend/*			
<u>Firm Practice of Architecture</u>	21	NCAC 02	.0214
Amend/*			
<u>Out of State Firms</u>	21	NCAC 02	.0215
Amend/*			
<u>Annual Listing of Partnership</u>	21	NCAC 02	.0216
Repeal/*			
<u>Registered Limited Liability Partnership</u>	21	NCAC 02	.0219
Repeal/*			
<u>Application for Registration by Exam</u>	21	NCAC 02	.0301
Amend/*			
<u>Examination</u>	21	NCAC 02	.0302
Amend/*			
<u>Licensure by Reciprocity</u>	21	NCAC 02	.0303
Amend/*			
<u>Continuances Failure to Appear</u>	21	NCAC 02	.0701
Amend/*			
<u>Subpoenas</u>	21	NCAC 02	.0703
Amend/*			

MASSAGE AND BODYWORK THERAPY, BOARD OF

The rules in Chapter 30 concern organization and general provisions (.0100); application for licensure (.0200); licensing (.0300); business practices (.0400); standards of professional conduct (.0500); massage and bodywork therapy schools (.0600); continuing education (.0700); rules (.0800); and complaints, disciplinary action and hearings (.0900).

<u>Student Enrollment Agreement</u>	21	NCAC 30	.0629
Amend/*			

MEDICAL BOARD

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

<u>Continuing Medical Education</u> Amend/*	21	NCAC 32S .0216
<u>Limited Physician Assistant License for Disasters and Eme...</u> Amend/*	21	NCAC 32S .0219
<u>Expedited Application for Physician Assistant Licensure</u> Adopt/*	21	NCAC 32S .0220

CONTESTED CASE DECISIONS

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
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
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	
ABC Commission v. Startown Lounge, Inc. T/A 5 O'clock Somewhere	10 ABC 0153	Gray	06/25/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	Webster	07/09/10	
ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	Gray	08/02/10	
ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room	10 ABC 2659	Lassiter	07/14/10	
ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President	10 ABC 3107	Brooks	07/15/10	
<u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>				
Tammy S. Barbone v. Crime Victims Compensation Comm.	08 CPS 2667	Brooks	07/16/10	
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	
William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol	09 CPS 4692	Brooks	06/09/10	
California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	Overby	05/12/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
Marius A. Christian v. State Highway Patrol	09 CPS 6368	Overby	08/13/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	May	06/23/10	
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	
Harry L. Foy Jr., Department of Crime Control and Public Safety, Div. of State Highway Patrol Motor Carrier Enforcement Section	09 CPS 6728	Overby	08/17/10	
James M. Abdella v. Department of Crime Control and Public Safety v. Motor Carrier Enforcement Div	09 CPS 6740	Overby	08/18/10	
AD Gustafson Inc., Andrew Gustafson v. State Highway Patrol	10 CPS 0071	Lassiter	07/30/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	Elkins	06/29/10	25:04 NCR 515
Keon J. Jones v. Victims Compensation Commission	10 CPS 0848	Webster	07/26/10	
X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV	10 CPS 0855	Lassiter	07/20/10	
AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control	10 CPS 2072	Gray	06/15/10	
Michael A. Rossi Sr., v. Dept. of Crime Control and Public Safety, Div. of Victims	10 CPS 2478	Lassiter	08/30/10	

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Compensation Services

McLain, LLC, Phillip McLain v. NC State Highway Patrol 10 CPS 2515 Brooks 07/02/10

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

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C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	Brooks	06/16/10
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	Webster	04/29/10
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Mattie Lowe/Angela Lowe, Lowe Family Care Home #3 v. DHHS, Division of Health Service Regulation	09 DHR 4148	Gray	08/27/10
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Onslow MRI, LLC v. DHHS, Div. of Health Service Regulation, Certificate of Need Section and Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging	09 DHR 5617	Overby	06/24/10
Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging v. DHHS, Division of Health Service Regulation, CON Section and Onslow MRI, LLC	09 DHR 5638	Overby	06/24/10
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The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Rehabilitation-Mount Holly and d/b/a Carolinas Health Care System v. DHHS, Div of Health Service Regulation CON Section and Caromont Health, Inc. and Gaston Memorial Hospital, Inc	09 DHR 6116	Brooks	07/26/10
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Kelvin Donelle Lewis v. Health Care Personnel Registry , Nurse Aide Registry	09 DHR 6196	Webster	04/05/10
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Gloria Manley v. DHHS-DCD	09 DHR 6816	Overby	06/24/10
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Tamekia Cain v. DHHS, Division of Health Service	10 DHR 0488	Gray	05/20/10
Elizabeth Locke v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	10 DHR 0678	Webster	06/17/10
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Candy Bynum-Anderson v. DHHS, Division of Facility Services, Health Care Personnel Registry	10 DHR 0793	Gray	07/29/10
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Phillip D. Hollifield, Administrator of the Estate of Phillip W. Hollifield v. DHHS	10 DHR 1448	Brooks	06/16/10
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Sandbox Academy Child Care Center, Cynthia Martin v. OAH, DHHS	10 DHR 1837	Mann	08/27/10
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Lenora Wesley v. Division of Child Development, DHHS	10 DHR 2069	Gray	08/17/10
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Phyllis Ann Johnson v. DOJ, Company Police Program	09 DOJ 5295	Elkins	05/03/10	25:01 NCR 111
Joseph Thomas DePrisco v. Criminal Justice Education and Training Standards Commission	09 DOJ 5354	Lassiter	06/01/10	
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Charles Lovelace Williams v. Sheriffs' Education and Training Standards Commission	10 DOJ 0066	Gray	05/26/10	
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Frederick Charles Newingham v. Private Protective Services Board	10 DOJ 1103	Lassiter	07/23/10	
Steven Daniel Blue v. Private Protective Service Board	10 DOJ 1250	Webster	08/03/10	
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Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10	
Jane C. Brocius v. State Treasurer Retirement System Division	09 DST 4066	Gray	03/25/10	25:03 NCR 350
Russell Ray Rouse v. DOT, Retirement Systems Division	10 DST 0068	Overby	07/21/10	

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Benjamin Franklin Wyche Jr. v. State Board of Education	10 EDC 2449	Overby	07/20/10	
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Windy Woods, LLC v. DENR, Division of Water Quality	09 EHR 4621	Gray	06/04/10	25:05 NCR 674
Rufus E. Murray v. DENR, Division of Marine Fisheries	09 EHR 5042	Gray	07/23/10	
Little Miracles Child Care, Margaret Mosley v. Moore County Health Department, DENR	10 EHR 0624	Gray	08/11/10	
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Bill M. Klimvakis, Bill's Plumbing v. DENR, Division of Waste Management	10 EHR 3286	Overby	08/23/10	

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Tammy A. Lee v. Blue Cross Blue Shield of NC	09 INS 6817	Overby	05/03/10	
Benton E. Miles, Jr., State Health Plan	10 INS 0720	Brooks	06/08/10	

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Jewel C. Mosley v. Wilson County Health Department, Felix Meyer, Director	08 OSP 2140	Gray	07/20/10	
Spencer Batchelor v. NCSU Campus Police	09 OSP 0059	Lassiter	03/29/10	25:03 NCR 358
Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10	
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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	
Janice F. Stokes v. DOC, Division of Community Corrections	10 OSP 2316	Gray	08/20/10	
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	
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	

OFFICE OF SECRETARY OF STATE

Jenny S. Thompson v. Department of SOS	09 SOS 2342	Lassiter	03/17/10	
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10	

Filed

STATE OF NORTH CAROLINA

IN THE OFFICE OF

2010 JUN 18 AM 9:09 ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

09 OSP 2149

Office of
Administrative Hearings

BOBBY L. MURRAY,
Petitioner,

v.

NORTH CAROLINA CENTRAL
UNIVERSITY,
Respondent.

DECISION

This case came on for hearing before Beecher R. Gray, Administrative Law Judge, on March 29, 2010, in Raleigh, North Carolina. Petitioner was represented by Vanessa K. Lucas, Esq., of the law firm of Edelstein and Payne. Respondent was represented by Katherine A. Murphy, Esq., of the Attorney General's Office.

ISSUE

Whether Respondent has established just cause to dismiss Petitioner for unacceptable personal conduct.

WITNESSES

Respondent, North Carolina Central University (hereinafter "Respondent" or "NCCU"), presented testimony from the following five witnesses: Joan Myatt, Mother of Brittany Myatt; Brittany Myatt, NCCU student; Andria Knight, Director of the NCCU Equal Opportunity Employment Office; Dr. Melvin Carver, Chair of the NCCU Art Department and Mary Mathew, Interim Dean of the NCCU College of Liberal Arts. Petitioner testified on his own behalf and presented testimony from Dr. Leon B. Hardy, Associate Professor of Mathematics at NCCU and Joyce C. Page, Adjunct Professor and former director of purchasing at NCCU.

EXHIBITS

The following exhibits offered by Petitioner were received in evidence:

1. Voluntary dismissal of charges
2. Expungement of charges
3. Investigatory placement letter
4. Notice of predisciplinary conference letter
5. 2/27/09 letter
6. Letter from Postmaster to Petitioner
7. Dismissal letter
8. 4/28/09 letter to Gregory from Petitioner
9. Printout of Facebook page for Brittany Myatt

The following exhibits offered by Respondent were received in evidence:

1. Handwritten statement by Brittany Myatt
2. Handwritten statement by Brittany Myatt (2)
3. Notes taken by Knight
4. Log prepared by Knight
5. Dismissal letter from Carver to Petitioner
6. Investigatory placement letter

BASED on careful consideration of the sworn testimony of the witnesses, documents admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of facts:

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Petitioner Bobby Murray began his employment with NCCU on October 26, 1996. (T p. 62) Mr. Murray started as a temporary employee, but after seven months was promoted to Computer Lab Coordinator II. He then had a lateral move to Computer Consultant I. On October 15, 2005, Mr. Murray was promoted to the Department of Art as a Computer Consultant II. (T pp. 62-63)
3. Mr. Murray's primary responsibility as a Computer Consultant II was to provide computer service and solutions to students, faculty, and staff who use Macintosh computers. Mr. Murray's job necessitated daily interaction with students. (T p. 63)
4. Mr. Murray's supervisor was Melvin J. Carver, Chair for the Department of Art. (T pp. 42 & 63).
5. Mr. Murray was terminated effective March 9, 2009, for unacceptable personal conduct. In the termination letter signed by Dr. Carver it was stated that "The specific incident giving rise to your unacceptable personal conduct is: 1. January 15, 2009, it was brought to my attention that the University Police questioned you on January 14, 2009 for allegedly making inappropriate physical contact with a female student in the Fine Art building." (Res. Ex. #5, T p. 46)
6. The incident referred to in the termination letter was based on allegations by Brittany Myatt. (Res. Ex. #1 & #2)
7. Mr. Murray denies that he had inappropriate physical contact with Ms. Myatt. (T p. 64)

8. Mr. Murray testified that on January 14, 2009, he was in his office when Ms. Myatt stuck her head in the door and said she needed to ask him something. (T p. 66) Mr. Murray invited her in and she asked him if he had any tape. (T p. 66) As he was about to give her tape, he mentioned to her that he saw something surprising yesterday. She said, "What was that?" and Mr. Murray replied that he saw her outside on the north side of the Fine Arts Building on Lawson Street kissing another woman. (T p. 67). Ms. Myatt said that she was bisexual and asked Mr. Murray if he had a problem with that. (Id.) Mr. Murray replied that he did not have a problem with that. (Id.) Ms. Myatt said that she went both ways and Mr. Murray said that he did not have a problem with that either. (Id.) Mr. Murray testified that Ms. Myatt then brought it up a third time and started rubbing his back, reached down and started to hug him. (T p. 67-68) Mr. Murray stood up, hugged her back, and sat down. (T p. 68) Mr. Murray then changed the conversation back to education and asked Ms. Myatt about her grades and long-term goals. (T. 68) They talked for a little while and she went back to class. (T. 69)
9. Ms. Myatt had hugged Mr. Murray on campus on one other occasion. (T p. 66) Brittany Myatt denied that she ever had hugged Petitioner. (T p. 25) Mr. Murray's relationship with Ms. Myatt was no different than with other students. (Id.) Ms. Myatt, like other students, had come to Mr. Murray's office before and, like other students, he would see her around campus. (T p. 65)
10. Mr. Murray brought up the subject of Ms. Myatt kissing another student, because "we can do things that we do not realize the seriousness of it and sometimes they can have consequences down the road" and things can come back to haunt people. (T p. 70)

11. Mr. Murray was called down to the campus police department around twelve or twelve-thirty on January 14, 2009. (T p.70) They asked Mr. Murray if anything had happened in his office that day. (Id.) Mr. Murray said, "No." (T p. 71) They asked if a young lady was in his office and he said, "Yeah." (Id.) They asked what happened and Mr. Murray said that they had a conversation and relayed their conversation. (Id.) The police said that the young lady had filed a complaint and had a story totally different from Mr. Murray's. (Id.) Mr. Murray was dumbfounded as they asked him more questions. (Id.) The police told Mr. Murray that charges may be filed. (Id.) Mr. Murray said, "For what? I haven't done anything" (Id.) Mr. Murray gave the police a handwritten statement as requested. (T p. 72) Mr. Murray also asked permission to type his statement in his office on his Macintosh and bring it back, which he did about thirty minutes later. (T p. 73)
12. According to Dr. Carver, Mr. Murray's story about the events on January 14, 2009, as given in his statements to the police on the same day, during his pre-disciplinary hearing and during other levels of the grievance procedure were consistent. (T p. 49)
13. I find Mr. Murray's testimony to be credible.
14. On January 15, 2009, Mr. Murray was called by campus police and went to their office. (T p. 74) Mr. Murray was told by the campus police that Ms. Myatt had filed assault charges and that they were going to have to arrest him. (T p. 74) Mr. Murray was handcuffed, taken to jail, processed, and then released by the magistrate. (T p. 76) The campus police took him back to campus. (Id.)
15. Mr. Murray attended a mediation with regard to the criminal charges. (T p. 77) The outcome of the mediation was that the charges were dismissed. (T pp. 77-78, Pet. Ex. #1) The charges later were expunged from Mr. Murray's record. (T p. 79, Pet. Ex. #2)

16. Mr. Murray was placed on investigatory leave with pay on January 22, 2009. (T p. 81, Pet. Ex. #3, Res. Ex. #6)
17. Mr. Murray attended a pre-disciplinary conference with Dr. Carver and Frank Lewis. Mr. Murray was able to give Dr. Carver an account of the events on January 14, 2009. (T p. 85)
18. After the pre-disciplinary hearing, Mr. Murray received the termination letter the next day. (T p. 89, Pet. Ex. #7) Mr. Murray appealed the decision. (T p. 89) The first step of the grievance procedure was a mediation with Dr. Carver and Dr. Mathew. (Id.) Mr. Murray informed Dr. Mathew that the charges against him had been dismissed. (Id.) The mediation impasse. (Pet. Ex. #8) After the mediation, Mr. Murray went to see Ms. Vanessa Gregory, manager of employee relations in the Human Resources Department and told her that the charges were dismissed and he should be able to have his job back. (T p. 90) He followed up his conversation with a letter that asked to go to the second step of appealing his wrongful termination. (Pet. Ex. #8, T p. 90)
19. Mr. Murray has been looking for other jobs since his dismissal from NCCU. (T p. 92) He has used the internet, sent letters to potential employers and attempted using some of the old methods of job finding, but has found it very difficult in the present economy to find work. (Id.) Mr. Murray currently is not employed. (Id.) Mr. Murray enjoyed his job immensely and would love to come back to NCCU. (Id.)
20. Ms. Joan Myatt, the mother of Brittany Myatt, is an operations manager for the Department of Defense and lives in Piscataway, New Jersey. (T p. 9) Ms. Joan Myatt testified that on January 14, 2009, her daughter called her and appeared upset. (T p. 10)

21. Brittany Myatt called her mother at approximately 0930 a.m. on January 14, 2009. Ms. Joan Myatt was in New Jersey when the incident occurred and only knows what her daughter told her. (T p. 15)
22. Ms. Joan Myatt testified that her daughter is not bisexual and that her daughter never has told her that she is a lesbian or that she dates women. (T p. 16)
23. Ms. Brittany Myatt is a student at NCCU. (T p. 17) Ms. Myatt was eighteen years old and a freshman in January of 2009. (Id.)
24. Ms. Brittany Myatt testified that on January 14, 2009, she went to get tape at the direction of her teacher, Mr. Hughes, to hang her artwork on the wall of the classroom. (T pp. 18-19). According to Ms. Myatt, she went to Mr. Murray's office and he told her to come in and close the door, but she did not close it. (T p. 19) Ms. Myatt testified she asked to borrow tape and Mr. Murray said to her that he saw her the day before with a girl and that Ms. Myatt had kissed the girl. (Id.) According to Ms. Myatt, she said, "No" and was thinking that it was not a kiss, but a hug and a friendly side-to-side kiss. (Id.) Ms. Myatt said that as Petitioner was giving her the tape he hugged her for twenty seconds and grabbed her arms and his face was right in front of her face. She testified that Petitioner looked at her in a sexual way for 7 seconds. (T p. 20) Ms. Myatt said she felt that was disrespectful and pushed him off. (Id.) According to Ms. Myatt, she then left and called her mom and told her what happened. (Id.)
25. Ms. Myatt went to the campus police station and gave them two written statements about forty-five minutes to an hour after the incident. (T p. 21-22, Resp. Exs. #1 & #2) The second statement was for the purpose of writing more neatly. (T p. 22)

26. In both statements Ms. Myatt said that Mr. Murray gave her a tight hug that lasted for 20 seconds, grabbed her arms and looked at her in a “sexual way” which took about 7 seconds and then she pushed him off. (Resp. Exs. #1 & #2)
27. Mr. Murray denied that the hug lasted for 20 seconds and said that it was just a hug and release. (T p. 69) Mr. Murray also denies that he grabbed Ms. Myatt’s arms or looked at her in a sexual way. (Id.)
28. Ms. Myatt denied telling Mr. Murray that she was bisexual and denies being bisexual or a lesbian. (T p. 25) Ms. Myatt has an account on Facebook, an online social network. (T p. 26) On her Facebook page Ms. Myatt’s March 24, 2010 post concerned what Ms. Myatt referred to as a joke about a girl getting another girl’s phone number and her “vajayjay” smelling like fish. (T p. 26-27, Pet. Ex. #9) Ms. Myatt also refers to another female as “the biggest gay fag” and this same female as her fiancée and girlfriend. (T p. 28, Pet. Ex. #9) Ms. Myatt again explained this as a joke. (T p. 29, Pet. Ex. #9)
29. I did not find Ms. Brittany Myatt’s testimony to be credible.
30. Ms. Andria Knight, the director of the Equal Employment Opportunity Office at NCCU, conducted the investigation of the incident between Mr. Murray and Ms. Myatt. (T p. 31-32)
31. Ms. Knight’s investigation included obtaining a copy of the police report, speaking with Dr. Carver, and interviewing Brittany Myatt. (T p. 32) She did not interview Mr. Murray. According to Ms. Knight, she attempted to reach him but each time his phone would ring and there was no voice mail capability. (T p. 33) On March 4, 2009, Ms. Knight and Ms. Vanessa Gregory of Human Resources called Mr. Murray and left him a voice mail. (T p. 40-41) Mr. Murray called back shortly after that. (T p. 41) Ms. Knight

had the opportunity to talk with Mr. Murray, but she did not talk to him about the incident of January 14, 2009. (T p. 41)

33. Ms. Knight got Mr. Murray's version of the event from the police report. (T p. 36) She assessed Mr. Murray's credibility based on her interview with Ms. Myatt. (T p. 36 & 40)
34. Dr. Carver first learned of the incident of January 14, 2009, that same day when he received a call from Ms. Joan Myatt. (T p. 44) Dr. Carver contacted human resources about the matter to inform them and seek advice on how to respond. (T p. 45) Dr. Carver was the ultimate decision maker with regard to disciplinary action against Mr. Murray. (T p. 45)
35. Dr. Carver never spoke with Ms. Brittany Myatt about what happened on January 14, 2009. (T p. 49)
36. Dr. Carver admitted that he is not sure what happened on January 14, 2009. (T p. 50)
37. Dr. Mathew is the interim dean of the College of Liberal Arts. (T p. 56) She is Dr. Carver's direct supervisor. (Id.) Dr. Mathew supported Dr. Carver's decision to dismiss Petitioner. (T p. 57)
38. Dr. Mathew never spoke with Brittany Myatt. (T p.59) Therefore, Dr. Mathew's judgment of credibility of Ms. Myatt is not convincing.
39. Dr. Leon Hardy is an associate professor of mathematics at NCCU. (T p. 110). Dr. Hardy has been at NCCU nearly 30 years. (Id.) Dr. Hardy is competent to testify with regard to the campus community. Dr. Hardy testified that hugging on campus is normal between faculty, employees, and students. (T p. 111) Dr. Hardy testified that he has hugged female students with whom he has developed a relationship. (Id.) Dr. Hardy

further testified that it is normal for adults on campus to give personal advice and to talk to students about their behavior in public. I found Dr. Hardy's testimony credible.

40. Joyce Page works for the North Carolina Department of Health and Human Services and teaches an evening class in community health at NCCU. (T p. 115) Ms. Page also worked for twelve years as the director of purchasing at NCCU. (T p. 116) Ms. Page is competent to testify with regard to the campus community. Ms. Page testified that hugging on campus is normal and comfortable. (T p. 116) Ms. Page testified that she gives personal advice to students and that she is familiar with advice being given to students by faculty, going back to when she was a student at NCCU. (T p. 117) I found Ms. Page's testimony to be credible.

CONCLUSIONS OF LAW

Based on the foregoing findings I conclude as follows:

1. The parties properly are before the Office of Administrative Hearings and the Office of Administrative Hearings has jurisdiction over this case.
2. Petitioner was a career State employee at the time of his termination from employment, and thus was subject to the provisions of Chapter 126.
3. Before a career State employee may be discharged for disciplinary reasons, the agency must establish that there is just cause for the action. N.C.G.S. §126-35.
4. Unacceptable personal conduct is one basis for dismissal. 25 NCAC 01I .2301(d) and 25 NCAC 01I .2302(a) state that employees may be dismissed for a current incident of unacceptable personal conduct. 25 NCAC 01I .2304(b) includes conduct for which no reasonable person should expect to receive prior warning and conduct unbecoming an employee that is detrimental to the agency's service as forms of unacceptable personal conduct.

5. Petitioner's conduct was not conduct for which no reasonable person should expect to receive prior warning nor was it conduct unbecoming an employee that was detrimental to the agency's service.

6. Determining whether a public employer had just cause requires two inquiries. First, whether the employee engaged in the conduct that the employer alleges; and second, whether that conduct constitutes just cause for the action taken. N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 665, 599 S.E.2d 888, 898 (2004).

7. Respondent has not shown by a preponderance of the evidence that the employee engaged in the conduct that the employer alleges.

8. Based on the foregoing there is not sufficient evidence in the record to support Respondent's termination of Petitioner for unacceptable personal conduct and Respondent has failed to carry its burden to establish that there was just cause.

DECISION

BASED ON THE FOREGOING FINDINGS AND CONCLUSIONS, Respondent's decision to dismiss Petitioner is not supported by the evidence and is REVERSED. Petitioner is entitled to the following relief under Chapter 126 of the General Statutes of North Carolina:

1 Reinstatement to his same or similar position at North Carolina Central University;

2. Back pay from March 9, 2009 until his reinstatement;

3. Respondent shall pay to Petitioner's counsel reasonable attorney's fees, upon presentation of proper affidavit and petition, for the time involved in prosecuting this case.

4. Respondent shall pay to Petitioner the costs incurred in prosecuting this matter, including the costs of the depositions taken pre-hearing, the costs of the transcripts of the

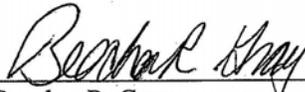
hearing, and all other relief and benefits to which he would have been entitled but for Respondent's dismissal of Petitioner on March 09, 2009.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Under N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. § 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 17 day of June, 2010.



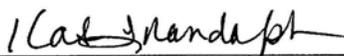
Beecher R. Gray,
Administrative Law Judge

A copy of the foregoing was mailed to:

Vanessa K. Lucas
EDELSTEIN & PAYNE
PO Box 28186
Raleigh, NC 27611
ATTORNEY FOR PETITIONER

Katherine A. Murphy
Education Section
NC DEPARTMENT OF JUSTICE
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 18th day of June, 2010.


Katherine T. Randolph, ALJ Assistant
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431-3000
Fax: (919) 431-3100

STATE OF NORTH CAROLINA
COUNTY OF WAYNE

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2010 JUL 26 PM 3:15

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 OSP 4648

O'Tonious T. Raynor, Petitioner,)	
v.)	DECISION
Department of Health and Human Services, Emery Milliken, Respondent)))	

Office of
Administrative Hearings

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Joe L. Webster in Goldsboro, North Carolina on March 16 and March 17, 2010. The record was left open for submission of materials by the parties after receipt of the transcript of the proceeding.

APPEARANCES

For Petitioner : O'Tonious T. Raynor, pro se
315 North Carolina Street
Goldsboro, North Carolina 27530

For Respondent : Charlene B. Richardson
Assistant Attorney General
Cherry Hospital
201 Stevens Mill Road
Goldsboro, North Carolina 27530

ISSUES

Whether Respondent had just cause to terminate Petitioner from his State employment at Cherry Hospital.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat., section 126, et. seq.
N.C. Gen. Stat., section 150B-23, et seq.
25 N.C.A.C. 01, et seq.

WITNESSES

For Petitioner: Mitchell Todd Smith
O'Tonious Tyrone Raynor

For Respondent: Michael Kim Letchworth
Phillip Cook
O'Tonious Tyrone Raynor
Dean Autry Barfield
Francisco Duarte
Darlene Burnette
Mona Lisa Williamson
Thomas Randal Herring
Labecka Madrigal
Billy Tart
Lori Carr Henderson

EXHIBITS

For Petitioner:

1. Cherry Hospital Nursing Service Coverage
 2. Memo of Commendation to Petitioner dated 9/26/06 and 10/5/06
 3. Narrative statement of incident by Petitioner
 7. Official Star Certificates issued to Petitioner
 8. Photo of Petitioner showing injury to face
 13. Dismissal letter dated 4/9/09
 15. Cherry Hospital Staff Training Record
- Unmarked memo on Unit Based Staffing Project dated 8/29/07

For Respondent:

1. Human Resource Data
2. Predisciplinary conference letter
3. Termination letter
4. Code of Conduct
5. Abuse/Neglect/Exploitation of Patients
Prohibited
7. June 2, 2007 warning
9. August 10, 2006 warning
11. Precaution flow sheet
12. Letter from Secretary Cansler
13. Diagram of U-1, 3-W
- 13A. Enlargement of diagram of U1-3W
14. Diagram of U2-3W
- 14A. Enlargement of diagram of U2-3W
16. Medical record
- 17A. Video
- 17B. Video prints

18. Advocacy Report
19. Statement of Tyrone Raynor
20. Statement of Tyrone Raynor
21. Transfer documents of B.F.
22. No Tolerance Policy
23. Key Accountability Log

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, a Judges view of the Respondent's premises where the alleged abuse occurred, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these finding of facts, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner was employed as a Health Care Technician (HCT) at Cherry Hospital in Goldsboro, North Carolina from November 1, 1995 until April 11, 2009. (T p. 53, lines 19-21) (Respondent's Exhibit 1)
2. The Respondent, Cherry Hospital, is a residential facility established for the treatment of persons with mental illness under the auspices of the North Carolina Department of Health and Human Services.
3. As a HCT, the Petitioner was in the first line of care at Cherry Hospital. He received his assignments from a registered nurse and was expected to communicate with the registered nurse to let them know if there were any difficulties with patients. (See, T p.133, lines 10-19).
4. The Petitioner was permanently assigned to work on U-1,3West in the Psychosocial Rehabilitation Unit.(T p. 284, lines 13-14). On the night of March 10, 2009, carrying over to the morning of March 11, 2009, the Petitioner volunteered to work on ward U2-3West, in the Adult Acute Admissions Unit. (T p.59, lines 6-10; lines 11-19). Petitioner volunteered because, while it was not his turn to work at that ward, he did so to sop the bickering among his co-workers as to which one of them should cover ward U-2 3West that evening.
5. The Petitioner had years of experience at Cherry Hospital. (T p. 90, lines 3-4). The Petitioner admitted to Philip Cook, Director of Cherry Hospital that he let his guard down with regard to B.F. (T p. 51, lines 1-12). The Petitioner had some familiarity with B.F. and testified that he has always called B.F. "Be Free". (T p. 386, lines 6-11).

6. Patient BF was the only patient on Ward U2-3West on the night of March 10, 2009, carrying over to the morning of March 11, 2009. (T p. 62, lines 5-9). When the Petitioner and the nurse arrived on U2-3West they were given a report that B.F. did not get along well with others. (T p. 384, lines 24-25, p. 385, line 1).

7. The Petitioner documented on the precaution flow sheet that B.F. was asleep from 11:45 p.m. to 2:00 a.m. (T p. 62, lines 10-21). At 2:15 a.m., the Petitioner's documentation indicates that the B.F. was laying quietly in bed. (T p.62, lines 22-23). From 2:30 a.m. to 2:45 a.m., B.F. was calm in the dayroom. (T p. 63, lines 9-11; p.64, lines 14-17).

8. On March 11, 2009, the Petitioner weighed approximately 310 pounds, and was approximately 6 feet, 1 inch tall. Patient B.F. was no more than 5 feet, 7 inches tall. (T p.65, lines 23-25; p. 66, lines 1-19). The video in evidence as Respondent's exhibit 17A shows that B.F. was of slight build. Respondent's exhibit 17A.

9. Between 2:45 a.m. and 3:00 a.m. on the morning of March 11, 2009, B.F. hit the Petitioner several times. (T p. 64, lines 21-23; p. 67, p.68, line 1). Eventually the Petitioner stood up, pushed B.F., and B.F. was on the floor with his feet up in the air, approximately 5 to 6 feet from the Petitioner. (T p. 68, lines 2-17; T p. 26, lines 9-12, T p.72, lines 20-25, p. 73, line 1) (Respondent's exhibit 17B, video image prints 4-7; Respondent's exhibit 17A, video).

10. The video shows that Petitioner then moves directly toward B.F., in a manner that did not indicate any confusion on the Petitioner's part, and who the Petitioner says threatened to kill him, and reaches down and grabs B.F. (T p.26, lines 19-22, Respondent's exhibit 17B, video image prints 8, 8.5, 9, 10, 11, 12). The Petitioner then forcefully pinned B.F. up against the furniture in the dayroom and steps on his arm. He also uses his knee to hold the patient back against the chair, drawing his arm back as if to strike the patient. (T p. 26, lines 23-25; p. 27, lines 1-2). The Petitioner then dragged B.F. who has assumed a defensive posture and is cowering from the Petitioner down a hallway out of view of the camera to a room where there is no camera. (T p.27, lines 10-15)(Respondent's exhibit 17B, video image prints 82, 15, 66, 68) (Respondent's exhibit 17A, video).

11. Neither of the Petitioner's statements indicate that he called out for help when B.F. was on the floor with his feet up in the air, even though there was a nurse in the nurses' station (Respondent's exhibit 19) (Respondent's exhibit 20).

12. The Petitioner indicated that after he had been struck by B.F., and got up, he pushed his panic button, but it didn't work because he did not hear the call over the intercom. (T p. 70, lines 7-11).

13. Randall Herring, Cherry Hospital's telecommunication network analyst, maintains the body alarm system. He looked at the body alarm system logs for the U-2 building for the early morning hours of March 11, 2009, and that the body alarm system was working. Herring testified that if the body alarm system was working anywhere in the U-2 building, it was working everywhere in the U-2 building, including U-2, 3 West, which is where the incident between the Petitioner and B.F. occurred. (T p. 297, lines 4-25; p. 298, line 1). Herring indicated that there

are testing stations in the units where the body alarm transmitters which Cherry Hospital personnel wear around their necks for safety can be checked to determine if they are working. (T pp. 300; 301, lines 1-9). If the Petitioner had a body alarm transmitter around his neck which did not work, it is because he was negligent in not testing it and getting a replacement unit when it did not work.

14. The Petitioner knew the correct North Carolina Intervention (NCI) procedure to use when he was hit by a patient, but did not try to use it and did not stand up so that he could use it properly. (Respondent's exhibit 17A, video). The Petitioner indicated that if a patient is throwing punches at you, there is a procedure where you try to grab the patient and step back, pull them toward you, and wrap their arms around you. (T p. 91, lines 14-21). Billy Tart, Interim Director of Nursing, also indicated that a block would have been the correct NCI procedure for the Petitioner to use to respond to B.F.'s attack, except that the Petitioner was not standing but sitting at the time of the attack. (T p. 321, lines 8-24T p. 327, lines 9-20). Todd Smith, who testified for the Petitioner, also indicated that the block would have been the correct NCI procedure to use. (T p. 209, lines 20-25; p.210, lines 1-5).

15. Prior to B.F. hitting the Petitioner, the Petitioner in response to a question by B.F. concerning whether he could go out to smoke, told B.F. that he could not go out to smoke. (T p. 76, lines 14-16). Billy Tart testified that the patient was not sitting in a relaxed position, and that he was pacing around somewhat anxiously. (T p. 328, lines 23-25; p. 329, line 1; Respondent's exhibit 17A, video). Todd Smith, who testified for the Petitioner, indicated that staff had been trained to look for signs of agitation in a patient. (T p.196, lines 23-25; p. 197, lines 1-4). It is unclear from the testimony whether the Petitioner recognized these signs of anxiousness in B.F. despite his experience. (T p.331, lines 11-25).

16. The Petitioner and the nurse who was assigned to the ward with him had been told that B.F. could not get along with others. (T p.76, lines 20-21). The Petitioner testified that he always reads patients charts (T p. 77, lines 11-14). The back of the precaution flow sheet for B.F. for March 11, 2009 indicated assaultive behavior on the part of B.F. (Exhibit 11).

17. Dean Barfield a master level instructor in North Carolina Interventions testified that once the Petitioner pushed B.F. off of him, it would have been appropriate for the Petitioner to put some distance between him and the patient and to get some help for B.F. (T p. 119, lines 1-4, p.131, lines 22-25). Mr. Barfield indicated that staff are trained that if they cannot handle a situation, get away from it and call for help. (T p. 118, lines 19-22).

18. Mona Williamson, clinical nurse manager for the U 2, Adult Acute Admissions Unit testified that when the patient was on the floor and off balance that would have given the Petitioner time to get away from him. (Tp. 150, lines 7-16). Billy Tart, Interim Director of Nursing, also testified that when the patient was on the floor, the Petitioner should have moved away from him, and sought assistance (T p. 321, lines 21-25; p. 322, lines 1-9).

19. Smith, the Petitioner's witness testified that going to the nurses' station to get help was an option. (T p. 207, lines 12-20).

20. Dean Barfield testified that staff at Cherry Hospital are trained to try NCI first, and if it doesn't work then to do the best that they can. (T p. 120, lines 6-15). The Petitioner knew the correct NCI procedure to use after he was attacked by the patient, but could not use it, because he was not standing as he should have been in order to use it. (T p. 91, lines 14-21). The Petitioner never tried to run to the nurses' station for help while B.F. was on the floor.

21. Dean Barfield testified that two staff members, a health care tech and a nurse, were adequate staffing for B.F. (T p. 132, lines 16-18). Mona Williamson, Clinical Nurse Manager, also testified that two staff members were appropriate staffing for the unit. (T p. 159, lines 16-20).

22. Dean Barfield indicated that before a patient could be put in restraints, a registered nurse had to give permission. (T p. 133, lines 10-24).

23. Mona Williamson testified that staffing varied on the unit, and that as the clinical nurse manager she had never been informed that staffing for B.F. was being increased. On March 12, 2009, the day after the incident, staffing was again a registered nurse and a health care technician. (T p. 165, lines 21-25).

24. When asked by the Court why he didn't back up when B.F. was on the floor in the dayroom, the Petitioner responded that he "manned up", and then acknowledged that he probably could have backed up. (T p. 396, lines 22-24). Later Petitioner testified that the interactions between B.F. and him occurred "in the heat of the moment" (T p. 336, line 21).

25. B.F. was injured in the incident with the Petitioner. The physical injuries to B.F. were "superficial lacerations to the right side of the leg and cheek". (T p. 375, lines 15-19; Exhibit 16)). The undersigned finds that the physical injuries to B.F. came from Petitioner's use of excessive force.

26. Mona Williamson testified that B.F. suffered mental anguish or injury as a result of the incident with the Petitioner. (See, T p. 277, lines 16-20). Mona Williamson testified that B.F. had been non-aggressive in a unit to which he had been moved, until he was interviewed about the incident involving the Petitioner. Ms. Williamson testified that after he was interviewed concerning the incident with the Petitioner, B.F.'s old aggressive behaviors of attacking people unprovoked returned. (T pp. 271-275). The undersigned finds Ms. Williamson's testimony to be unpersuasive and does not prove by a preponderance of the evidence that B.F. suffered mental anguish as a result of the incident with the Petitioner.

27. Philip Cook, Cherry Hospital's Chief Executive Officer, testified that the incident between the Petitioner and B.F. was the worst case of physical abuse that he had ever seen, and that the Petitioner's termination was appropriate. (T p. 29, lines 20-22; p. 27, line 22-24). While this incident may have indeed been the worst case of physical abuse that Mr. Cook has ever seen, the undersigned does not find this incident of physical abuse rises to the level of severity that Mr. Cook's testimony suggests.

28. Mr. Cook also testified that the Petitioner's behavior was completely inappropriate in a caregiving setting where Cherry Hospital is responsible for patients. (T p. 27, lines 16-18). Philip Cook had worked as a Health Care Tech for several years, worked as a social worker in psychiatric settings, and then led several psychiatric health care systems. (T p. 24, lines 16-25),

29. Even after B.F. was cowering from the Petitioner, the Petitioner dragged him through the dayroom down the hallway. (T p.28, lines 24-25; p. 29, lines 1-2). (Respondent's exhibit 17B, video images 15, 66, and 68).

30. B.F had a medical condition as well as a mental condition. B.F. had asthma, an enlarged heart, was hypertensive, had a suspected neurological condition, and was being monitored frequently because of some medication that he had received. (T p. 267, lines 11-21; p. 268, lines 1-14). B.F. was a schizophrenic. (T p. 268, lines 15-16).

31. On June 9, 2007, the Petitioner was given a warning for giving false and misleading information during an investigation that he visually saw a patient in his bed, and later stated he thought he saw the patient in the bed, when in fact the patient was off of the campus of Cherry Hospital. (Exhibit 7).

32. On June 21, 2006, the Petitioner did not provide adequate care to a patient. He did not report the patient's injuries to the nurse prior to moving the patient from one area to another. Patient fell on the floor and was bleeding from his nose due to face hitting the wall. There was reason to suspect possible head trauma and/or fracture(s) and patient was not assessed by the RN. The Petitioner failed to cooperate with investigators by dictating how he would provide his statement. (Exhibit 8).

33. On July 31, 2008 Petitioner received commendations from Respondent "for extra effort and long hours during Tropical Storm Hanna on September 5, 2008 through September 6, 2008, and for contributing to the success of Cherry Hospital in its mission to provide on patient psychiatric service and for performance above and beyond standard practice while working with difficult patients." (Petitioner's Ex. 1) Also Petitioner was commended "for having such a willing attitude and therapeutic communication and for his empathy and encouragement to Respondent's patients." (10/5/06, Petitioner's Ex. 2)

BASED UPON the foregoing Findings of Fact, and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes. The parties received proper notice of the hearing in the matter. To the extent that the findings of fact contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

2. “No career State Employee subject to the State Personnel Act shall be discharged...for disciplinary reasons, except for just cause.” N.C. Gen.Stat. section 125-35 “In contested cases conducted pursuant to Chapter 150B..., the burden of showing that a career State employee subject to the State Personnel Act was discharged...for just cause rests with the department or agency employer.” N.C. Gen.Stat. Section 126-35 the responsible party for the burden of proof must carry that burden by a greater weight or preponderance of the evidence. Black’s Law Dictionary cites that “preponderance means something more than weight; it denotes a superiority of weight or outweighing.” The finder of fact cannot properly act upon the weight of the evidence in favor of the one having the onus, unless it overbear, in some degree, the weight upon the other side.

3. Any employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority. Such actions may be taken against career employees as defined by the State Personnel Act, only for just cause. The provisions of this section apply only to employees who have attained career status. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. 25 N.C.A.C. 1J.0614

4. In *North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004) the North Carolina Supreme Court stated: [D]etermining whether a public employer had just cause to discipline its employee requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for [the disciplinary action taken]. Citing *Sanders v. Parker Drilling Co.*, 911 F.2d 191 (9th Cir. 1990), *cert. denied*, 500 U.S. 917, 114 L. Ed. 2d 101 (1991).

5. An employer may dismiss an employee for just cause based upon unacceptable personal conduct. 25 NCAC 1J.0604 “Unacceptable Personal Conduct is (4) the willful violation of known or written work rules ;...(6) the abuse of ...patient(s)..over whom the employee has charge or to whom the employee has a responsibility...” 25 N.C.A.C. 1J.0614 “Employees may be dismissed for a current incident of unacceptable personal conduct, without any prior disciplinary action.” 25 N.C.A.C.1J.0608

6. Petitioner allowed B.F. to come near him while the Petitioner was sitting in the dayroom of the U2-3West ward of Cherry Hospital. Petitioner was hit by BF while Petitioner was sitting in the dayroom. Petitioner pushed B.F. away from him and B.F. fell to the floor with his feet in the air. (Exhibit 17B, video image numbers.

7. Neither of the Petitioner’s statements indicate that he called for help from the nurse who was in the nurses’ station or ran toward the nurses station at the time that the patient was on the floor with his feet up in the air. (Respondent’s Exhibits 19 and 20)

8. While B.F. was on the floor, the Petitioner walked directly toward him, and grabbed him and pushed B.F. up on the sofa of the dayroom, using his knee to hold the patient up against the sofa. (Exhibit 17B, video image number 82). The Petitioner also stepped on B.F.’s hand. Respondent’s Exhibit 17B, video image number.

9. Even when B.F. was cowering, the Petitioner dragged him down the hall. (Respondent's Exhibit 17B, video image numbers 15, 68).
10. Both Mona Williamson, Clinical Nurse Manager, and Lori Henderson, Patient Advocate, testified that the Petitioner's actions were excessive force and violated the Cherry Hospital Abuse, Neglect, and Exploitation Policy and Code of Conduct. (T p. 150, lines 17-25; p. 151, line 1; p.361, lines 16-23; p.364, lines 10-17).
11. The Petitioner's actions in grabbing B.F., pushing him up against the sofa in the dayroom, holding him there with his knee, stepping on his hand, dragging him down the hall, and then pushing him against his will into a bedroom where there were no video cameras constitute excessive force and abuse that is forbidden by the Cherry Hospital Abuse, Neglect, and Exploitation Policy. The Petitioner had training on Cherry Hospital's Abuse, Neglect and Exploitation Policy. (T p. 88, lines 16-18) (Respondent's exhibit 5). The Petitioner had been retrained on abuse and the avoidance of abuse because of the number of allegations of abuse against him. (Tp. 354).
12. The Petitioner's actions in grabbing B.F., pushing him up against the sofa in the dayroom, holding him there with his knee, stepping on his hand, dragging him down the hall, and then pushing him against his will into a bedroom where there were no video cameras violates the Cherry Hospital Code of Conduct. The Petitioner had read the Cherry Hospital Code of Conduct, and was aware that the abuse of patients was prohibited. (T p. 88, lines 19-20)(Respondent's exhibit 4).
13. B.F. had mental and medical conditions. (T p. 267, lines 11-21; p. 268, lines 1-14)
14. The video of the incident between B.F. and the Petitioner does not show the Petitioner stopping to contact the nurse in the nurse's station to ask if he could place B.F. in restraints. Indeed, neither of the Petitioner's statements indicate that the Petitioner contacted the nurse in the nurse's station to ask if he could place the patient in restraints.(Exhibit 17A, 19, 20). Since permission of a nurse is required to place a patient in restraints before doing so, and the Petitioner did not have permission from a nurse, it is unlikely that Petitioner was taking B.F. to the bedroom because he thought that it was the restraint room. See T p.133, lines 10-24).
15. Petitioner's actions in grabbing B.F. and pushing him up against the sofa in the dayroom, and holding him there with his knee, and dragging B.F. across the dayroom floor constitute the willful violation of a known or written work rule, i.e. the Cherry Hospital Abuse, Neglect, and Exploitation Policy.
16. Petitioner's actions in grabbing B.F. and pushing him up against the sofa in the dayroom, and holding him there with his knee, and dragging B.F. across the dayroom floor constitute the willful violation of a known or written work rule, i.e. the Cherry Hospital Code of Conduct.
17. B.F. had physical injuries to his face and leg as a result of the Petitioner's actions. (Respondent's exhibit 16)

18. The causation of mental and physical injury by other than accidental means may be proven by circumstantial evidence, such as grabbing the patient and forcefully placing him on the sofa and then straddling him, dragging the patient through the dayroom and continuing to do so, even after he was cowering, and not using proper NCI techniques even after the Petitioner had been trained to do so. The causation of mental or physical injury by other than accidental means constitutes abuse under the definition of abuse in the Cherry Hospital Abuse, Neglect, and Exploitation Policy.

19. The excessive use of force including grabbing B.F. and placing him forcefully on the sofa, and dragging him through the day room, even after he was cowering, constituted unreasonable restraint under the definition of abuse in the Cherry Hospital Abuse, Neglect, and Exploitation Policy.

20. While Respondent met its burden that it had just cause to dismiss the Petitioner based upon Petitioner's use of excessive force, the penalty of dismissal does not match the deed done by Petitioner. Under the specific facts of this case, Respondent should have considered suspending Petitioner without pay and other penalties rather than terminating his employment. He was a long term, valued employee of the Agency. Petitioner's finds himself in the situation he faces because of "good will," as a volunteer to B.F.'s ward. Prior to being assaulted by B.F., Petitioner had committed no act which would have been grounds for his termination or even discipline. Petitioner's initial act of repelling the assault by pushing B.F. away from him was understandable and justifiable under the circumstances. Petitioner's further acts after repelling the initial blows by B.F. as shown in the video, while understandable in the context of other environments, were excessive and not justifiable, and did violate the Agency's policies and Administrative Code provisions cited herein. The facts of this case do not demonstrate the heartless kind of willful conduct often seen in cases of abuse arising out of unprovoked reasoned decision making (e.g. striking a patient without provocation or other intentional abuse). The use of excessive force by Petitioner after provocation is not a complete defense to his conduct. Petitioner's testimony that he "manned up" to B.F. is proof of a mental state that can never be condoned in Respondent's facilities, even considering the dangerous nature of the work environment. It is clear from the record that Petitioner was determined to bring B.F. under Petitioner's complete domination and control by attempting to completely subdue B.F. Since there was no one else in the ward that B.F. could present immediate danger to until help arrived, the evidence is clear that Petitioner could have avoided further harm to himself or others by merely walking away until he obtained assistance.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following

DECISION

The undersigned finds and holds that the Petitioner was discharged from his employment with Respondent for unacceptable personal conduct which "may" be just cause for termination. The Respondent has carried its burden of proof by a preponderance or greater weight of the evidence that the dismissal of Petitioner was lawful and in accordance with the applicable State standards. Respondent did not act erroneously, arbitrarily, capriciously or otherwise prejudice Petitioner's rights. Nevertheless, the undersigned finds and recommends that Petitioner be suspended for 45 days, demoted one pay grade and be required to attend additional training as determined by Respondent. Moreover, Petitioner should receive the harshest warning possible and be forewarned that the slightest error in judgment with respect to assaultive conduct in the future will result in his immediate dismissal without warning.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision. N.C. Gen.Stat. section 150-B-36(a).

In accordance with N.C. Gen.Stat. section 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency that will make the final decision in this case is the North Carolina State Personnel Commission. State Personnel Commission procedures and time frames regarding appeal to the Commission are in accordance with Appeal to Commission, section 0.0400 *et seq.* of Title 25, Chapter 1, Subchapter B of the North Carolina Administrative Code (25 NCAC 01B.0400 *et seq.*).

IT IS SO ORDERED.

This the 26th day of July, 2010



Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

O'Tonius T Raynor
315 North Carolina Street
Goldsboro, NC 27530
PETITIONER

Charlene Richardson
Assistant Attorney General
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ATTORNEY FOR RESPONDENT

This the 26th day of July, 2010.



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FILED

STATE OF NORTH CAROLINA

IN THE OFFICE OF

COUNTY OF WAKE

2010 JUL 19 PM 2:03

ADMINISTRATIVE HEARINGS

09 OSP 5157

MICHAEL KARR,
Petitioner,

OFFICE OF
ADMINISTRATIVE HEARINGS

v.

NC DEPARTMENT of HEALTH and HUMAN
SERVICES, DIVISION of VOCATIONAL
REHABILITATION SERVICES,
Respondent.

DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on February 23-24, 2010 in Raleigh, North Carolina. The record was left open for the parties' submission of materials, including but not limited to supporting Memorandums of Law. After filings by Respondent and Petitioner on May 18, 2010 with the Clerk of the Office of Administrative Hearings (OAH), and receipt by the Undersigned on May 20, 2010, the record was closed on May 20, 2010.

APPEARANCES

For Petitioner: Michael C. Byrne
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For Respondent: Kathryn J. Thomas
Assistant Attorney General
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P.O. Box 629
Raleigh, North Carolina 27602

ISSUE

Whether Respondent failed to give Petitioner veteran's preference in hiring disability determination specialist trainees for the hiring class of September 2009?

WITNESSES

For Petitioner: Karen Boone
Joanna Heisler
Gay Long
Michael Karr

For Respondent: Linda Eckert

EXHIBITS

For Petitioner: Exhibits 1 through 6, 8, 9, 11, 13, 14 and 15

For Respondent: Exhibits 1 through 17

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner, Michael Karr, is a resident of Johnston County, North Carolina. He has a B.A. in history and aerospace studies from East Carolina University and a master's degree in counseling and guidance from Troy State University. Petitioner also has a North Carolina real estate appraiser's license.
2. Petitioner is retired from the United States Air Force. Petitioner entered the military in 1972 as a second lieutenant (during the Vietnam War) and was promoted through the ranks to lieutenant colonel, retiring in 1999. Petitioner attended higher education schools within the military, including Squadron Officer's School, Air Command Staff College, and Air War College. Petitioner received numerous decorations and awards in the military, including the Bronze Star for his service during the Gulf War in 1990-1991. (P Ex 4)
3. Petitioner's primary responsibility in the military was logistics. Petitioner served as an aircraft squadron commander supervising about 500 persons in four different areas of aircraft

maintenance. Petitioner was also a deputy group commander at Offutt Air Force Base in Nebraska for three years, supervising approximately 1000 service persons in five squadrons.

4. Following retirement from the military, Petitioner worked as a real estate appraiser and using his North Carolina real estate appraiser's license has conducted over 800 real estate appraisals for 22 lenders and clients. In this job, Petitioner was required to gather and analyze data and make value determinations.

5. Petitioner is currently (and was at the time of this hearing) employed by the North Carolina Division of Motor Vehicles (DMV) as a resolution hearing officer. In this job, Petitioner is required to collect, evaluate and analyze information, and make a determination whether an applicant should get his driver license restored to him.

6. Prior to his DMV job, Petitioner was a contract hearing officer (contract was for 3 months) for the North Carolina Department of Health and Human Services, the Respondent agency in this case. In this job, Petitioner listened to claimants present their cases for receiving mental health services and the provider's reasons for denying such. Petitioner would then make a decision as to whether the service should or should not be provided.

7. The Respondent, North Carolina Department of Health and Human Services (DHHS), Division of Vocational Rehabilitation (DVR), Disability Determination Services (DDS) is a State agency. On June 15, 2009, a job posting for Disability Determination Specialist Trainees, with up to 36 positions to be filled, was posted on the Office of State Personnel website. The total number actually hired was/is dependent on budget considerations and was/is determined by the DDS administrator or deputy administrator.

8. The disability determination specialists carry a case load of disability applications, and adjudicate disability claims. A trainee position is an entry level position for individuals who are in training to become a Disability Determination Specialist. The trainee position requires a four year degree. The disability determination trainee is in a training progression for one year in order to work to the full Disability Determination Specialist I full class.

9. On or about June 18, 2009, Petitioner filed an application for a position as a disability determination specialist trainee with the Department of Health and Human Services, Division of Vocational Rehabilitation Services, Disability Determination Services. (R Ex 3) Petitioner filled out and submitted a form PD-107 state application form and supplied his Form DD-214 showing military service to Respondent.

10. Once an application is received for a disability determination specialist trainee position, and the applicant is determined to meet the minimum qualifications of a four year degree, the Human Resources (HR) office sends a packet with an overview describing the job in more detail to each applicant. The overview contains a description of job duties, the training program, the work environment, and work responsibilities. The applicant is invited to schedule an appointment to take a test. The packet contains an instruction to bring the DD-214 on the day of the test.

11. To prepare for seeking the position with Respondent, Petitioner first examined all his Air Force and other work documents. Petitioner then took the test given by Respondent, scoring 94 points out of 100. Respondent notified Petitioner that he had passed the test. Respondent gave Petitioner a ten point veterans' preference on this test, but Petitioner would have passed the test even in the absence of this preference.

12. If an applicant qualifies for veterans' preference, HR will mark V in the upper right hand corner. HR does not identify "most qualified" or "highly qualified". HR handles all questions regarding promotional priority and veterans' preference issues. By policy, DDS gives 10 extra points on the screening test to individuals who qualify for veteran's preference. (R Ex 17) Petitioner's application was marked with a "Q" for qualified and "V" for veterans' preference. (R Ex 3) There is no dispute that Petitioner qualified for veterans' preference.

13. If an applicant passes the test, he or she is eligible for an interview. Each applicant is also required to submit a writing sample in the form of written responses to questions.

14. Once it is determined which applicants are eligible for an interview, interviews are scheduled and interview teams are formed. There are generally five or six interview teams. Applicants are divided up and appear only before one team. For the September 2009 trainee class, 102 applicants were interviewed. There were five interview teams composed of two members. Each team interviewed 20 to 25 applicants. Each interview team used the same interview questionnaire. The general practice is that the interview team is composed of two experienced employees. As a general practice one interviewer on a team asks the questions while the other writes the applicant's responses. Each interview team is independent of the other. The decision what to write and how much to write on each applicant is at the sole discretion of the different interview writers on each of the five or six teams. There is no scoring of answers. There is no objective or other ranking scale used by the Respondent in the interviews. One team might recommend five or ten applicants, and another team might not recommend any applicant. The teams are not given quotas to fill.

15. The main selection tool which is almost exclusively the only tool (depending on the individual team) used by DDS for the disability determination specialist trainee is the interview itself. The teams are looking for individuals who have the essential elements to be successful as a disability examiner. Each team is given autonomy on how they determine whether an applicant has the essential elements for success. One team may give greater or lesser weight on work experience while another team may give no weight whatsoever to prior work experience. Each individual on the team may give different weight to materials in front of them. Each interview team is composed of a unit supervisor and a case consultant. The assistant chief of operations manager who supervises the unit supervisor reviews all of the applications and questionnaires of each applicant interviewed. For each applicant that the interview team recommends for hiring, at least one other assistant chief of operations manager reviews the packet for each applicant recommended for hire.

16. Petitioner was interviewed for the position of Disability Determination Specialist Trainee by two members of Respondent's staff, Linda Eckert and Joanna Heisler. Both Heisler and Eckert testified at trial. In determining Petitioner's qualifications for the position, the

interviewers gave zero weight to Petitioner's application and the work experience shown on the application.

17. Linda Eckert is a Case Processing Unit Supervisor II. Ms. Eckert started working with DDS in 1985 as a trainee, and has received promotions to achieve her current position. She has been a supervisor of a unit for 13 years, and has regularly interviewed for disability determination specialist trainees, office assistants, case consultants, and disability examiner IIIs. Based on her years at the agency and experience Eckert stated she knew the traits and characteristics which make an individual successful.

18. Joanna Heisler is a case consultant, and has been involved in the hiring process several times. Ms. Heisler has been employed at DDS since 1998, and has been through the training process herself. Ms. Heisler has participated in interviewing applicants for the trainee class two times, and for an office assistant position once.

19. In the interview, Ms. Eckert asked Petitioner interview questions while Ms. Heisler wrote down Petitioner's answers to those questions. Heisler admitted that it was "impossible" to write down "complete" answers given by the applicants to interview questions. Petitioner in discussion of numerous questions during the trial alleged that Heisler had not written down complete and detailed answers in response to the interview questions. The evidence bears out Petitioner's assertions in so far as had Petitioner only provided the answers as written, the interview would have very short. Eckert admitted that the decision not to hire Petitioner was based on his "answers" to the interview questions.

20. Ms. Heisler and Ms. Eckert, in the group of persons they interviewed as part of Petitioner's applicant group, interviewed veterans but selected none of them out of the 20 interviews they conducted. In fact, four applicants who qualified for veterans' preference were interviewed. Twenty-seven people were hired out of the 102 applicants who were interviewed. None of the veterans who applied for the September 2009 trainee class were hired.

21. Ms. Heisler and Ms. Eckert did select an applicant, Thomas Gautier, who was a new graduate of Mount Olive College and whose only prior job experience was as a camp counselor and refereeing intramural basketball games. This was despite Gautier having a work history that was not commensurate with Petitioner's, and despite Respondent conceding that Gautier's work history does not demonstrate the essential elements of the job in question. In fact, Gautier had no prior long term employment whatsoever.

22. Ms. Heisler and Ms. Eckert also hired another applicant, Demetra Callender. Callender completed none of the four written essay questions present on the interview form. She was offered a job while Petitioner, who completed all the questions, was not. Eckert testified that she weighed the "essay questions" between 5 and 15% of the interview. Heisler was asked how the Respondent took the applicants' answers to the written essay questions into account. She testified that she could not recall being given instruction to weigh the written questions. Heisler selected about "five percent" weight to the written questions. Testimony indicated that in truth and fact that virtually no weight was given to any of the application process other than the oral interview.

23. Each interview team takes the interview folder containing the interview questionnaire, the application, the writing sample and recommendation form to a branch manager after the interview has been completed. Sometimes the managers disagree with the interview team's recommendation.

24. Karen Boone is an Assistant Chief of Operations with the DDS, a position she has held since 2004. Ms. Boone has worked with DDS for almost 30 years. She started as a disability determination specialist trainee which is the basic entry level, and then she received a promotion to Disability Examiner II. Ms. Boone became a unit case consultant, which is an assistant supervisor, a position she held for approximately eight years. She then became a unit supervisor, a position she held for approximately seven years before being promoted to an assistant chief of operation. Ms. Boone supervises seven case processing units. Over the years, Ms. Boone estimated that she was involved in the hiring process for around 300 people. The responsibility for supervising the hiring process for disability determination specialist trainees rotates among four managers.

25. There are four operations managers, including Ms. Boone. Boone managed the interview process for the September 2009 hiring class. The four assistant chief of operations met with all of the interview teams to review the interview packets. Almost all of the interviewers for the September 2009 class had interviewed previous applicant classes. The review meeting lasted from an hour and fifteen minutes to an hour and a half. The interview teams are instructed to tell the applicants that they are trying to capture their responses as accurately as possible. Ms. Boone stated that the interview questions were designed "to give somebody an opportunity to give examples of the different essential elements." (T 88-89)

26. Karen Boone reviewed the interview teams' recommendations. She also reviewed Petitioner's responses to the interview questions. Based on those reviews, it was her determination that Petitioner did not have the essential elements to be a successful disability examiner. Ms. Boone felt that Petitioner's responses did not sufficiently answer or provide details to the questions. She felt he did not answer questions with specific steps. Boone reviews only what is written by the interviewer; she does not meet the candidate nor talk to them herself. Boone gives deference to the interview team believing an interviewer will have a better picture of an applicant than just looking at what is written on a piece of paper.

27. Ms. Heisler and Ms. Eckert's practice of giving zero weight to the application and ignoring an applicant's prior work experience was never given to them as a policy nor were they directed to refrain from taking an applicant's prior work experience and history into account. Heisler said that they do not, in reaching the hiring decision, take an applicant's prior work experience into account. Heisler testified that an applicant's prior experience had no bearing on an applicant's ability to do the disability determination job. Heisler stated that Petitioner's prior job experience was not relevant because the only requirement for the position was a four year degree. Respondent's job posting, however, states several qualifications that a successful applicant should have. At no time during the interview did Heisler and Eckert inform Petitioner that his prior job experience was irrelevant to his qualifications for the position.

28. In contrast to Ms. Eckert, Ms. Heisler did not recall whether their interview of Petitioner was long or short. In fact, in stark contrast to Eckert, Heisler testified that she recalled nothing at all about Petitioner's interview. Heisler testified that at the time of the interview she did not know that Petitioner was a veteran. Eckert testified that in evaluating Petitioner's suitability for the position, no discussion or analysis of veterans' preference came into consideration. She stated the only veteran preference Petitioner received was 10 extra points on his pre-interview test.

29. Gay Long is the Human Resources (HR) Manager at DDS. Ms. Long is responsible for managing the hiring process for disability determination specialist trainees. She is responsible for the job posting, ensuring that state personnel policies are followed, receiving and processing applications, and ensuring that documents are maintained in the hiring file. The Human Resources office is also responsible for ensuring the verification of veterans' preference and making sure that applicants are given 10 extra points on the testing portion of the application process. Human resources staff marks "V" at the top of applications for which they have verified veteran's status.

30. Ms. Long testified that HR verifies that an applicant for a Disability Determination Specialist Trainee position has a four year degree which invites them to take a screening test. Long testified that someone could submit an application that had nothing filled in the work history and that would affect nothing in the hiring process. Long testified that length and type of prior work experience is irrelevant to the hiring of Disability Determination Specialist Trainees because it is not required. Long believed that it was irrelevant that Petitioner had been a hearing officer with Respondent, conducting over 240 telephone hearings to determine eligibility for Community Support Services.

31. Ms. Long could not cite any personnel policy that entitles an agency to completely disregard an applicant's work history. Long stated that there were several traits and characteristics required of a trainee which the interview questions were designed to discover. Long's testimony indicated other information was for all practical purposes irrelevant including past criminal history. As HR director, Long would not consider it relevant that an applicant had been fired from another State agency for stealing.

32. When asked if it was her obligation as Human Resources Director of Disability Determination to comply with law and policy Ms. Long stated, "I refer back to policy." She stated, "I don't know anything about the law." (T 183-184) When asked about veterans' preference, Long stated she referred to policy, not the general statutes. She further stated that to her knowledge the North Carolina Administrative Code and personnel policies she followed were not the same thing. Long testified that the hiring managers and supervisors make the final decisions based on the interview questions.

33. Ms. Long agreed that Petitioner was eligible for veterans' preference. Ms. Long stated, as did Ms. Eckert, that Respondent gave Petitioner no additional preference with respect to his attempt to obtain employment with Respondent beyond 10 extra points on a pre-interview pass/fail screening test.

34. Ms. Eckert testified that Petitioner's interview did not last the standard hour and a half. However, on cross-examination Eckert claimed that the interview began at 9:30 but that she could not recall when the interview ended. Petitioner himself testified that the interview lasted about an hour and a half. As stated previously, Ms. Heisler had no memory of the interview at all.

35. Ms. Eckert, who asked the questions, stated that she recalled Petitioner's interview. When asked why, Eckert claimed that she "recall[ed] based on the [Petitioner's] presentation and responses in the interview that [Petitioner] did not demonstrate the essential characteristics and traits that we were looking for that are required of a successful disability examiner." (T. 294) When asked why she made the conclusion cited above, Eckert answered that Petitioner "...had kind of an odd presentation. He stared...He had a very intense stare." (T. 295) Eckert continued: "But yet the rest of [Petitioner's] body language was very relaxed and almost - you know, he smiled a lot, which is unusual for an applicant, and seemed overly confident and relaxed in the interview to me throughout the entire process." (T. 295)

36. Ms. Eckert believed Petitioner did not demonstrate the ability to be a team player in several of his responses. While the job posting does not contain the word teamwork, in the packet of information mailed to all applicants, under the heading of Work Responsibilities, the applicant is advised that "[e]ach Unit works together as a team to get work done when someone is absent. In fact, we encourage teamwork among all DDS employees toward the common goal of timely and accurate service to our claimants." (R Ex 4)

37. Ms. Eckert felt that Petitioner's responses included very little detail, that he did not provide a whole lot of insight into his analytical ability, and that he did not seem to have focused on reading or understanding the disability overview. Eckert stated she discussed the responses with Ms. Heisler immediately after the interview and turned in the recommendation form to her supervisor, Ms. Boone that day. Heisler did not remember any part of the interview process. Eckert felt that Petitioner's responses as recorded by Heisler to the interview questions were short on specifics.

38. There was no rating of those interviewed and no numeric scoring or ranking or weighing of questions. The interviewers appear to have no standard in conducting interviews and there are no specific policies for evaluating the applications. There is no scoring or ranking of the overall interview.

39. In one question asking how a conflict in two medical sources should be handled, the Petitioner answered, "Assume there is somebody who has medical experience above and beyond him that would help. He would have to find somebody." (P Ex 8) Respondent believed the answer showed a lack of analysis. Respondent however found the answer provided by Demetra Callender, a successful applicant interviewed by Eckert and Heisler to be acceptable. That answer was, "If at all possible try to get 3rd opinion." (P Ex 15)

40. In another question (not scored), the applicants were asked to describe what they believed a typical day as an examiner would be like. Petitioner stated, "Spending a good bit of time on telephone, figure out how to prioritize files and use the computer. Make a lot of notes, back and

forth with the same file. Ask questions of folks in the office.” (P Ex 8) Respondent felt Petitioner’s answer was short on specifics. Respondent found Ms. Callendar’s response acceptable. That response was, “Each day will not be the same. Procedure will never change. There will be days she will have to stay on point w/ procedure.” (P Ex 15)

41. Regarding another interview question asking what the applicant thought the job of a Disability Examiner entailed, the following exchange took place at the hearing:

ECKERT: Mr. Karr’s response was ‘A lot of time on the telephone and computer. Make decisions by gathering info from doctors, neighbors, friends.’

PETITIONER’S COUNSEL: All right.

ECKERT: Ms. Callendar’s response was, ‘A lot of analyzing, research, communicating with people inside and outside the agency [and] make the best decision.’

PETITIONER’S COUNSEL: How is that substantively different, ma’am?

ECKERT: She gave more information about the analyzing, researching, communicating. And there again, this was one interview response taken out of multiple interview responses.

PETITIONER’S COUNSEL: Well, we can talk about them, ma’am. We’ll talk about them. [But] are you saying to this judge here that this answer was better than my client’s?

ECKERT: Yeah. It provided more detail.

PETITIONER’S COUNSEL: And what was the additional detail it allegedly provided?

ECKERT: She talked about the analysis that’s involved, the research, the communications, and making decisions. And Mr. Karr did mention making decisions.

THE COURT: Well, for clarity of the record, she didn’t talk about it. She just used the word “analyze” –

ECKERT: Yeah, but she used – that is true. She used the words.

THE COURT: I’d like to make the record very clear on that.

(T. 344-345)

42. A similar exchange took place with respect to a question about how much reading an applicant did, in which Ms. Eckert testified that Ms. Callendar’s answer “A lot – love to read at home, Does a lot of research,” (P Ex 15) was better than Petitioner’s “Read every night, usually historical fiction.” (P Ex 8), because the recorded answer for Callendar used the words “a lot.”

Ms. Eckert testified that "The question is how much reading do you do. It didn't matter to me if you read historical novels or the comics." (T 346)

43. Ms. Eckert did not think that Petitioner was among the most qualified for the job. She felt one of his answers showed using a lot of lists and in her experience it was difficult to use lists because the position required flexibility. In another answer, Eckert felt Petitioner did not describe steps he would take to meet deadlines. Petitioner had stated he had not missed a deadline and Eckert stated she had never met anyone who never missed a deadline. Though Petitioner had been in the military for 22 years and had been a vital "team player," and had demonstrated adaptability in many situations, Eckert felt (in response to one interview question) that consulting with a supervisor to determine priorities rather than helping a coworker demonstrated a lack of adaptability.

44. Based on Petitioner's presentation ("smiled a lot," "seemed overly confident and relaxed in the interview") and responses to the interview, Eckert felt Petitioner did not demonstrate the essential characteristics and traits she was looking for to be a successful disability examiner.

45. The hiring managers with input from the various interview teams (recommending only those they interviewed) concluded that 27 other applicants including Demetra Callender possessed significantly better qualifications for the position than the Petitioner. This decision was not based on any scoring system. The decision was further not based on prior work experiences.

46. Gay Long, Human Resources Manager at DDS reviewed all of the recommendations to make sure the folders were complete and that the managers had justified the reasons for their hire. She inquired about Petitioner and felt the managers explained to her why Petitioner was not hired. The hiring managers and supervisors make the final decisions. Ms. Long testified, "They are the experts. I do not compare." (T 197) Ms. Long stated that the fact Petitioner had hearing officer experience at the NC Department of Health and Human Services did not matter and was not something the hiring managers took into account.

47. Respondent made no attempt to provide a preference to Petitioner other than giving Petitioner the ten points on the initial screening test. This exchange between Petitioner's counsel and Eckert is found on pages 369 to 370 of the transcript.

Q. My question to you, ma'am, was can you show us anywhere in Exhibit 9 where you document the fact that my client had veterans' preference with respect to this position?

A. Not on the overview application review and interview questions packet, no.

Q. In evaluating [Petitioner's] suitability for the position, did you conduct any analysis of his veterans' preference?

A. We were given the information that he did get veterans – that he was a veteran, had veterans' preference, and that ten points is [sic] added to the test score, the screening test score, for veterans' preference.

Q. All right. But my question, and forgive me if I haven't phrased it right, is can you tell us what preference you gave my client due to his veteran status with respect to making a decision to hire or not to hire?

A. The recommendation to not hire was based on [Petitioner's] interview responses.

Q. Again, my question was can you tell us what preference you gave him in reaching the decision to hire or not hire him based on his veteran status. Did you give him preference or did you not?

A. No.

Q. No, the answer is no, you did not. Is that correct?

A. That's correct.

Q. And are you aware of any preference given to my client except for the ten points on that test with respect to the selection?

A. Not that I'm aware of.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. The State Personnel Act specifically holds that veterans shall be granted certain preferences in state employment:

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution.

N.C.G.S. 126-80

3. Petitioner is an eligible veteran for purposes of the North Carolina State Personnel Act and the North Carolina State Personnel Manual, having served in the Armed Forces of the United States on active duty during time of war. North Carolina State Personnel Manual, Workforce Planning, Recruitment, and Selection, Section 2, Page 35; see N.C.G.S. 126-81 In Petitioner's

case, he served during the period of the Vietnam War and in the Gulf War of 1991, where he was awarded among other decorations the Bronze Star. Petitioner properly claimed veterans' preference by submitting his form DD-214 along with his application for the position. North Carolina State Personnel Manual, Section 2, Page 35

4. Because of its participation in a federally funded Medicaid program, Respondent is required by the Act to establish and maintain personnel standards on a merit basis. 42 U.S.C. 4728(b)(1995); 5 C.F.R. §§ 900.601 to 900.606 (1996); Appendix A to 5 C.F.R., Pt. 900, Subpt. F (1996). *Dunn v. North Carolina Dep't of Human Resources*, 124 N.C. App. 158, 476 S.E.2d 383 (1996).

5. Further, according to the North Carolina State Personnel Manual, Workforce Planning, Recruitment, and Selection, Section 2, Page 9. *Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria. Moreover, Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.* North Carolina State Personnel Manual, Workforce Planning, Recruitment, and Selection, Section 2, Page 9.

6. Though the specific issue in this case is whether Respondent gave Petitioner veterans' preference in applying for the job, it is difficult to discern what, if any, objective merit based standards Respondent applied in determining its most qualified applicants once the minimum qualifications of a college degree and passing of the screening test were met. The evidence is that Respondent ignored all prior experience in favor of a wholly subjective and standard-less interview process, where various individuals and teams interviewed differing persons compiling no score or ranking of any of the applicants. Even if Respondent's hiring processes were not wholly subjective, however, the evidence is that Petitioner was given no preference by Respondent barring ten points on an initial screening test.

7. The State of North Carolina and Office of State Personnel (OSP) requirements are clear:

State law requires that employment preference be given for having served in the Armed Forces of the United States on active duty (for reasons other than training) during periods of war or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

The preference to be accorded eligible veterans shall apply in initial employment, subsequent employment, promotions, reassignments, horizontal transfers and reduction-in-force situations.

North Carolina State Personnel Manual, Section 2, Page 35.

8. Moreover, OSP gives agencies clear regulations on applying the veterans' preference:

For initial employment or subsequent employment, after applying the preference to candidates from outside the State government structure, the eligible veteran shall be hired when overall qualifications are substantially equal to the nonveterans in the most qualified applicant pool unless there are State employees

with a priority as described under "Relationship to Other Priorities" below. Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant.

North Carolina State Personnel Manual, Section 2, Page 38.

9. Under North Carolina law, regulation and policy, veterans' preference provides special consideration for eligible veterans during the employment selection process. Where two or more candidates for employment have equal qualifications, including achievement on examinations, relevant work history and experiences, performance in interviews and other job related testings or reviews, preference must be given the veteran. Best practices would dictate that any hiring agency would follow this course on all candidates as they are bound to do for veteran (and other priority) candidates. An agency ignores vital information submitted by an applicant in their State application and by other writings at their own peril for case law charges that agency with having knowledge of this information which should be used in the selection process. The State has designed the selection process to evaluate candidates on more than their ability to meet the minimum requirements. The interview is but one part of the examination of an applicant's qualifications for the position. To hold otherwise would render the entire application and ultimately selection process a nullity.

10. In this present case Respondent failed to review and compare all of the Petitioner's information that it had knowledge of at the time of the decision for hiring was made. Further, as established by the greater weight of the evidence, besides failing to make any kind of determination at the time as to whether Petitioner's job-related qualifications were substantially equal to the non-veterans in the qualified applicant pool, Respondent made no effort to apply any preference to Petitioner other than the aforementioned ten points on a screening test. This was and is clearly a failure to give Petitioner veterans' preference.

11. The Commission is specifically authorized to remedy a failure to give veterans' preference by awarding the veteran applicant the job:

The State Personnel Commission may, upon a finding that veterans' preference was denied in violation of this policy, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation.

North Carolina State Personnel Manual, Section 2, Page 39

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

DECISION

The Undersigned finds and so holds that Petitioner has carried his burden of proof by a preponderance of the evidence that Respondent failed to give Petitioner veterans' preference in the selection of a Disability Determination Specialist Trainee. As such, it is the decision of the Undersigned that Respondent place Petitioner in the same or similar position that he was rejected from at the soonest time possible and that Petitioner be awarded back pay from the date he was originally rejected for the position until the date he assumes it (offset by any employment by the Petitioner during the same time period). Further, Petitioner should be awarded reasonable attorney fees pursuant to 25 N.C.A.C. 1B.0414 upon submission by the Petitioner's counsel of a Petition to the North Carolina State Personnel Commission for Attorney Fees with an accompanying itemized statement of the fees and costs incurred in representing the Petitioner.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and to present written arguments regarding this Decision issued by the Undersigned in accordance with N. C. Gen. Stat. § 150B-36.

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses.

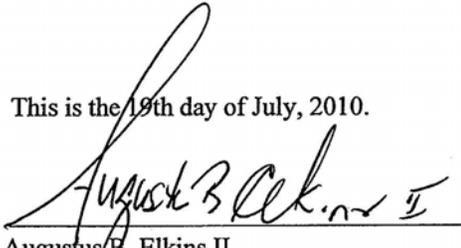
For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record.

The agency that will make the final decision in this case is the North Carolina State Personnel Commission. State Personnel Commission procedures and time frames regarding appeal to the Commission are in accordance with Appeal to Commission, Section 0.0400 *et seq.* of Title 25, Chapter 1, SubChapter B of the North Carolina Administrative Code (25 NCAC 01B .0400 *et seq.*).

IT IS SO ORDERED.

This is the 19th day of July, 2010.



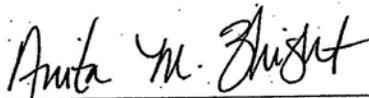
Augustus B. Elkins II
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 20th day of July, 2010.



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