

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10F .0201

DEADLINE FOR RECEIPT: Monday, December 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

To the Rule generally, are all rules compliant with the regulations enacted by federal laws and regulations, as required by G.S. 113-307, and the Federal Boat Safety Act of 1971 and federal regulations, as required by G.S. 75A-6(m)? For any request below, reference the federal rule or regulation it complied with, including, but not limited to, regulations within 46 CFR 25 and 33 CFR 175.

46 CFR 160.076-5 defines "PFD" as "personal flotation device as defined in 33 CFR 175.13." Following, 33 CFR 175.13 defines it as "Personal flotation device or PFD means a device that is approved by the Commandant under 46 CFR part 160", while "throwable PFD" and "wearable PFD" are defined precisely. The definition of PFD is rather vague, considering the definition is what is "approved by the Commandant under 46 CFR part 160." What is the precise definition of "personal flotation devices" as used in this Rule? Does it follow the definitions in 46 CFR part 160 and 33 CFR 175.13?

What are the definitions of "throwable PFD" and "wearable PFD"? Are these only defined within 33 CFR 175.13?

In (b)(1)(A) and (B), who approves the label of the PFD? The U.S. Coast Guard?

In (b)(2), what does "immediately available for use" mean?

Similarly, in (b)(4), what does "serviceable conditions" mean?

When using referencing the U.S. Coast Guard, maintain consistency. See (b)(4)(C) and (c)(1).

In (b)(4)(D), insert an Oxford comma after "Requirements".

In (c)(3) and (4), "extinguisers" is misspelled and should be spelled "extinguishers".

Where are each of the types of fire extinguishers defined?

Lawrence R. Duke
Commission Counsel
Date submitted to agency: December 7, 2022

In (d), remove the comma after “46 CFR 25.40-1”.

Also, what is the determination of “liquid of a volatile nature as fuel” pursuant to?

In (f)(1), what is the standard used for producing an “efficient sound signal”?

In (g), who makes the determination as to whether exhibiting lights are “necessary”?

Also, how does such a determination fit into or facilitate the next requirement for any other lights not being “mistaken for lights” in these rules and not reducing visibility? Who makes the determination of mistake and visibility?

How is the determination made as to whether a shown light was “exhibited in sufficient time to prevent a collision”?

Similarly to an above request, in (g)(6)(B), what does “ready at hand” mean?

In (g)(7), what are the “foregoing requirements” referenced? Assuming they are the Paragraph (g) requirements, state as such in Subparagraph (7).

In the History Note section, move the comma one space to the left in “January 1, 2023”.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: December 7, 2022

1 15A NCAC 10F .0201 is amended as published in 36:11 NCR 967-969 as follows:

2
3 **SECTION .0200 - SAFETY EQUIPMENT AND ACCIDENT REPORTS**

4
5 **15A NCAC 10F .0201 SAFETY EQUIPMENT**

6 (a) All vessels subject to the rules of this Section shall meet the vessel equipment requirements set forth in G.S. 75A-
7 6(n), 46 CFR 25, and 33 CFR 175. 46 CFR 25 and 33 CFR 175 are incorporated by reference, including subsequent
8 amendments and editions, and can be found free of charge online at www.ecfr.gov. Notwithstanding the federal
9 regulations incorporated in this Paragraph, Paragraphs (b) through (g) shall apply to vessels operating in State waters.
10 To the extent these vessel equipment requirements conflict with the incorporated federal regulations, federal
11 regulations shall supersede any and all State laws or regulations.

12 (b) Personal flotation devices (PFDs) shall be required as follows:

13 (1) No person may operate a vessel unless, for each person on the vessel, at least one ~~Type I, II, or III~~
14 U.S. Coast Guard approved wearable PFD is on board and readily accessible. Any U.S. Coast Guard
15 approved wearable PFD may be carried to meet the requirement, provided:

16 (A) the approved label for the PFD indicates that the device is approved for the activity for
17 which the vessel is being used; or

18 (B) the PFD is used in accordance with the requirements on the approval label and with the
19 requirements in its owner's manual.

20 (2) No person shall operate a vessel 16 feet or more in length unless one ~~type IV~~ U.S. Coast Guard
21 approved throwable PFD is on board and immediately available for use, in addition to the total
22 number of PFDs required in Subparagraph (1) of this Paragraph.

23 (3) No person shall operate a vessel while the vessel is underway with any child under 13 years old
24 aboard unless each child is:

25 (A) wearing an appropriate PFD approved by the U.S. Coast Guard;

26 (B) below decks; or

27 (C) in an enclosed cabin.

28 This Subparagraph shall not apply to a vessel that is registered as a commercial vessel.

29 ~~(4) A Type V PFD may be carried in lieu of any PFD required under Subparagraph (1) of this Paragraph~~
30 ~~provided:~~

31 ~~(A) the approval label for the Type V PFD indicates that the device is approved for the activity~~
32 ~~for which the vessel is being used; or~~

33 ~~(B) the Type V PFD is used in accordance with the requirements on the approval label and~~
34 ~~with the requirements in its owner's manual.~~

35 ~~(5)~~(4) No person shall operate a vessel unless each required PFD is:

36 (A) in serviceable condition;

37 (B) of appropriate size and fit for the intended wearer;

- (C) United States Coast Guard approved; and
- (D) legibly marked with its approval number, as specified in 46 CFR 25 Uninspected Vessels, Requirements and 33 CFR 175 Personal Flotation Devices.

~~(6)~~(5) Exemptions shall apply as follows:

- (A) Canoes and kayaks 16 feet in length and over shall be exempted from the requirements for carriage of the additional ~~Type IV~~ U.S. Coast Guard approved throwable PFD as specified in Subparagraph (b)(2) of this Rule.
- (B) Sailboards, surfboards, tubes, swimming rafts, inflatable toys, and similar devices used as water toys or swimming aids shall be exempted from the requirements for carriage of any PFD required under this Paragraph.
- (C) Manually propelled vessels such as racing shells, rowing sculls, racing canoes, and racing kayaks that are recognized by national and international racing associations for use in competitive racing, that are not designed to carry any equipment not solely for competitive racing, and in which all occupants with the with exception of a coxswain, if one is present, row, scull, or paddle, shall be exempted from the requirements for carriage of any type PFD required under this Paragraph.

(c) Fire Extinguishers shall be required as follows:

- (1) All motorboats shall carry at least the minimum number of USCG-approved hand portable fire extinguishers specified in this Rule if:
 - (A) the motorboat has closed compartments under thwarts and seats in which portable fuel tanks may be stored;
 - (B) the motorboat has double bottoms that are not sealed to the hull or that are not completely filled with flotation material;
 - (C) the motorboat has closed living spaces;
 - (D) the motorboat has closed stowage compartments in which combustible or flammable materials are stowed;
 - (E) the motorboat has permanently installed fuel tanks; or
 - (F) the motorboat is Class 2 or longer.
- (2) Class A and Class 1 Motorboats less than 26 feet in length shall carry one Type B-I extinguisher.
- (3) Class 2 Motorboats shall carry two Type B-I extinguishers.
- (4) Class 3 Motorboats shall carry three Type B-I extinguishers.
- (5) One Type B-II hand held fire extinguisher may be substituted for two B-I hand portable fire extinguishers. A fixed fire extinguishing system installed in the engine compartment shall be deemed equal to one Type B-I hand portable fire extinguisher.

Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, shall not be required to carry portable fire extinguishers if the construction of the vessels will not permit the entrapment of explosive or flammable gases or vapors.

1 (d) Every engine, except outboard motors, using gasoline as fuel and installed in a vessel shall be equipped with an
2 acceptable means of backfire flame control that meets the requirements of 46 CFR 25 and 33 CFR 175.

3 (e) Every vessel, except open vessels using liquid of a volatile nature as fuel, shall be equipped with an operable
4 ventilation system as required by 33 CFR 175.201 and 46 CFR 25.40-1, to remove any explosive or flammable gases
5 from the bilges of the engine and fuel tank compartments that meets the requirements of 46 CFR 25 and 33 CFR 175.

6 (f) Sound devices shall be required as follows:

7 (1) Vessels less than 12 meters or 39.4 feet in length shall be equipped with some means of making an
8 efficient sound signal; and

9 (2) Vessels equal to or greater than 12 meters or 39.4 feet in length shall be equipped with a whistle and
10 a bell that comply with 33 USC 2033.

11 (g) Lights. The lights prescribed by this Paragraph shall be exhibited from sunset to sunrise and in fog, mist, falling
12 snow, heavy rainstorms, sandstorms, or any other similar circumstances of restricted visibility. They may be exhibited
13 in all other circumstances when deemed necessary. During such times no other lights shall be exhibited, except those
14 that cannot be mistaken for the lights specified in these Rules, do not impair their visibility or distinctive character, or
15 do not interfere with keeping a proper lookout. Lights shall be required as follows:

16 (1) Vessels, other than those vessels described in Subparagraphs (g)(3)-(7) of this Rule, equal to or
17 greater than 12 meters or 39.4 feet but less than 20 meters or 65.6 feet in length shall exhibit:

18 (A) A masthead light forward visible for three miles;

19 (B) Sidelights, green to starboard and red to port, visible for two miles; and

20 (C) A stern light visible for two miles.

21 (2) Vessels, other than those vessels described in Subparagraphs (g)(3)-(7) of this Rule, less than 12
22 meters or 39.4 feet in length shall exhibit:

23 (A) An all-round white light visible for two miles; and

24 (B) Sidelights, green to starboard and red to port, visible for 1 mile.

25 (3) Sailing vessels underway that are seven meters or 23 feet in length or greater shall exhibit:

26 (A) A stern light visible for two miles; and

27 (B) Sidelights, green to starboard and red to port, visible for two miles.

28 (4) In a sailing vessel less than 20 meters or 65.6 feet in length, the lights prescribed in Subparagraph
29 (3) of this Paragraph may be combined in one lantern carried at or near the top of the mast where it
30 can be best seen.

31 (5) A sailing vessel of less than seven meters or 23 feet in length shall, if practicable, exhibit the lights
32 prescribed in Subparagraph (3) or (4) of this Paragraph; if not practicable the vessel shall have ready
33 at hand an electric torch or lighted lantern showing a white light that shall be exhibited in sufficient
34 time to prevent a collision.

35 (6) A vessel under oars shall either:

36 (A) exhibit the lights prescribed in Subparagraph (g)(5) of this Rule for sailing vessels; or

1 (B) have ready at hand an electric torch or lighted lantern showing a white light that shall be
2 exhibited in sufficient time to prevent a collision.

3 (7) On public waters not subject to the jurisdiction of the United States, vessels propelled by machinery
4 of 10 horsepower or less, in lieu of the foregoing requirements, may carry from one-half hour after
5 sunset to one-half hour before sunrise a white light in the stern or have on board a hand flashlight
6 in good working condition which shall be ready at hand and shall be temporarily displayed in
7 sufficient time to prevent collision. The Subparagraph shall not apply to vessels in waters of this
8 State that are subject to the jurisdiction of the United States.

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10 *History Note: Authority G.S. 75A-3; 75A-6; 113-307;*
11 *Eff. February 1, 1976;*
12 *Amended Eff. November 1, 2013; April 1, 2009; March 1, 2008; April 1, 1999; August 1, 1988; May*
13 *1, 1976;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
15 *6, 2016;*
16 *Amended Eff. January 1, 2023; November 1, 2018.*
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