

Burgos, Alexander N

Subject: FW: RRC - 15A NCAC 10F .0201 Extension Letter

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, February 1, 2023 5:14 PM
To: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RRC - 15A NCAC 10F .0201 Extension Letter

Carrie,

Thank you for making these changes. This rule is good to go. Please submit the final version to OAH.Rules@oah.nc.gov.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

Burgos, Alexander N

Subject: FW: RRC - 15A NCAC 10F .0201 Extension Letter
Attachments: 10F .0201 Perm_Tech1.2023.docx; Wildlife Resources - 12.2022 - 15A NCAC 10F .0201 Change Requests v.2.docx

From: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>
Sent: Monday, January 23, 2023 2:47 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RRC - 15A NCAC 10F .0201 Extension Letter

Lawrence,

Attached please find the amended rule and responses to the technical change request. Please let me know if you have additional comments or questions.

Carrie Ruhlman

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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)? **Yes** 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? **Yes. 46 CFR part 160 details general characteristics of life preservers. This is the federal definition that must be used.***

*What are the definitions of "throwable PFD" and "wearable PFD"? Are these only defined within 33 CFR 175.13? **yes, now cited.***

*In (b)(1)(A) and (B), who approves the label of the PFD? The U.S. Coast Guard? **The U.S. Coast Guard. 46 CFR Part 160 specifies text of PFD labels and approval.***

*In (b)(2), what does "immediately available for use" mean? **Can easily be reached if needed. "readily accessible" is the term used in 75A. Changed to "readily accessible".***

*Similarly, in (b)(4), what does "serviceable conditions" mean? **It's in a condition allowing it to work as intended. It doesn't have rips and tears. Changed.***

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: December 7, 2022

In (b)(4)(D), insert an Oxford comma after “Requirements”. Done

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

Where are each of the types of fire extinguishers defined? They are not defined and there is no formal definition. They are labeled so you know that you are purchasing the required one. They are required to be USCG approved Type B extinguishers as listed in CFR.

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

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

In (f)(1), what is the standard used for producing an “efficient sound signal”? Just a sound that’s audible. Edited for clarity.

In (g), who makes the determination as to whether exhibiting lights are “necessary”? The individual operating the boat. Edited for clarity.

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? This is language directly from CFR. This is referring to docking lights, flash lights, etc that cannot be mistaken for the red, green and all around white light, and will not restrict others from seeing those lights on a boat.

How is the determination made as to whether a shown light was “exhibited in sufficient time to prevent a collision”? This is direct language from 33 CFR 83.25 (d)(ii). Whether there is a collision or not would determine this – investigation of collision.

Similarly to an above request, in (g)(6)(B), what does “ready at hand” mean? Readily available. Edited for clarity.

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

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

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

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

2
3 **15A NCAC 10F .0201 SAFETY EQUIPMENT**

4 (a) All vessels subject to the rules of this Section shall meet the vessel equipment requirements set forth in G.S. 75A-
5 6(n), 46 CFR 25, and 33 CFR 175. 46 CFR 25 and 33 CFR 175 are incorporated by reference, including subsequent
6 amendments and editions, and can be found free of charge online at www.ecfr.gov. Notwithstanding the federal
7 regulations incorporated in this Paragraph, Paragraphs (b) through (g) shall apply to vessels operating in State waters.
8 To the extent these vessel equipment requirements conflict with the incorporated federal regulations, federal
9 regulations shall supersede any and all State laws or regulations.

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

11 (1) No person may operate a vessel unless, for each person on the vessel, at least one ~~Type I, II, or III~~
12 U.S. Coast Guard approved wearable PFD as defined in 33 CFR 175.13 is on board and readily
13 accessible. Any U.S. Coast Guard approved wearable PFD may be carried to meet the requirement,
14 provided:

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

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

19 (2) No person shall operate a vessel 16 feet or more in length unless one ~~type IV~~ U.S. Coast Guard
20 approved throwable PFD as defined in 33 CFR 175.13 is on board and immediately available for
21 use, readily accessible, in addition to the total number of PFDs required in Subparagraph (1) of this
22 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; a condition allowing it to work as intended;

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

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

4 ~~(6)(5)~~ Exemptions shall apply as follows:

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

17 (c) U.S. Coast Guard marine approved and labeled fire extinguishers ~~Fire Extinguishers~~ shall be required as follows:

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

35 Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire,
36 shall not be required to carry portable fire extinguishers if the construction of the vessels will not permit the entrapment
37 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~~ nature, including gasoline or diesel, as fuel,
4 shall be equipped with an operable ventilation system as required by 33 CFR 175.201 and 46 CFR 25.40-1, to remove
5 any explosive or flammable gases from the bilges of the engine and fuel tank compartments that meets the
6 requirements of 46 CFR 25 and 33 CFR 175.

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

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

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

12 (g) Lights. The lights prescribed by this Paragraph shall be exhibited from sunset to sunrise and in fog, mist, falling
13 snow, heavy rainstorms, sandstorms, or any other similar circumstances of restricted visibility. They may be exhibited
14 in all other circumstances when deemed ~~necessary~~ necessary by the operator of the vessel. During such times no other
15 lights shall be exhibited, except those that cannot be mistaken for the ~~lights specified in these Rules, required~~
16 navigation lights, do not which impair their visibility or distinctive character, or ~~do not~~ interfere with keeping a proper
17 ~~lookout~~ lookout as defined in 33 CFR 83.20(b). Lights shall be required as follows:

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

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

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

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

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

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

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

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

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

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

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

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

37 (6) A vessel under oars shall either:

- 1 (A) exhibit the lights prescribed in Subparagraph (g)(5) of this Rule for sailing vessels; or
2 (B) have ~~ready at hand~~ an electric torch or lighted lantern showing a white light ~~that shall be~~
3 ~~readily available to be~~ exhibited in sufficient time to prevent a collision.

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

10
11 *History Note: Authority G.S. 75A-3; 75A-6; 113-307;*
12 *Eff. February 1, 1976;*
13 *Amended Eff. November 1, 2013; April 1, 2009; March 1, 2008; April 1, 1999; August 1, 1988; May*
14 *1, 1976;*
15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*
16 *6, 2016;*
17 *Amended Eff. January 1, 2023; November 1, 2018.*
18
19

Burgos, Alexander N

Subject: FW: RRC - 15A NCAC 10F .0201 Extension Letter

From: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>

Sent: Thursday, January 12, 2023 1:08 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: RRC - 15A NCAC 10F .0201 Extension Letter

Hi Lawrence,

My plan is to submit for the February meeting. I will have responses/edits to you by Feb 3rd. Thanks!

Carrie Ruhlman

N.C. Wildlife Resources Commission

Office of Conservation Policy & Analysis

1751 Varsity Drive

Raleigh, North Carolina 27606

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Burgos, Alexander N

Subject: FW: RRC - 15A NCAC 10F .0201 Extension Letter

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Thursday, January 12, 2023 11:13 AM

To: Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>; Ruhlman, Carrie A <carrie.ruhlman@ncwildlife.org>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: RRC - 15A NCAC 10F .0201 Extension Letter

Carrie & Ashley –

What is your plan for this rule? Are you planning on handling it at the February Meeting? If so, please have a response to the change requests in by February 3, 2023.

Thanks,

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

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