

NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 07 • Pages 396 - 498

October 1, 2007

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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.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street
Raleigh, North Carolina 27603-8005
(919) 807-4700
(919) 733-0640 FAX

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Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street(919)
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611
(919) 733-2578
(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-2893

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

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215 North Dawson Street
Raleigh, North Carolina 27603
(919) 715-4000

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NORTH CAROLINA REGISTER
Publication Schedule for January 2007 – December 2007

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 (first legislative day of the next regular session)	270 th day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
21:22	05/15/07	04/24/07	05/30/07	07/16/07	07/20/07	09/01/07	05/08	02/09/08
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22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
22:03	08/01/07	07/11/07	08/16/07	10/01/07	10/22/07	12/01/07	05/08	04/27/08
22:04	08/15/07	07/25/07	08/30/07	10/15/07	10/22/07	12/01/07	05/08	05/11/08
22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
22:06	09/17/07	08/24/07	10/02/07	11/16/07	11/20/07	01/01/08	05/08	06/13/08
22:07	10/01/07	09/10/07	10/16/07	11/30/07	12/20/07	02/01/08	05/08	06/27/08
22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
22:10	11/15/07	10/25/07	11/30/07	01/14/08	01/21/08	03/01/08	05/08	08/11/08
22:11	12/03/07	11/08/07	12/18/07	02/01/08	02/20/08	04/01/08	05/08	08/29/08
22:12	12/17/07	11/26/07	01/01/08	02/15/08	02/20/08	04/01/08	05/08	09/12/08

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



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO.123 EMERGENCY RELIEF FOR DAMAGE CAUSED BY DROUGHT

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government; and

WHEREAS, the North Carolina Emergency Management Act authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the North Carolina Emergency Management Act authorizes the Governor to take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing **HAY or WATER** to relieve our grief stricken counties must adhere to the registration requirements of N.C.G.S. § 20-86.1 and N.C.G.S. § 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. § 20-116 and N.C.G.S. § 20-18; I have further found that citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. § 166-A-4(3), and

WHEREAS, I have requested the United States Department of Agriculture declare eighty-five (85) North Carolina counties as agricultural disaster areas due to drought conditions justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, there is a severe shortage of hay for feeding livestock;

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

Section 1. The North Carolina Department of Crime Control & Public Safety in conjunction with the N.C. Department of Transportation shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. § 20-116 and N.C.G.S. § 20-118 and certain registration requirements and penalties therefore arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting **HAY or WATER** along North Carolina roadways to our grief stricken counties.

Section 2. 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.

Section 3. Vehicles referenced under Section 1 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 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 4. 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 5. The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) **does not apply** to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 6. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner, which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with the **DROUGHT**.

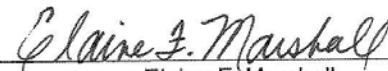
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency whichever is less.

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 twenty-eighth day of August in the year of our Lord two thousand and seven, and of the Independence of the United States of America the two hundred and thirty-second.




Michael F. Easley
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

Note from the Codifier: This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Piston, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Piston, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property, which is known as the former Celanese Dreyfus Research Park, consists of 120.41 acres and is located at 2300 Archdale Drive. Environmental contamination exists on the Property in groundwater. Piston, LLC has committed itself to redevelopment of the Brownfields Property for high-density, multi-family residential use, including two-, three- and four-story townhouse and condominium units with slab-on-grade construction, several small parks, a pool and a recreational facility. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Piston, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Charlotte-Mecklenburg Public Library, 310 North Tryon Street, Charlotte, NC 28202, by contacting Sarah Poole at that address, at spoole@plcmc.org or at (704) 416-0702; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if Piston, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on October 2, 2007. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:)

The Assessment of Unauthorized)
 Substance Tax Dated December 2, 2005,)
 by the Secretary of Revenue of the)
 State of North Carolina)

ADMINISTRATIVE

DECISION NUMBER: 503

vs.)

David Christopher Ledwell)
 and Tracy Renee Ledwell,)
 Taxpayers)

THIS MATTER was heard before the regular Tax Review Board (hereinafter "Board") in the city of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, April 12, 2007, upon a Motion to Dismiss filed by the Attorney General of North Carolina regarding the Petition for Administrative Review filed by Taxpayers requesting review of unauthorized substance taxes and penalties. Taxpayers were present but their purported counsel was not in attendance.

Pursuant to N.C. Gen. Stat. § 105-241.1, assessments proposing unauthorized substance tax and penalties were mailed to Taxpayers. The Taxpayers protested the assessments and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary entered a Final Decision that sustained the proposed assessments against the Taxpayers. Pursuant to N.C. Gen. Stat. § 105-241.2, the Taxpayers filed a Notice of Intent to File Petition for Administrative Review, received by the Board on July 12, 2006. Pursuant to N.C. Gen. Stat. § 105-241.2(a)(2), Taxpayers were notified by the Board that a Petition for Administrative Review of the Assistant Secretary's final decision must be filed with the Board within 60 days of July 12, 2006. On September 20, 2006, Taxpayers, through counsel, sent the Board a Petition for Administrative Review.

Pursuant to N.C. Gen. Stat. § 105-241.2(a)(2), the Board lacks jurisdiction over this matter because the Petition for Administrative Review was untimely filed. The Board cannot confer jurisdiction over this matter, and likewise the Board cannot consider arguments regarding the untimely nature of the Petition. Thus, the Board concludes that Taxpayer's petition for administrative review is not properly before the Board because the Board lacks jurisdiction.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that
Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 11th day of July 2007.

TAX REVIEW BOARD



Stacey A. Phipps
Stacey A. Phipps, Chief Deputy Treasurer, on
behalf of Richard H. Moore, State Treasurer

Edward S. Finley, Jr.
Edward Finley
Chair, Utilities Commission

Noel L. Allen, Esq.
Noel L. Allen, Esq.

STATE OF NORTH CAROLINA

**BEFORE THE
TAX REVIEW BOARD**

**COUNTY OF WAKE
IN THE MATTER OF:**

The Proposed Assessment of Additional)
Sales and Use Tax For the Period)
September 1, 1998 Through May 31, 2004)
By the Secretary of Revenue)
)
)
vs.)
)
The Century Slate Company, Inc.,)
Appellant)

ADMINISTRATIVE DECISION
NUMBER: 504
Docket Number 2006-114

This Matter was heard before the regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, May 3, 2007 pursuant to the petition of The Century Slate Company, Inc. (hereinafter "Appellant") for administrative review of the final decision entered by the Assistant Secretary of Revenue on August 24, 2006 regarding the proposed assessment of additional sales and use tax for the period September 1, 1998 through May 31, 2004. Counsel for appellant were present at this hearing and presented written and oral argument before the Board.

Appellant initially protested the proposed assessment and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision that sustained the proposed assessment. From the Assistant Secretary's final decision, appellant filed a notice of intent and petition for administrative review with the Board pursuant to N.C. Gen. Stat. § 105-241.2.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2. After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct.

And it appearing to the Board, after conducting an administrative hearing in this matter, at which appellant was represented by counsel, and reviewing the Assistant

Secretary's final decision, that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record, that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact, and that the final decision of the Assistant Secretary was supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Assistant Secretary's final decision is **AFFIRMED** in regards to the proposed assessment of additional sales and use tax for the period in question, with no assessment of penalties, and no assessment of accrued interest as of the date of this order.

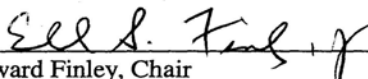
Made and entered into the 1st day of August 2007.



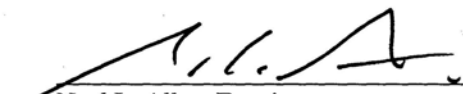
TAX REVIEW BOARD



Stacey A. Phipps, Chief Deputy Treasurer, on behalf
Richard H. Moore, State Treasurer



Edward Finley, Chair
North Carolina Utilities Commission



Noel L. Allen, Esquire

**The 2008 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. INTRODUCTION

The 2008 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.
- 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 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(A), II(B)₂ or II(C). Projects awarded in prior years that will place in service in 2008 and have increased development costs are eligible to apply for additional 9% tax credits. The Agency will evaluate such applications based on the relevant criteria in the applicable set-aside. Both the prior cycle and current cycle awards would count towards the maximum per Principal limit in Section II(E)(1).

This Section II only applies to 9% tax credit applications.

A. **PRESERVATION SET-ASIDE**

The Agency will award up to \$750,000 in tax credits to applications proposing to rehabilitate the following:

1. properties with 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; or

2. projects allocated 9% tax credits in 1992~~4~~ or earlier.

In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). See Section II(E)(~~23~~) for award limitations ~~for this set-aside~~.

B. REHABILITATION SET-ASIDE

The Agency will award up to twenty percent (20%) of tax credits available after forward commitments and the preservation set-aside to projects proposing rehabilitation of existing housing. Adaptive reuse projects and entirely vacant residential buildings will be considered new construction. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3).

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.

~~NEW CONSTRUCTION GEOGRAPHIC SET-ASIDES~~

WEST: 20%	CENTRAL: 25%	METRO: 30%	EAST: 25%
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WEST		CENTRAL		METRO	EAST	
Alexander	Jackson	Alamance	Montgomery	Buncombe	Beaufort	Johnston
Alleghany	Lincoln	Anson	Moore	Cumberland	Bertie	Jones
Ashe	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.

In order to qualify under subsection (D)(1) above, an application must either not involve any for-profit Principals or comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2). In order to qualify under subsection (D)(2) above, an application must meet the requirements of subsection (D)(1) above, 24 CFR 92.300(a)(1) and any other regulation 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. LIMITATION OF AWARDS TO PRINCIPALS AND PROJECTS

1. The maximum award to any one Principal will be a total of \$1,000,000 in tax credits, including all set-asides. Forward commitments will count towards the maximum applicable in the year they are allocated.
2. The maximum award to any one project will be \$1,000,000, other than the preservation set-aside, which will be \$250,000, the lesser of (a) \$800,000 or (b) \$8,000 per qualified low income unit. The per unit limit will be \$8,500 for adaptive reuse projects or where the residential buildings meet all Energy Star standards (as defined in Appendix B).
[see bonus point section for Energy Star]
3. ~~Awards under Section II(A) will be limited to \$250,000 and will not be eligible for the federal acquisition tax credit pursuant to Section 42 of the Code.~~

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. No county will be awarded tax credits for new construction exceeding \$1,500,000 unless doing so is necessary to meet another set-aside requirement of this Plan. Forward commitments will count towards this limit in the year they are allocated. No county will be awarded more than two (2) projects under the rehabilitation set-aside. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies.
2. 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) Enterprise area tier (one through five)

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

G. OTHER AWARDS

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 2008 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(A), II(B), II(E)(1), II(F)(1) and this Section II(G) in order to completely fund a project request. Projects will be counted towards these limitations in the order awarded under the Plan (preservation, rehabilitation, higher-scoring new construction applications, and tie-breakers).

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2008 application process for 9% tax credits. The Agency will announce the application schedule for bond allocation and 4% tax credits at a later time.

- | | |
|--|---|
| January 11 ¹⁴ | Deadline for submission of preliminary applications (12:00 noon) |
| March 35 | Market analysts will mail studies to the Agency and applicants |
| March 14 ¹⁶ | Notification of final site scores |
| March 24 ²³ | Deadline for market-related project revisions |
| March 31 ^{April 2} | Deadline for the Agency and applicant to receive a hard copy of the revised market study, if applicable |
| May 9 ¹¹ | 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 ~~\$5,400~~^{\$300} at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,100 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 \$1,100 upon submission of the full application.
3. Entities receiving 9% tax credit awards are required to pay a nonrefundable allocation fee equal to the greater of:
 - (a) ~~0.60~~⁵⁸% of the project's total qualified basis or,
 - (b) seventy-five hundred dollars (\$7,500).

For projects with prior awards applying for additional tax credits, the percentage above will be applied to the project's entire amount of qualified basis. This fee is in addition to the fee paid at time of the prior award. The allocation fee must be paid to the Agency upon the earlier of return of the reservation letter or carryover allocation agreement. Failure to return the required documentation (such as ownership entity information) and fee by the date specified may result in cancellation of the tax credit reservation.
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 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 \$700 per unit (includes all units, qualified, unrestricted and employee) prior to issuance of the project's IRS Form 8609.
- ~~6~~⁵. 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~~⁶. The Agency may assess applicants or owners a fee of up to ~~\$2,000~~^{\$500} 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).

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 or population type (family/elderly) as separate for purposes of the Agency's preliminary application process. Each application would require a separate initial application fee. Projects may be considered as one application in the full application submission if all sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of 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. 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.

D. MONITORING FEES

The following must be paid prior to the issuance of a federal form 8609:

Project Type	
Tax credit projects without an Agency loan, including projects using tax-exempt bond financing and 4% credits	\$550 per unit
Projects receiving an RPP loan.	\$650 per unit

The monitoring fee is applied to all units in a project, including all market rate units and units reserved for employees, managers or other personnel.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

New construction applications must meet all threshold requirements and receive 110200 points to be considered for award and funding. Preservation and 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 preservation and rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2008 cycle.

A. SITE AND MARKET EVALUATION—(MAXIMUM 140 POINTS)

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 100140 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 necessary-discretionary land use approval required (includes all legislative or quasi-judicial decisions) other than approval of subdivision plats or building permits. 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) 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.
 - (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 applicant'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, ~~with an emphasis on those the Agency considers to be within the same market area. Criteria involving consideration of land uses will focus on the area within approximately one half mile.~~ The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. ~~Where appropriate, the score for a particular category will reflect the project's tenant type (family/elderly/supportive housing/special needs).~~

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM ~~30~~⁴⁰ 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 ~~60~~⁶⁵ POINTS)

- Suitability of surrounding development
- Land use pattern is residential in character (single and multifamily housing) ~~with a balance of other uses (particularly retail and amenities).~~
- Availability, quality and proximity of services, amenities and features, including but not limited to: grocery store; mall/strip center; ~~gas/convenience;~~ basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center, ~~basketball/tennis courts, fitness/nature trails, public swimming pool, restaurants, bank/credit union, medical offices, professional services, movie theater, video rental, public safety (fire/police).~~
- 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. ~~Amount and character of vacant, undeveloped land.~~

(iii) SITE SUITABILITY (MAXIMUM ~~103~~⁵ POINTS)

- Adequate traffic safety controls (i.e. stop lights, speed limits, turn lanes, etc.).
- Burden on public facilities (particularly roads).
- Access to mass transit (if applicable).

(iv) LOCATION OF BUILDINGS (MAXIMUM NEGATIVE 20 POINTS)

- Degree of ~~on-site~~ negative features, design challenges and 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. ~~Similarity of scale and aesthetics/architecture between project and surroundings.~~
- The project would not be visible to potential tenants using normal travel patterns. ~~Visibility of buildings and location of project sign(s) in relation to traffic corridors.~~

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 NOT ACCEPT A full application in a primary market area containing one or more projects with 9% tax credits or Agency loans which ~~have~~:

- (i) have a history of high vacancy rates, or
- (ii) not reached stabilized occupancy.

~~The Agency may waive this limitation will not apply if the existing projects have a different population types (family/elderly).~~ Subsection (A)(2)(b)(ii) above will not apply if all owners of projects that have not reached stabilized

occupancy consent to applications in their primary market area. Such consent would apply to all applications and does not affect subsection (A)(2)(c)(iv) below.

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.
- (d) 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).
- (e) 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 (i.e. artists).~~

B. RENT AFFORDABILITY—(MAXIMUM 50 POINTS)

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)(c); 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.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM ~~20~~30 POINTS)

(a) ~~Eligibility~~Eligible Sources:

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

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

Other sources of ~~public~~ funding may qualify PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE by the Agency. (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 thirty percent (30%) higher than the maximum allowed for a unit at 60% area median income. Adjustments to the purchase price of the land by the seller, ~~uncommitted RPP funds or other~~ Agency loans, state credits and bond financing are not ~~considered~~ 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 either:

- (i) have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%) or
- (ii) have a term of at least forty (40) years, an interest rate of the long-term applicable federal rate (AFR) and a source that must be treated as a "below market federal loan" under Section 42(i)(2) of the Code.

See Section IV(C)(2)(e) 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 <u>4</u>	\$116,000	16 <u>2</u>
\$78,000	8 <u>4</u>	\$1218,000	18 <u>2</u>
\$810,000	10 <u>4</u>	\$1320,000	20 <u>2</u>
\$912,000	12 <u>4</u>	\$14,000	28
\$1014,000	14 <u>2</u>	\$15,000	30

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. ~~The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.~~

(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
\$2,000	5 <u>4</u>
\$4,000	10 <u>4</u>
\$6,000	15 <u>2</u>
\$8,000	20 <u>2</u>
\$10,000	30

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. ~~The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.~~

(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:

- 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.
- 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)

- (a) ~~Full applications for new construction projects must have less than \$95,000 per unit in total replacement costs to be eligible for an award of tax credits or RPP funds. The Agency will consider exceptions to development cost limits where a project faces extraordinary circumstances mandated by building code compliance requirements or development issues. Examples include~~ The Agency will assess negative points to applications listing more than the following construction costs per unit, as outlined in Chart A below. The point structure in Chart B will apply to the following:
- (i) all units are detached single family houses or duplexes,
 - (ii) serving persons with severe mobility impairments,
 - (iii) development challenges resulting from being within or adjacent to a central business district,
 - (iv) utilization of historic rehabilitation tax credits, or
 - (v) building(s) with both steel and concrete construction and at least four (4) stories of housing.

<u>CHART A</u>		<u>CHART B</u>	
\$78,000	-10	\$92,000	-10
\$90,000	-20	\$110,000	-20

- (b) The calculation of construction costs in subsection (C)(1)(a) above includes lines 2 through 10 of the Project Development Cost (PDC) description. See Sections VI(B)(7), (8), (9), and (15) for other cost restrictions. The following will be excluded from the calculation of total replacement costs in subsection (C)(1)(a) above:
- (i) ~~land costs (the lesser of the appraised value or amount in the evidence of site control);~~
 - (ii) ~~reasonable reserves;~~
 - (iii) ~~water and sewer tap fees and impact fees (provided that the applicant has included documentation from the local government verifying the amount of fees required); and~~
 - (iv) ~~the costs directly associated with a Community Service Facility.~~

(c) Applications for projects awarded in prior years applying for additional credits may only include increased costs in lines 2 through 19 of the PDC description.

2. RESTRICTIONS ON RPP AWARDS

Projects requesting RPP funds may not:

- (a) 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,
- (b) include market-rate units,
- (c) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999, ~~or~~
- (d) request less than \$150,000 or more than \$800,000 ~~1 million~~ per project, ~~or~~
- (e) have a commitment of funds from a local government under terms that will result in more repayment than the RPP financing (see description below).

The maximum award of RPP funds to any one Principal will be a total of \$1,500,000 ~~\$2,000,000~~. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(c) if the Agency has inadequate funds. 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:

Repayment of RPP and local government loans = (NOI / 1.15) – 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

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, 2002~~4~~ and January 1, 2007~~6~~. (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, ~~all~~ owners and Principals that have participated in an out of state tax credit allocation ~~must complete the~~ 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 (10) 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 ~~an FHA insured project, an RD funded rental project, a tax exempt bond funded mortgage, an Agency loan, a tax credit project or any other publicly subsidized project (resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing disqualification);~~
- (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 ~~(this includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed);~~
- (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 200~~4~~₃ 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 200~~4~~₃ or earlier for which the final cost certification requirements have not been met by December 21~~2~~₂, 2007~~6~~;
- (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 for under the preservation or rehabilitation set-asides 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 2008 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 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, 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.

F. SPECIAL CRITERIA AND TIEBREAKERS—(MAXIMUM 20 POINTS)

1. ENERGY STAR/ HUD PROGRAMS (MAXIMUM 5 POINTS)

Five (5) points will be awarded to applications that agree to have residential buildings comply with all Energy Star standards as defined in Appendix B (incorporated herein by reference) ~~projects that have an obligation of funds from the HUD 202 or 811 programs, including project based rental assistance appropriate for the project.~~

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);
- (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, 2002 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. 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 ~~the greater of five (5) units or ten percent (10%) of the total units to persons with disabilities or homeless populations. (The five unit minimum does not apply to applications Projects without 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.

~~Project Owners~~ **Project 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 ~~(not required for projects where all of the units are providing transitional housing for the homeless).~~
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the required number of units ~~specified in the application~~ 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 ~~based upon the minimum~~ number of units ~~specified in the application~~.
- (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). Applicants will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July 24~~8~~, 2009~~8~~ 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. **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 ~~(MAXIMUM 80 POINTS)~~**

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)

~~A maximum of eighty (80) points will be awarded.~~ 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 extent to which the proposed site plan includes a scattered building layout focusing on visual appeal and privacy.~~
 - (ii) ~~—~~ The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
 - (iii) The degree to which site layout ensures a low, controlled traffic speed through the project.
- (b) Quality of Design and Construction
The Agency will award up to ~~seventy-fourty (740)~~ 740 points 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) The degree to which building exteriors are designed for very low maintenance and extended useful life.

NOTE: ~~In addition to the above criteria, all projects must meet or exceed all design requirements as specified in Appendix B.~~ Owners may not start construction, including sitework, before the Agency has approved the project's plans and specifications ~~(see Appendix B).~~

H. CRITERIA FOR SELECTION OF PRESERVATION AND REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Sections II(A) or 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, 1993,
- (c) require rehabilitation expenses in excess of \$10,000 per unit for preservation projects under Section II(A) and \$15,000 per unit for rehabilitation projects under Section II(B) (both as supported by a physical needs assessment 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, and

- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program).

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 ~~Project Development Cost~~ 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, 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 Sections II(A) and 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 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, particularly between related parties.
- (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 preservation and rehabilitation set-asides are 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 projects.
- 3. Adaptive reuse projects.
- 4. 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. ~~allocation priority will be based on the relevant scoring and threshold requirements of Section IV.~~

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 ~~100460~~ points and agree to 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.
2. Rehabilitation applications must:
 - (a) have been placed in service on or before December 31, 1993~~2~~,
 - (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) 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) own, directly or indirectly, an equity interest in the applicant and
- (e) be a managing member or general partner of the applicant.

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 require appraisals where cost per acre is below this amount. Appraisals for preservation, 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 preservation and 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 applicant is responsible for all relocation expenses, which

must be included in the project's development budget. Applicants 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 the end of the Extended Use Period. ~~Tax Information Authorization: Applicants and Principals must submit an executed Internal Revenue Service (IRS) Form 8821 with their full applications; every owner should submit a separate form.~~

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**

Applicants 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 ~~three-two~~ percent (23%) and operating expenses escalating at ~~four-three~~ percent (34%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. ~~Projects with less than forty (40) units must also demonstrate \$150 per unit per year of net cash flow for the first fifteen (15) years. This does not apply to projects with rental assistance provided through RD.~~
- (c) ~~RPP loans will be underwritten using a twenty (20) year term and a two percent (2%) interest rate. The Agency may alter these terms to ensure project feasibility. Underwriting of applications with a commitment from RD will incorporate the requirements of that program, and any RPP loan will have a 30 year term (fully amortizing) and zero percent (0%) interest.~~
Applications requesting RPP funds may be required to comply with the 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 applicable RPP Guidelines.
- (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 ~~\$3,000~~\$2,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes preservation, rehabilitation and adaptive reuse): minimum of ~~\$3,200~~\$2,800 per unit per year not including taxes, reserves and resident support services.
- (c) ~~Owner projected operating expenses will be used if they are higher than Agency minimums.~~ 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. 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 ~~project development costs~~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, and must be maintained for the duration of the low-income use period.

~~Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits.~~

The operating reserve can be funded by deferring the developer's 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. Preservation, 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. ~~Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.~~

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, and the replacement reserve will not escalate annually.

~~Funds remaining in the operating and replacement reserve accounts at the end of the RPP loan term must be used for project maintenance costs approved by the Agency or applied against the loan.~~

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 ten (10) 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. The bank must complete a cover letter using the format approved by the Agency, and submit it with the letter of intent.

- (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) day extension of this deadline for local governments if requested by the applicant in advance of the full application due date. 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) 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/BUILDER FEES

- (a) Developer's 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 twenty five percent (25%) of the PDC description line item for rehabilitation (line 4). In addition, a maximum developer's fee of four percent (4%) is allowed on the acquisition cost of buildings (not including land value/cost) unless (i) there is an identity of interest between the seller and one or more Principal(s) or (ii) the award is under Section II(A).~~
- (c**b**) Builder's general requirements shall be limited to six percent (6%) of hard costs.
- (d**e**) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e**d**) 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).
- 8. **CONSULTING FEES**
~~Consulting fees for a project must be paid out of developer fees, so that the aggregate~~ The total amount of any consulting fees and developer fees ~~is~~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 ~~Project Development Cost D~~ 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 three percent (3%) of total hard costs, including general requirements, builder profit and overhead. Preservation, rehabilitation and adaptive reuse projects shall include a hard cost contingency line item of NO MORE THAN six percent (6%) 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 ~~Project Development Cost~~ PDC descriptions page. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.
- 15. **CONSTRUCTION INTEREST**
The Agency will only recognize three percent (3%) of the PDC description line items 2 through 10 plus land cost for construction loan interest.

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 eight and one half percent (8.5%), 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 federal 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. 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 Internal Revenue Service~~ 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.

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 ~~supportive~~ 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-three percent (90%~~3%~~) occupancy for ~~threesix~~ 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 ~~2007~~2008. 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

A. GENERAL PROVISIONS

1. Minimum size for all design documents is 24"x36".
2. All drawings should be to scale, using the minimum required scale as detailed below.
3. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

B. SITE PLAN

Must 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 set backs, right of ways, boundary lines, wetlands and any flood plains.
3. Existing topography of site and any proposed changes including retaining walls.
4. The finished floor elevations for all buildings.
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.

C. FLOOR PLANS

1. Include floor layouts using a minimum scale of $1/16" = 1'$ for each building; identifying the location of units, common use areas and other spaces.
2. Show dimensioned floor plans for all unit types using a minimum scale of $1/4" = 1'$.
3. Indicate net building square footage and heated square footage. See "Definitions" in this Appendix.
4. For projects involving renovation and/or demolition of existing structures, show proposed changes to building components and design and also describe removal and new construction methods.
5. For projects involving removal of asbestos and/or lead based paint removal, show general notes identifying location and procedures for removal.

D. ELEVATIONS FOR NEW CONSTRUCTION

1. Minimum scale for elevations is $1/16" = 1'$.
2. Include front, rear and side elevations of all building types.
3. Identify all materials to be used on building exteriors.

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.
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.
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 or below and a SHGC of 0.48 or below are required for new construction.
5. Windows must not be located over tub or shower units.

C. UNIT DESIGN AND MATERIALS

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 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.
10. Residential floors must be separated by sound insulation.

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 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 exhaust fan rated at 70 CFM vented to the exterior of the building using hard ductwork along the shortest run possible. The exhaust fan must ~~either be controlled by a humidistat or wired to run whenever the bathroom light is on.~~
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 ~~roll-in~~ curbless showers. All curbless showers must have a collapsible water dam installed before occupancy.

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).
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

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. 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).

G. PROVISIONS FOR ALL ELDERLY HOUSING

- 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.
- Provide loop or "D" shape handles on cabinet doors and drawers.
- Exhaust vents and lighting above ranges must be wired to a remote switch near the range in an accessible location.
- Provide solid blocking at all water closets and tub/shower units for grab bar installation.
- Provide a minimum 12" grab bar in all tub/shower units. The grab bar will be installed horizontally at 48" A.F.F. on the wall opposite the controls.
- 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.
- All doors leading to habitable rooms must have a minimum 2'-10" door and include lever handle hardware.
- Hallways must have a minimum width of 42 inches.
- The maximum threshold height at any entry door is ½ inch.

H. 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:

- The unit(s) must be roughed in to allow for smoke alarms with strobe lights in every bedroom and living area.
- The units must have a receptacle next to phone jacks in units for future installation of TTY devices.
- Each overhead light fixture and receptacle must be wired to accommodate a 150 watt load.
- 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 additional fully accessible units with roll-in curbsless 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

- Zero to two bedroom units require at least one (1) full bathroom.
- Three bedroom units require at least 1.75 bathrooms (including one bath with upright shower and one bath with full tub).
- Four bedroom units require at least 2 full bathrooms.
- All tubs and showers must have slip resistant floors.
- All electric water heaters must have an Energy Factor of at least .93. All natural gas water heaters must have an Energy Factor of at least .61.
- 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.
- Whirlpool baths or spas are prohibited.
- A frost-proof exterior faucet must be installed on an exterior wall of the community/office building.
- All tub/shower control knobs must be single lever handled and offset towards the front of the tub/shower.
- ~~Roll In showers may not have a curb or threshold.~~
- ~~10.~~ Provide lever faucet controls for the kitchen and bathroom sinks.

B. ELECTRICAL PROVISIONS

- Provide overhead lighting, a ceiling fan, telephone jack and a cable connection in every bedroom and living room. Any walk-in closets must also have a switched overhead light.

2. Switches and thermostats must not be located more than 48 inches above finished floor height.
3. Receptacles, telephone jacks and cable jacks must not be located less than 16 inches above finished floor height.
4. Exterior lighting is required at each unit entry door.
5. 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.
6. 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.
7. Electric baseboard heating systems are not permitted.
8. All non-residential and residential spaces must have separate electrical systems.

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, must be rated at 13.0 SEER or greater and properly sized for the unit.
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.

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. SITEWORK 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.
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.
9. All plants must be mulched within two days after planting by covering entire planting area with a 4 inch layer of mulch.
10. Trees at streetscape must be at least 2 ½ inch caliper. Trees sited for building landscaping must be at least 2-inch caliper.
11. All shrubs must be a minimum size of 2 gallons.
12. Foundation plantings must be spaced an appropriate distance away from buildings to assure proper maintenance and growth.

IV. ENERGY STAR CERTIFICATION

Developers of projects utilizing tax credits have the opportunity to receive allocation of additional credits by choosing 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 15% 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.

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	Tenant Storage Areas
(min. of 3 locations)	

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 tables and grilles (150 sq. ft.)
- exercise room (must include new equipment)
- garden plots (8 ft. x 8 ft. boxes, 12 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

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 with twenty (20) or more residential units.
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 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.
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.

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.

VI. ADDITIONAL PROVISIONS FOR REHABILITATION OF EXISTING HOUSING

The following requirements apply to rehabilitation of existing units. Replacement of materials and methods during rehabilitation 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.
- 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.

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 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 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.

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.

Note from the Codifier of Rules

Title 23 – Department of Community Colleges

Below is a correction to proposed Rule 23 NCAC 02D .0202 as submitted by the NC State Board of Community Colleges and published in the NC Register on September 17, 2007, on pages 387 – 390.

The State Board of Community Colleges is extending the comment period through November 30, 2007. Comments should be directed to David J. Sullivan, 5001 MSC, Raleigh, NC 27699-5001, phone (919) 807-6961, fax (919) 807-7171, email sullivanand@nccommunitycolleges.edu

Paragraph (d) of Rule 23 NCAC 02D .0202 is republished as follows:

(d) Tuition Refunds. ~~A refund shall not be made except under the following circumstances: A tuition refund shall not be made from state funds except under the following circumstances:~~

~~(A) — A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered is cancelled due to insufficient enrollment.~~

~~(B) — A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.~~

~~(C) — For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.~~

~~(D) — A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.~~

(1) For any course or courses which begin during the first week (seven calendar days) of a semester:

(A) A 100 percent refund shall be made to the student for any course from which the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar.

(B) A 100 percent refund shall be made to the student for any course in which the student is officially enrolled when the course is cancelled by the college.

(C) A 100 percent refund shall be made to the student for any course or courses from which the student officially withdraws when the student officially enrolls in a course or courses of an equal or greater number of credit hours as the course or courses from which the student officially withdraws. This 100 percent refund shall be granted only when the withdrawal(s) and enrollment(s) occur on or after the first day of class(es) of the academic semester or term as noted in the college calendar and on or before the census date.

(D) A 75 percent refund shall be made if the student officially withdraws from a course or courses on or before the census date and the student is ineligible for a 100 percent refund for a course.

(2) For any course or courses beginning at times other than the first week (seven calendar days) of a semester:

(A) A 100 percent refund shall be made to the student for any course or courses from which the student officially withdraws prior to the first class meeting of the course.

(B) A 100 percent refund shall be made to the student for any course in which the student is officially enrolled when the course is cancelled by the college.

(C) A 100 percent refund shall be made to the student for any course or courses from which the student officially withdraws when the student officially enrolls in a course or courses of an equal or greater number of credit hours as the course or courses from which the student officially withdraws. This 100 percent refund shall be granted only when the withdrawal(s) and enrollment(s) occur on or after the first class meeting and on or before the census date.

(D) A 75 percent refund shall be made if the student is ineligible for a 100 percent refund and the student officially withdraws from a course during or after the first class meeting and on or before the census date.

(3) For contact hour courses:

(A) A 100 percent refund shall be made if the student officially withdraws from a contact hour course prior to the first day of class(es) of the academic semester or term as noted in the college catalog.

(B) A 100 percent refund shall be made to the student if a course in which the student is officially enrolled is cancelled by the college.

(C) A 100 percent refund shall be granted if a student withdraws from a contact hour course and enrolls in a contact hour course on or after the first day of classes and on or before the tenth calendar day of the course.

- (D) A 75 percent refund shall be made if the student is ineligible for a 100 percent refund or credit and officially withdraws from a contact hour course on or before the tenth calendar day of the course.
- ~~(3)~~(4) Where a student, having paid the required tuition for a semester, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester may be refunded to the estate of the deceased.
- ~~(4)~~(5) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.
- (6) Military Tuition Refund: Upon request of the student, each college shall:
- (A) Grant a full refund of tuition and fees to military reserve and National Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
 - (B) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

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 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 adopt the rule cited as 21 NCAC 54 .1612 and amend the rules cited as 21 NCAC 54 .1701, .1707, .2103, .2706.

Proposed Effective Date: March 1, 2008

Public Hearing:

Date: December 12, 2007

Time: 9:00 a.m.

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

Reason for Proposed Action: To implement statutory language which authorizes the Board to request that an applicant for licensure or reinstatement of a license or that a licensee currently under investigation by the Board for allegedly violating the N.C. Psychology Practice Act consent to a criminal history record check. To implement statutory language which authorizes the Board to issue a license to a person who holds a current credential for psychology licensure mobility. To amend requirements for a psychological associate to obtain health services provider psychological associate (HSP-PA) certification by paralleling language to the educational requirements for licensure as a psychological associate.

Procedure by which a person can object to the agency on a proposed rule: Submit written objections to Martha Storie, Executive Director, NC Psychology board, 895 State Farm Road, Suite 101, Boone, NC 28607. Letters of objections must be received no later than December 12, 2007.

Comments may be submitted to: Martha N. Storie, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, phone (828) 262-2258, fax (828) 265-8611, email mstorie@charter.net

Comment period ends: December 12, 2007

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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantive (≥\$3,000,000)
- ☒ None

SECTION .1600 - GENERAL PROVISIONS

21 NCAC 54 .1612 CRIMINAL HISTORY RECORD CHECK

A licensee who is under investigation by the Board shall submit to the Board the following within 30 days of receipt of written communication from the Board or its agent that a criminal history record check is required:

- (1) signed consent form;
- (2) completed Fingerprint Record Card
- (3) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check; and
- (4) other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check.

Authority G.S. 90-270.9; 90-270.22(a).

SECTION .1700 - APPLICATION FOR LICENSURE

21 NCAC 54 .1701 INFORMATION REQUIRED

(a) Except as provided in Paragraph (b) of this Rule and Rule .1707 of this Section, the information required for each applicant for licensure shall consist of:

- (1) typed, or legibly printed, notarized application form, ~~supervision contract form, and application fee; form;~~
- (2) application fee;
- (3) typed, or legibly printed, notarized supervision contract form;
- (4) signed consent form, completed Fingerprint Record Card, and other such form(s) or

information as required by the North Carolina Department of Justice to perform a criminal history record check;

(5) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;

(2)(6) official college-transcript(s) sent directly to the Board by any training institution(s)-institution of higher education from which the applicant received a graduate degree;—degree or otherwise completed graduate course work in psychology;

(3)(7) completed information-supervisor forms from present and past supervisors;

(4)(8) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;

(5)(9) written verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously has been—was licensed, if applicable;

(6)(10) official report of any previous score obtained on the Examination for Professional Practice in Psychology sent directly to the Board from the Association of State and Provincial Psychology Boards, if applicable; and

(7)(11) additional documentation regarding educational credentials described in 21 NCAC 54 .1802 and 21 NCAC 54 .1803, if applicable.

(b) The information required for each applicant applying for licensure on the basis of holding a current credential for psychology licensure mobility shall consist of:

(1) typed, or legibly printed, notarized application form;

(2) affidavit which attests to having no unresolved complaint in any jurisdiction at the time of application in North Carolina;

(3) application fee;

(4) typed, or legibly printed, notarized supervision contract form;

(5) signed consent form, completed Fingerprint Record Card, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;

(6) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;

(7) official transcript sent directly to the Board by the institution of higher education from which the applicant received his or her doctoral degree in psychology; or if applicable, a copy

of the transcript sent directly to the Board by either the Association of State and Provincial Psychology Boards, National Register of Health Service Providers in Psychology, or American Board of Professional Psychology;

(8) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;

(9) written verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously was licensed;

(10) written verification sent directly to the Board from the applicable organization(s) that the applicant holds a current credential in good standing for psychology licensure mobility, as follows:

(A) Certificate of Professional Qualification (CPQ) from the Association of State and Provincial Psychology Boards;

(B) registrant in the National Register of Health Service Providers in Psychology; or

(C) diplomate of the American Board of Professional Psychology; and

(11) documentation of meeting requirements for health services provider certification as specified in Section .2700 of this Chapter, if applicable.

(b)(c) An application shall contain all required materials to be complete. An incomplete application shall be active for three months from the date on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. process, and the applicant If the individual chooses to pursue licensure at a later date, the individual shall totally reapply.

(e)(d) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Paragraph Subparagraphs (a)(1) through (a)(5) of this Rule—Rule, or Subparagraphs (b)(1) through (b)(6) of this Rule if applying on the basis of a mobility credential, shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.11(a),(b); 90-270.13(a), (a1), (b); 90-270.15; 90-270.22(a).

21 NCAC 54 .1707 SENIOR PSYCHOLOGIST

(a) A senior psychologist is someone who has achieved longevity in the practice of psychology and has demonstrated exemplary professional behavior over the course of his/her career, as defined in this Rule.

(b) Except as provided in Paragraph (c) of this Rule, to be approved for licensure at the Licensed Psychologist level on the basis of senior psychologist status, an applicant shall hold a doctoral degree in psychology from an institution of higher education and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 12 continuous years at the doctoral level by one or more other state or provincial psychology boards which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
- (4) passes the North Carolina State Examination.

(c) An applicant who received the doctoral degree prior to January 1, 1978, upon which his or her psychology licensure in another jurisdiction is based, shall hold a doctoral degree from an institution of higher education and meet all of the requirements specified in Subparagraphs (b)(1) through (b)(4) of this Rule.

(d) Except as provided in Paragraph (e) of this Rule, to be approved for licensure at the Licensed Psychological Associate level on the basis of senior psychologist status, an applicant shall hold a master's, specialist, or doctoral degree in psychology from an institution of higher education and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 12 continuous years at the master's level by one or more other state or provincial psychology boards which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
- (3) has no unresolved complaint in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
- (4) passes the North Carolina State Examination.

(e) An applicant who received the degree prior to January 1, 1978, upon which his or her psychology licensure in another jurisdiction is based, shall hold a master's, specialist, or doctoral degree from an institution of higher education and meet all of the requirements specified in Subparagraphs (d)(1) through (d)(4) of this Rule.

(f) The information required for each applicant shall consist of:

- (1) typed, or legibly printed, notarized application form, including an affidavit which attests to meeting the requirements specified in Subparagraphs (b)(1) through (b)(3) or Subparagraphs (d)(1) through (d)(3) of this Rule, as applicable;
- (2) typed, or legibly printed, notarized supervision contract form;
- (3) application fee;
- (4) signed consent form, completed Fingerprint Record Card, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
- (5) payment of fee required by the North Carolina Department of Justice to conduct a criminal history record check;
- (4)(6) official college transcript(s) sent directly to the Board by any training institution(s) from which the applicant received a graduate degree;
- (5)(7) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist; and
- (6)(8) written verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction in which the applicant has applied for a license, is currently licensed, or previously ~~has been~~ was licensed.

(g) An application shall contain all requested materials to be complete. An incomplete application shall be active for three months from the date on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. ~~process, and the individual If the individual chooses to pursue licensure at a later date, the individual shall totally reapply. reapply if the individual wishes to pursue licensure further.~~

(h) To be considered to have made application pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (f)(1) through (f)(5) of this Rule shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.

Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.13(a),(e); 90-270.22(a).

SECTION .2100 - RENEWAL

21 NCAC 54 .2103 REINSTATEMENT

(a) The information required for each applicant requesting reinstatement of licensure within 30 days after a license has been suspended due to non-renewal shall consist of:

- (1) completed renewal application form;

- (2) documentation to having completed a minimum of 18 continuing education hours as specified in Rule .2104 of this Section during the two years preceding the date of application for reinstatement of licensure;
- ~~(2)(3)~~ completed supervision report form, if applicable; ~~and; and~~
- ~~(3)(4)~~ payment of the renewal and reinstatement fees; fees.

The information listed in this Paragraph shall be filed in the Board office within 30 days after a license has been suspended due to non-renewal.

(b) The information required for each applicant requesting reinstatement of licensure after a license has been suspended for more than 30 days due to non-renewal or after a license has been voluntarily relinquished with the Board's consent shall consist of:

- (1) typed, or legibly printed, notarized application form and supervision contract form;
- (2) signed consent form, completed Fingerprint Record Card, and other such form(s) or information as required by the North Carolina Department of Justice to perform a criminal history record check;
- (3) payment of fee required by the North Carolina Department of Justice to perform a criminal history record check;
- (4) documentation to having completed a minimum of 18 continuing education hours as specified in Rule .2104 of this Section during the two years preceding the date of application for reinstatement of licensure;
- ~~(2)(5)~~ completed information forms from present and past supervisors;
- ~~(3)(6)~~ three completed reference forms from professionals who are familiar with the applicant's current work, one of which shall be from a doctoral level psychologist;
- ~~(4)(7)~~ written verification and report on the status of licensure, including any disciplinary action which shall be pending or has been taken sent directly from other jurisdictions in which the applicant has applied for a license or has been licensed, if applicable;
- ~~(5)(8)~~ official graduate college transcripts, not on file in the Board's office, sent directly to the Board by the training institution(s); and
- ~~(6)(9)~~ payment of the renewal and reinstatement fees within 30 days after receiving notification from the Board that reinstatement of licensure has been approved.

(c) An application shall contain all requested materials to be complete. An incomplete application shall be active for three months from the date of application. At the end of such time, if still incomplete, the application shall be void, and the applicant shall be deemed to have discontinued the application process. ~~process, and the applicant~~ If the individual chooses to pursue licensure at a later date, the individual shall totally reapply.

- (d) To be considered to have made application for reinstatement of licensure pursuant to G.S. 90-270.5(a), the information specified in Subparagraphs (b)(1) through (b)(4) of this Rule shall be filed in the Board office within 30 days of offering to practice or undertaking the practice of psychology in North Carolina.
- ~~(e)(e)~~ Reexamination may be required for reinstatement.

Authority G.S. 90-270.9; 90-270.14(a)(2); 90-270.15(f),(h); 90-270.22(a).

SECTION .2700 - HEALTH SERVICES PROVIDER CERTIFICATION

21 NCAC 54 .2706 HSP-PA REQUIREMENTS

(a) To be certified as a health services provider psychological associate (HSP-PA), a North Carolina licensed psychological associate shall be qualified by education. An applicant shall submit a completed, notarized application form and provide documentation of meeting health services provider requirements.

(b) An applicant shall demonstrate that he/she holds a master's, specialist, or doctoral degree which provides an academic foundation in the provision of health services as defined in Rule .2701(a) of this Section and which meets the following requirements:

- (1) The master's, specialist, or doctoral program in psychology shall be an organized training program which has established a clear intent, through the structure of the program and in institutional publications, to train individuals to provide health services in psychology as defined in G.S. 90-270.2(4) and Rule .2701(a) of this Section.
- (2) Within the applicant's training program in health services in psychology, course work shall have been completed in the areas of assessment, diagnosis, intervention, and psychopathology. The applicant shall further establish that he or she has completed relevant course work that has provided training in diagnosis, evaluation, treatment, remediation, or prevention of one or more of the following areas:
 - (A) mental, emotional, and behavioral disorder, disability, and illness;
 - (B) substance abuse;
 - (C) habit and conduct disorder; or
 - (D) psychological aspects of physical illness, accident, injury, and disability.
- (3) Pursuant to final Board approval, an applicant shall be considered to have been trained in the provision of health services in psychology if the applicant establishes that requirements set forth in Subparagraphs (b)(1) and (b)(2) of this Rule have been met through a master's, specialist, or doctoral degree program in psychology in any one of the following areas of specialization in psychology: applied

- behavior analysis in psychology, applied developmental psychology, clinical psychology, counseling psychology, rehabilitation psychology, school psychology, health psychology, or substance abuse ~~treatment-treatment~~ psychology.
- (4) If the applicant ~~cannot-is unable to~~ establish that he or she has a master's, specialist, or doctoral degree from a program in psychology that provides training in the provision of health services, the applicant shall not be eligible for HSP-PA certification. This shall apply even if the applicant establishes that course work in the areas listed in Subparagraph (b)(2) of this Rule was completed or if the applicant has completed an applied training experience (i.e., practicum, internship, residency, postdoctoral fellowship, etc.) in the provision of health services without having completed a planned and directed training program in health services in psychology.
- (5) An applicant who has completed a program in psychology that establishes in institutional publications an intent to train individuals for careers in administration, research, teaching, academia, and other areas not involving training in the provision of health services in psychology shall not be considered to have been provided an academic foundation in the provision of health services and shall not be approved for HSP-PA certification.
- (6) Only course work taken at an institution of higher education as defined in G.S. 90-270.2(5) shall be considered by the Board to establish that an applicant has an academic foundation in the provision of health services.
- (7) ~~Psychological Associates Applicants for HSP-PA who receive-received~~ their degrees during or after 1997 shall document that their degree program included an internship, externship, ~~or practicum-practicum~~, or supervised field ~~experience~~ at a site providing health ~~services~~services. This supervised training experience shall meetwhich meets all of the following criteria:
- (A) ~~The internship, externship, or practicum-It shall have been in-be~~ a planned and directed program of training in health services, in contrast to on-the-job training, and shall ~~have provided-provide~~ the trainee with a planned and directed sequence of training integrated with the educational program in which the ~~individual was-student is~~ enrolled. This supervised training experience shall be planned by the educational program faculty and training site staff rather than by the student.
- (B) ~~The internship, externship, or practicum-site shall have had a clearly designated and appropriately licensed psychologist who was responsible for the integrity and quality of the training program.~~ (C) ~~The internship, externship, or practicum shall have been comprised of the equivalent of at least one semester's training and shall have been a minimum of 12 weeks and 200 hours of supervised training in the provision of health services.~~
- (D) ~~The internship, externship, or practicum shall have had a written program description detailing its functioning and shall have been approved by the applicant's training program prior to its occurrence.~~
- (E) ~~The internship, externship, or practicum shall have provided a minimum of one hour per week of individual face to face, regularly scheduled supervision with the specific intent of overseeing the health services rendered by the trainee.~~
- (F) ~~At least 50 percent of the training shall have been spent in the provision of direct health services to patients or elients seeking assessment of treatment, and shall have been comprised of a range of assessment and treatment interventions.~~
- (G) ~~Supervision may have been provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50 percent of supervision shall have been provided by an appropriately licensed or certified psychologist or psychological associate, or other psychologist who is exempt from licensure under the North Carolina Psychology Practice Act.~~
- (H) ~~Persons enrolled in the internship, externship or practicum shall have been designated as "interns," "externs," or "practicum students" or hold other designation which clearly indicated training status.~~
- (B) The supervised training experience shall have a written description detailing the program of training, or a written agreement, developed prior to the time of the training, between the student's educational program and the training site. Such an agreement shall

- be approved by the student's educational program prior to the beginning of the supervised training experience.
- (C) The supervised training experience site shall have a designated and appropriately licensed or certified psychologist or psychological associate responsible for the integrity and quality of the supervised training experience.
- (D) A student enrolled in a supervised training experience shall be designated as any of the following: an "intern," "extern," or "practicum student," or shall hold a title which indicates training status for the practice of psychology and provision of health services.
- (E) The supervised training experience shall be a minimum of 12 weeks consisting of at least 500 hours of supervised training. At least 400 hours of the training shall be in the provision of health services as defined by G.S. 90-270.2(4) and Rule .2701(a) of this Section.
- (F) The supervised training experience shall be completed within a period of 12 consecutive months at not more than two training sites.
- (G) Except as provided in Part (b)(7)(H) of this Rule, regularly scheduled individual face-to-face supervision with the specific intent of overseeing the provision of health services shall be provided by a North Carolina licensed or certified psychologist or psychological associate or by a psychologist who is exempt from licensure, pursuant to G.S. 90-270.4(b), at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student.
- (H) If completing a supervised training experience outside of North Carolina, the student shall be provided regularly scheduled individual face-to-face supervision with the specific intent of overseeing the provision of health services by a licensed or certified psychologist or psychological associate or by an individual holding a master's,

specialist, or doctoral degree in psychology, at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student. Proof of the supervisor's license or degree program, as applicable, may be required by the Board to establish the supervisor's training in psychology.

(c) An applicant who is approved for licensure as a Psychological Associate under senior psychologist requirements specified in 21 NCAC 54 .1707 and demonstrates that at least 25 percent of his/her qualifying practice has been in the provision of direct health services, as defined in Rule .2701(a) of this Section, shall be deemed to meet all requirements of this Rule for certification as a health services provider psychological associate (HSP-PA).

Authority G.S. 90-270.9; 90-270.13(c); 90-270.20(c).

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02C .0305; 02D .0325.

Proposed Effective Date: February 1, 2008

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to David Sullivan, NC Community College System, 200 West Jones Street, MSC 5001, Raleigh, NC 27699-5001 or by emailing the demand to sullivanv@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

Reason for Proposed Action:

23 NCAC 02C .0305 - Session Law 2007-323 *requires that the State Board of Community Colleges to adopt rules which permit students enrolled in public high schools to take community college courses through the newly created "Learn & Earn Online Program." This rule creates a framework for the high school students to enroll in college level courses via "Learn & Earn Online."*

23 NCAC 02C .0325 – Session Law 2007-323 *requires that the State Board of Community Colleges to adopt rules which permit students enrolled in public high schools to take community college courses through the newly created "Learn & Earn Online Program." One provision in the Session Law prohibits colleges from earning formula FTE from those students. This amendment will make the prohibition clear.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections shall be addressed to President, NC Community College System, 5001 MSC, Raleigh, NC 27699-5001, within the comment period, and must be post marked by 11:59 p.m. on the last day of the comment period.*

Comments may be submitted to: *David J. Sullivan, 5001 MSC, Raleigh, NC 27699-5001, phone (919)807-6961, fax (919)807-7171, email sullivanand@nccommunitycolleges.edu*

Comment period ends: *November 30, 2007*

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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

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

- ☒ **State**
- ☐ **Local**
- ☒ **Substantive** ($\geq \$3,000,000$)
- ☐ **None**

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 - STUDENTS

23 NCAC 02C .0305 EDUCATION SERVICES FOR MINORS

- (a) The State Board shall encourage individuals to complete high school before seeking admission to a college.
- (b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at a college if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of the student to the program is approved by the college. This requirement may be waived if the student has been out of school at least six months and the application is supported by a notarized petition of the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.

(c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to any curriculum course one hundred level and above or any continuing education course, except adult basic skills, concurrently under the following conditions:

- (1) Upon recommendation of the chief administrative school officer and approval of the president of the college;
- (2) Upon approval of the student's program by the chief administrative school officer and the president of the college; and
- (3) Upon certification by the Chief Administrative School Officer that the student is taking the equivalent of one-half of a full-time schedule and is making progress toward graduation.

(d) High school students, taking courses pursuant to Paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any term on a space-available basis to any curriculum course one hundred level and above or any continuing education course, except adult basic skills. Once admitted, they shall be treated the same as all other students.

(e) Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to high school students. College credits shall be awarded to those high school students upon successful completion of the courses. Cooperative programs shall be approved, prior to implementation, by the State Board or its designee.

(f) Students less than 16 years old who are mature enough to function well in an adult education setting and are intellectually gifted as evidenced by a score in the range from the 92nd percentile to the 99th percentile on an aptitude and an achievement test selected from a list of tests approved by the System Office may be admitted to community colleges. Tests included on the System Office approved list shall be selected from the Mental Measurements Year Book published by the ~~Buros~~-Buros Institute of Mental Measurements. The student shall be ranked by an official of the student's school in the top 10 percent on the following behavioral characteristics: mature, observant, inquisitive, persistent, innovative, analytical, adaptable, leadership, desire to achieve, self-confidence and communications skills. Students less than 16 years old shall not displace adults but may be admitted any term on a space-available basis to any curriculum course one hundred level and above. Students admitted to community colleges under this Paragraph shall pay the same tuition and fees as other curriculum students.

(g) Public school students in grades 9, 10, 11, 12 who participate in the Learn and Earn Online program may enroll in online courses through a community college for college credit. Students may enroll in Learn and Earn Online courses regardless of the college service areas in which they reside. Community college student enrollments in Learn and Earn Online shall not be considered as a regular budget full-time equivalent (FTE) in the curriculum enrollment formula, but shall be accounted for separately and community colleges shall receive funds as a special allotment. Community colleges shall report annually to the State Board of Community Colleges course evaluations that

indicate compliance with system standards for rigor and quality, the number of students enrolled in Learn and Earn Online courses and the number of students who complete Learn and Earn Online courses.

~~(g)~~(h) Except as authorized by G.S. 115D-20(4), colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

~~(h)~~(i) A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer period. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the college or high school.

~~(i)~~(j) At the request of the director of a youth development center having custody of juveniles committed to the Department of Juvenile Justice and Delinquency Prevention, a college may make available to these juveniles any course offered by that college if they meet the course admission requirements. The director's request shall include the director's approval for each juvenile to enroll in the course.

Authority G.S. 115D-1; 115D-5; 115D-20; S.L. 1995, c. 625.

23 NCAC 02D .0325 LIMITATIONS IN REPORTING STUDENT MEMBERSHIP HOURS

(a) Student hours shall not be reported for budget/FTE which result from:

- (1) Conferences or visits. General types of meetings usually of one or more day's duration, attended by a fairly large number of people. A conference or visit may have a central theme, but is loosely structured to cover a wide range of topics. The emphasis is on prepared presentations by authoritative speakers, although division into small group sessions for discussion purposes is often a related activity.
- (2) Seminars or Meetings. A small group of people meeting primarily for discussion under the direction of a leader or resource person or persons. Seminars and meetings are generally one-time offerings even though they may continue for more than one day.
- (3) Programs of a service nature rather than instructional classes.
- (4) Enrollment of high school students not in compliance with 23 NCAC 2C.0301 and 2C.0305.
- (5) Unsupervised classes.
- (6) Proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students shall be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (7) Homework assignments.
- (8) Inter-institutional or intramural sports activities including those of prison inmates.
- (9) Effective July 1, 1993, no budget/FTE shall be generated by occupational extension students

after their first repetition of an occupational extension course. Students who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These students shall not generate budget/FTE. The funds collected from these students shall be used by the colleges to offer additional educational courses. This Subparagraph does not apply to fire, rescue, or law enforcement training courses taken by fire, rescue, or law enforcement personnel.

(10) Learn and Earn Online Courses.

(b) A statement on occupational extension course repetitions consistent with the requirements of this rule shall be included in college advertisements, schedules and catalogs. Students shall be notified during registration that they will be charged the full cost of courses which they have taken twice within a five-year period and in which they wish to enroll. Students shall be primarily responsible for monitoring course repetitions; however, the colleges shall review records and charge students full cost for courses taken more than twice.

(c) Senior citizens who are legal residents of North Carolina and who wish to enroll in an occupational extension course, shall not be required to pay for taking the course twice. Senior citizens who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These senior citizens shall not generate budget/FTE. The funds collected from these senior citizens shall be used by the colleges to offer additional educational courses.

(d) Students may repeat occupational extension courses more than once if the repetitions are required for certification, licensure, or recertification. The colleges shall submit annual reports to the State Board of Community Colleges naming the students and the certification, licensure or recertification requirements that necessitated the repetition.

(e) Self-supporting classes shall not be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(f) Occupational extension instruction shall not be offered in sheltered workshops and adult developmental activity centers (ADAP) except sheltered workshops and ADAP centers may contract with the community college to provide occupational extension courses on a self-supporting basis.

(g) Educational programs offered in a correctional department setting shall report full-time equivalent (FTE) student hours on the basis of contact hours.

Authority G.S. 115D-5.

*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 23, 2007.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

CEMETERY COMMISSION

<u>Name and Address</u>	04	NCAC	05A	.0101*	n/a G.S. 150B-21.5(a)(4)
<u>Petitions</u>	04	NCAC	05B	.0101*	n/a G.S. 150B-21.5(a)(4)
<u>Notice</u>	04	NCAC	05B	.0102*	n/a G.S. 150B-21.5(a)(4)
<u>Hearings</u>	04	NCAC	05B	.0103*	n/a G.S. 150B-21.5(a)(4)
<u>Display</u>	04	NCAC	05C	.0303*	n/a G.S. 150B-21.5(a)(4)
<u>Report</u>	04	NCAC	05D	.0101*	n/a G.S. 150B-21.5(a)(4)
<u>Report</u>	04	NCAC	05D	.0201*	n/a G.S. 150B-21.5(a)(4)

SOCIAL SERVICES COMMISSION

<u>Personnel Centers Home With Operator and Staff</u>	10A	NCAC	06R	.0305*	21:16 NCR
<u>Personnel Day Care Homes Only Staff Person Is Operator</u>	10A	NCAC	06R	.0306*	21:16 NCR
<u>General Requirements</u>	10A	NCAC	06R	.0401*	21:16 NCR
<u>Building Construction</u>	10A	NCAC	06R	.0402*	21:16 NCR
<u>Procedure</u>	10A	NCAC	06R	.0601*	21:16 NCR
<u>Staff Requirements</u>	10A	NCAC	06S	.0204*	21:16 NCR
<u>Purpose</u>	10A	NCAC	70E	.0101	21:22 NCR
<u>Method of Mutual Home Assessment</u>	10A	NCAC	70E	.0102	21:22 NCR
<u>Assessment Process</u>	10A	NCAC	70E	.0103	21:22 NCR
<u>Use of References</u>	10A	NCAC	70E	.0104	21:22 NCR
<u>Periodic Reassessment of Home</u>	10A	NCAC	70E	.0105	21:22 NCR
<u>Agency Foster Parent Agreement</u>	10A	NCAC	70E	.0106	21:22 NCR
<u>License Application</u>	10A	NCAC	70E	.0201	21:22 NCR
<u>Agency Foster Parents' Agreement</u>	10A	NCAC	70E	.0202	21:22 NCR
<u>Department of Social Services Intercounty Agreement</u>	10A	NCAC	70E	.0203	21:22 NCR
<u>Definitions</u>	10A	NCAC	70E	.0301	21:22 NCR
<u>Family Foster Home: Qualification</u>	10A	NCAC	70E	.0302	21:22 NCR
<u>Client Rights and Care of Foster Children</u>	10A	NCAC	70E	.0401	21:22 NCR
<u>Criteria For the Family</u>	10A	NCAC	70E	.0402	21:22 NCR
<u>Physical Facility</u>	10A	NCAC	70E	.0403	21:22 NCR
<u>Licensing Compliance Visits</u>	10A	NCAC	70E	.0404	21:22 NCR
<u>Criminal Histories</u>	10A	NCAC	70E	.0405	21:22 NCR
<u>Responsibility</u>	10A	NCAC	70E	.0501	21:22 NCR
<u>New Licenses</u>	10A	NCAC	70E	.0502	21:22 NCR
<u>Renewal</u>	10A	NCAC	70E	.0503	21:22 NCR
<u>Change in Factual Information on the License</u>	10A	NCAC	70E	.0504	21:22 NCR
<u>Termination</u>	10A	NCAC	70E	.0505	21:22 NCR
<u>Revocation or Denial</u>	10A	NCAC	70E	.0506	21:22 NCR

APPROVED RULES

<u>Licensing Authority Function</u>	10A NCAC	70E	.0507	21:22 NCR
<u>Kinds of Licenses</u>	10A NCAC	70E	.0508	21:22 NCR
<u>Out-of-State Facilities and Family Foster Homes</u>	10A NCAC	70E	.0509	21:22 NCR
<u>Reports of Abuse and Neglect</u>	10A NCAC	70E	.0510	21:22 NCR
<u>Criminal History Checks</u>	10A NCAC	70E	.0511	21:22 NCR
<u>Training Requirements</u>	10A NCAC	70E	.0512	21:22 NCR
<u>Scope</u>	10A NCAC	70E	.0601	21:22 NCR
<u>Definitions</u>	10A NCAC	70E	.0602*	21:22 NCR
<u>Licensing Authority Function</u>	10A NCAC	70E	.0701	21:22 NCR
<u>Responsibility</u>	10A NCAC	70E	.0702*	21:22 NCR
<u>New Licenses</u>	10A NCAC	70E	.0703*	21:22 NCR
<u>Relicensure and Renewal</u>	10A NCAC	70E	.0704*	21:22 NCR
<u>Change in Factual Information on the License</u>	10A NCAC	70E	.0705*	21:22 NCR
<u>Foster Home Transfer Procedures</u>	10A NCAC	70E	.0706*	21:22 NCR
<u>Termination</u>	10A NCAC	70E	.0707*	21:22 NCR
<u>Revocation or Denial</u>	10A NCAC	70E	.0708	21:22 NCR
<u>Kinds of Licenses</u>	10A NCAC	70E	.0709	21:22 NCR
<u>Out-of-State Facilities and Foster Homes</u>	10A NCAC	70E	.0710	21:22 NCR
<u>Purpose</u>	10A NCAC	70E	.0801	21:22 NCR
<u>Method of Mutual Home Assessment</u>	10A NCAC	70E	.0802*	21:22 NCR
<u>Assessment Process</u>	10A NCAC	70E	.0803*	21:22 NCR
<u>Use of References</u>	10A NCAC	70E	.0804	21:22 NCR
<u>Periodic Reassessment of Home</u>	10A NCAC	70E	.0805	21:22 NCR
<u>Agency Foster Parent Agreement</u>	10A NCAC	70E	.0806	21:22 NCR
<u>License Application</u>	10A NCAC	70E	.0901	21:22 NCR
<u>Agency Foster Parents' Agreement</u>	10A NCAC	70E	.0902*	21:22 NCR
<u>Department of Social Services Intercounty Agreement</u>	10A NCAC	70E	.0903	21:22 NCR
<u>Foster Home</u>	10A NCAC	70E	.1001*	21:22 NCR
<u>Client Rights</u>	10A NCAC	70E	.1101*	21:22 NCR
<u>Medication</u>	10A NCAC	70E	.1102*	21:22 NCR
<u>Physical Restraints</u>	10A NCAC	70E	.1103*	21:22 NCR
<u>Criteria for the Family</u>	10A NCAC	70E	.1104*	21:22 NCR
<u>Conflict of Interest</u>	10A NCAC	70E	.1105*	21:22 NCR
<u>Day Care Center Operations</u>	10A NCAC	70E	.1106	21:22 NCR
<u>Relationship to Supervising Agency</u>	10A NCAC	70E	.1107*	21:22 NCR
<u>Fire and Building Safety</u>	10A NCAC	70E	.1108*	21:22 NCR
<u>Health Regulations</u>	10A NCAC	70E	.1109*	21:22 NCR
<u>Environmental Regulations</u>	10A NCAC	70E	.1110*	21:22 NCR
<u>Room Arrangements</u>	10A NCAC	70E	.1111*	21:22 NCR
<u>Exterior Setting and Safety</u>	10A NCAC	70E	.1112	21:22 NCR
<u>Licensing Compliance Visits</u>	10A NCAC	70E	.1113	21:22 NCR
<u>Criminal Histories</u>	10A NCAC	70E	.1114	21:22 NCR
<u>Responsible Individual List</u>	10A NCAC	70E	.1115*	21:22 NCR
<u>Criminal History Checks</u>	10A NCAC	70E	.1116*	21:22 NCR
<u>Training Requirements</u>	10A NCAC	70E	.1117*	21:22 NCR
<u>Staffing Requirements</u>	10A NCAC	70G	.0301*	21:22 NCR
<u>Training Requirements</u>	10A NCAC	70G	.0302*	21:22 NCR
<u>Licensing Actions</u>	10A NCAC	70I	.0101*	21:22 NCR
<u>Staffing Requirements</u>	10A NCAC	70I	.0801*	21:22 NCR
<u>Training Requirements</u>	10A NCAC	70I	.0802*	21:22 NCR

APPROVED RULES

<u>Fiscal Management</u>	10A	NCAC	71R	.0201*	21:22 NCR
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INSURANCE, DEPARTMENT OF

<u>License-Steps</u>	11	NCAC	11H	.0102*	21:22 NCR
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LABOR, DEPARTMENT OF

<u>Elevator, Escalator, Dumbwaiter, and Special Equipment An...</u>	13	NCAC	15	.0702	21:22 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Applicability</u>	15A	NCAC	02N	.0201*	21:17 NCR
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<u>Definitions</u>	15A	NCAC	02N	.0203*	21:17 NCR
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<u>Performance Standards for New UST System Installations or...</u>	15A	NCAC	02N	.0301*	21:17 NCR
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<u>Upgrading of Existing UST Systems After December 22, 1988...</u>	15A	NCAC	02N	.0302*	21:17 NCR
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<u>Implementation Schedule for Performance Standards for New...</u>	15A	NCAC	02N	.0304*	21:17 NCR
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<u>Requirements for Petroleum UST Systems</u>	15A	NCAC	02N	.0502*	21:17 NCR
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<u>Requirements for Hazardous Substance UST Systems</u>	15A	NCAC	02N	.0503*	21:17 NCR
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<u>General Requirements</u>	15A	NCAC	02N	.0901*	21:17 NCR
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<u>Notification</u>	15A	NCAC	02N	.0902*	21:17 NCR
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<u>Tanks</u>	15A	NCAC	02N	.0903*	21:17 NCR
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<u>Piping</u>	15A	NCAC	02N	.0904*	21:17 NCR
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<u>Containment Sumps</u>	15A	NCAC	02N	.0905*	21:17 NCR
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<u>Spill Buckets</u>	15A	NCAC	02N	.0906*	21:17 NCR
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<u>National Codes of Practice and Industry Standards</u>	15A	NCAC	02N	.0907*	21:17 NCR
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<u>Scope and Purpose</u>	15A	NCAC	02S	.0101*	21:17 NCR
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<u>Prioritization Assessment</u>	15A	NCAC	02S	.0401	21:17 NCR
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<u>Purpose and Applicability</u>	15A	NCAC	02S	.0501	21:20 NCR
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<u>Abatement of Imminent Hazard</u>	15A	NCAC	02S	.0502	21:20 NCR
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<u>Prioritization of Certification Facilities and Sites</u>	15A	NCAC	02S	.0503*	21:20 NCR
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<u>Contaminated Site Characterization</u>	15A	NCAC	02S	.0504*	21:20 NCR
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<u>Preliminary Source Removal</u>	15A	NCAC	02S	.0505*	21:20 NCR
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<u>Tiered Risk Assessment</u>	15A	NCAC	02S	.0506*	21:20 NCR
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<u>Remedial Action Plan</u>	15A	NCAC	02S	.0507*	21:20 NCR
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<u>Land-Use Restrictions</u>	15A	NCAC	02S	.0508*	21:20 NCR
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<u>No Further Action Criteria</u>	15A	NCAC	02S	.0509*	21:20 NCR
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COASTAL RESOURCES COMMISSION

<u>Approval Procedures</u>	15A	NCAC	07H	.1102*	21:17 NCR
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<u>Approval Procedures</u>	15A	NCAC	07H	.1202*	21:17 NCR
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<u>Approval Procedures</u>	15A	NCAC	07H	.1402*	21:17 NCR
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<u>Approval Procedures</u>	15A	NCAC	07H	.2102*	21:17 NCR
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<u>Approval Procedures</u>	15A	NCAC	07H	.2402*	21:17 NCR
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<u>Approval Procedures</u>	15A	NCAC	07H	.2702*	21:17 NCR
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<u>Eligible Applicants/Grant Selection Criteria</u>	15A	NCAC	07M	.0307*	21:17 NCR
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REVENUE, DEPARTMENT OF

APPROVED RULES

<u>Continuing Education Requirements for County Assessors</u>	17	NCAC	10	.0505*	n/a G.S. 150B-1(d)(4)
<u>Continuing Education Requirements for County Appraisers</u>	17	NCAC	10	.0507*	n/a G.S. 150B-1(d)(4)

MEDICAL BOARD

<u>Passing Score</u>	21	NCAC	32B	.0211*	21:21 NCR
<u>Passing Exam Score</u>	21	NCAC	32B	.0314*	21:21 NCR

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

<u>Scope</u>	21	NCAC	32V	.0101	21:20 NCR
<u>Definitions</u>	21	NCAC	32V	.0102*	21:20 NCR
<u>Qualifications for License</u>	21	NCAC	32V	.0103	21:20 NCR
<u>Registration</u>	21	NCAC	32V	.0104	21:20 NCR
<u>Continuing Education</u>	21	NCAC	32V	.0105	21:20 NCR
<u>Supervision of Provisional Licensed Perfusionists</u>	21	NCAC	32V	.0106*	21:20 NCR
<u>Supervising Perfusionist</u>	21	NCAC	32V	.0107*	21:20 NCR
<u>Designation of Primary Supervision Perfusionist For Provi...</u>	21	NCAC	32V	.0108	21:20 NCR
<u>Civil Penalties</u>	21	NCAC	32V	.0109*	21:20 NCR
<u>Identification Requirements</u>	21	NCAC	32V	.0110	21:20 NCR
<u>Practice During a Disaster</u>	21	NCAC	32V	.0111	21:20 NCR
<u>Temporary Licensure</u>	21	NCAC	32V	.0112	21:20 NCR
<u>Orders for Assessments and Evaluations</u>	21	NCAC	32V	.0113	21:20 NCR
<u>Provisional License to Full License</u>	21	NCAC	32V	.0114*	21:20 NCR

TITLE 04 – DEPARTMENT OF COMMERCE**04 NCAC 05A .0101 NAME AND ADDRESS**

The North Carolina Cemetery Commission of the Department of Commerce is located in Raleigh, North Carolina. The mailing address for the Cemetery Commission is 1001 Navaho Drive, Suite 100, Raleigh, North Carolina 27609. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding scheduled state holidays.

History Note: Authority G.S. 65-49; 65-51; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993.

04 NCAC 05B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Cemetery Commission shall address a petition to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) The petition shall contain the following information:

- (1) a draft of the proposed rule;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) data supporting the proposal;

(5) names of those most likely to be affected by the proposed rule, with addresses if reasonably known;

(6) name(s) and address(es) of petitioner(s);

(7) a description as to how the petitioner(s) is (are) directly affected by the proposed rule.

(c) The Cemetery Commission shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. It shall consider all the contents of the submitted petition, plus any additional information it deems relevant.

History Note: Authority G.S. 65-49; 150B-20;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993.

04 NCAC 05B .0102 NOTICE

(a) Any person or agency desiring to be placed on the mailing list for Cemetery Commission rule-making notices may file a request, in writing, furnishing names and mailing addresses to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) In addition to notices sent to persons requesting them, notice of the rule-making proceedings will be sent to the North

Carolina Cemetery Association and to all state-licensed cemeteries.

History Note: Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; August 1, 1988.

04 NCAC 05B .0103 HEARINGS

(a) Unless otherwise stated in the particular notice of text, hearings before the North Carolina Cemetery Commission shall be held at the offices of the North Carolina Department of Commerce in Raleigh, North Carolina.

(b) Any person wishing to make an oral presentation may submit a written copy of the presentation to the administrator prior to or at the hearing.

(c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes.

(d) Upon receipt of a request to make an oral presentation, the Administrator of the Cemetery Commission shall acknowledge receipt of the request, and inform the requesting person of the imposition of any limitations deemed necessary to the end that a full and effective public hearing on the proposed rule may be held.

(e) Written submissions, except when otherwise stated in the particular notice of text must be sent to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Submission must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

(f) Upon receipt of written comments, the Administrator of the Cemetery Commission shall make prompt acknowledgement including a statement that the comments therein will be considered fully by the Cemetery Commission.

(g) The chairman of the commission, or his designate, shall have complete control of the hearing proceedings, including extension of any time requirements, recognition of speakers, time allotments for presentation, direction of the flow of the discussion, and the time management of the hearing. The chairman, or his designate, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.

(h) Any interested person desiring a statement of the principal reason(s) for and against the adoption of a rule by the Cemetery Commission and the factors that led to the overruling of the consideration urged for or against its adoption may submit a request addressed to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; August 1, 1988.

04 NCAC 05C .0303 DISPLAY

Each salesperson licensed by the Commission shall display his or her license in the office of each cemetery he or she represents. If extra copies are needed, a fee of one dollar and fifty cents (\$1.50) shall be charged for each duplicate license. Duplicate copies may be obtained by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49; 65-58; 150B-19;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993.

04 NCAC 05D .0101 REPORT

Each licensed cemetery shall make a report of deposits to the perpetual care fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the Report of Grave Spaces for the Month of _____. The form provides a space for deed number, date of deed, date of contract, purchaser, lot number, section, number of spaces deeded and amount due trust fund. This form may be obtained and must be returned to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; September 1, 1979.

04 NCAC 05D .0201 REPORT

Each licensed cemetery shall make a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form may be obtained from and must be returned to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; September 1, 1979.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 06R .0305 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF

(a) General Requirements

- (1) The owner of adult day care homes initially certified after January 1, 2003, or homes that make structural building modifications after this date, shall reside in the home.
- (2) Staff positions shall be planned and filled according to the goals of the program and the manpower needed to develop and direct the activities which meet these goals.
- (3) There shall be a statewide criminal history records search of all newly-hired employees of adult day programs for the past five years conducted by an agency approved by the North Carolina Administrative Offices of the Courts.
- (4) There shall be a written job description for each position, full-time or part-time. The job description shall specify qualifications of education and experience; to whom employee is responsible; duties and responsibilities; and salary range.
- (5) References, including former employers, shall be required in recruitment of staff.
- (6) There shall be an established review process for each employee at least annually and following any probationary period.
- (7) There shall be a written plan for orientation and staff development of new employees and volunteers and ongoing development and training of all staff. Documentation of such orientation, staff development and training shall be recorded.
- (8) There shall be a written plan for staff substitutions in case of absences. The plan shall include the coverage of usual responsibilities as well as maintenance of staff/participant ratio. Substitute staff shall have the same qualifications and training as those required by the position and in this Subchapter. Substitutes are not required to have current certified CPR and First Aid training as long as other staff are present with this training at all times. Trained volunteers may be used instead of paid substitutes.
- (9) Prior to beginning employment, each new employee shall present a written medical statement, completed within the prior 12 months by a physician, nurse practitioner or physician's assistant, certifying that the employee has no illness or health condition that would pose a health risk to others and that the employee can perform the duties assigned in the job.

(b) Personnel Policies

- (1) Personnel policies and their content are the responsibility of each adult day care program. Each program shall state its policies in writing. A copy of this statement of personnel practice shall be given to each employee and shall state the program's policy on the following:
 - (A) annual leave,
 - (B) educational opportunities,
 - (C) pay practices,
 - (D) employee benefits,
 - (E) grievance procedures,
 - (F) performance and evaluation procedures,
 - (G) criteria for advancement,
 - (H) discharge procedures,
 - (I) hiring and firing responsibility,
 - (J) use of any probationary period,
 - (K) staff participation in reviews of personnel practices,
 - (L) maternity leave,
 - (M) military leave,
 - (N) civil leave (jury duty and court attendance), and
 - (O) protection of confidential information.
- (2) All policies developed shall conform to the United States Department of Labor wage and hour regulations.

(c) Staffing Pattern. The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of staff to participants shall be adequate to meet the goals and objectives of the program. Whenever regularly scheduled staff are absent, substitutes shall be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) **Adult Day Care Homes**
One full-time equivalent staff person with responsibility for direct participant care for each six participants, up to 16 participants total.
- (2) **Adult Day Care Centers**
One full-time equivalent staff person with responsibility for direct participant care for each eight participants.

(d) Program Director

- (1) The program director shall have the authority and responsibility for the management of activities and direction of staff to ensure that activities and services are provided in accordance with established program policies.
- (2) The program director shall:
 - (A) be at least 18 years of age;
 - (B) have completed a minimum of two years of post secondary education from an institution accredited by an accrediting agency recognized by the United States Department of Education (including colleges,

- universities, technical institutes, and correspondence schools) or have a high school diploma or the equivalent and a combination minimum of five years experience and training in services to elderly or adults with disabilities;
 - (C) have at least two years of work experience in supervision and administration;
 - (D) present prior to employment, a written medical statement, completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and that the employee can perform the duties assigned on the job; and
 - (E) provide at least three reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer. The individuals providing reference information shall have knowledge of the applicant program director's background and qualifications.
- (3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit these characteristics:
- (A) ability to make decisions and set goals;
 - (B) knowledge and understanding of the needs of the aging and disabled;
 - (C) ability to design and implement a varied, structured program of group and individual activities; and
 - (D) managerial and administrative skills - ability to supervise staff and to plan and coordinate staff training.
- (4) The adult day care program shall have a full-time program director or a full-time substitute meeting the requirements as specified in this Paragraph. The program director shall assign authority and responsibility for the management of activities and direction of staff when the program director is not on site.

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978;
Amended Eff. September 1, 2007; July 1, 2007; May 1, 1992; July 1, 1990; July 1, 1984; January 1, 1981.

10A NCAC 06R .0306 PERSONNEL: DAY CARE HOMES: ONLY STAFF PERSON IS OPERATOR

- (a) The operator of an adult day care program shall meet the qualifications of director as defined in Rule .0305 of this Section.
- (b) There shall be a minimum of one staff person during all hours of operation meeting the requirements set forth in Rule .0305 of this Section.
- (c) A day care home shall have substitute or relief staff to enable the day care home to remain open on days when the operator is not available to supervise the program. The substitute or relief staff shall meet the requirements for this position as set forth in Rule .0305 of this Section.

History Note: Authority G.S. 131D-6; 143B-153; Eff. July 1, 1978;
Amended Eff. September 1, 2007; July 1, 2007; May 1, 1992; July 1, 1990; July 1, 1984; January 1, 1981.

10A NCAC 06R .0401 GENERAL REQUIREMENTS

- (a) The facility and grounds of an adult day care program shall be approved by the local environmental health specialist, the local fire safety inspector, the county department of social services, and the North Carolina Division of Aging and Adult Services.
- (b) The facility shall comply with all applicable zoning laws.
- (c) There shall be adaptable spaces, as defined in Rule .0201(2) of this Subchapter, suitable for activities for participants. Spaces shall provide opportunities for participants to get together as a group as well as privacy for quiet times.
- (d) The facility shall provide at least 40 square feet of indoor space for each participant in the portion of the buildings utilized for adult day care programs. This minimum square footage excludes hallways, offices, and restrooms.
- (e) If meals are prepared within the facility, the kitchen shall meet environmental health rules, as defined in 15A NCAC 18A .3300.
- (f) Storage areas must be adequate in size and number for storage of clean linens, dirty linens, cleaning materials, household supplies, food, equipment, and program supplies. A separate locked area for storing poisons, chemicals or other potentially harmful products (cleaning fluids, disinfectants, etc.) shall be provided.
- (g) A minimum of one male and one female toilet shall be located in each facility and accessible in accordance with the North Carolina Accessibility Code, which is hereby incorporated by reference, including any subsequent amendments or additions and can be obtained through the North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202 at a cost of sixty-two dollars and 00/100 (\$62.00). One toilet shall be available for each 12 adults, including staff and participants who utilize the facility. One hand lavatory shall be provided for each two toilets.
- (h) All rugs and floor coverings must be fastened down. Loose throw rugs are not allowed. Floors shall not be slippery.
- (i) A telephone shall be available for participants to make and receive calls. A pay station telephone is not acceptable for local calls.
- (j) Unless identified by the Division of Aging and Adult Services as shared space, the area certified for adult day care

shall be used for the sole purpose of the adult day care program and its activities during hours of program operation.

History Note: Authority G.S. 131D-6; 143B-153;

Eff. July 1, 1978;

Amended Eff. September 1, 2007; July 1, 1990; January 1, 1981.

10A NCAC 06R .0402 BUILDING CONSTRUCTION

(a) An adult day care building shall meet the approval of the local building inspector in terms of structural soundness and fire safety.

(b) The program shall provide at least one entrance at ground level with no steps or an entrance ramp with rails and a maximum slope of 1 in 12 (eight percent). The ramp shall be covered with a securely fastened non-skid floor covering which is secured at both ends.

(c) Facilities where 16 or fewer adults are served in a single family dwelling shall meet building construction requirements for adult day care homes specified in Section .0700 of this Subchapter.

(d) All facilities initially certified after January 1, 2003, or those that make structural building modifications after this date shall meet the North Carolina State Building Code, which is hereby incorporated by reference, including any subsequent amendments or additions and can be obtained through the North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202 at a cost of eighty dollars and 00/100 (\$80.00).

History Note: Authority G.S. 131D-6; 143B-153;

Eff. July 1, 1978;

Amended Eff. September 1, 2007; July 1, 2007; July 1, 1990; July 1, 1984; January 1, 1981; September 1, 1978.

10A NCAC 06R .0601 PROCEDURE

(a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by G.S. 131D-6 shall apply for a certificate to the county department of social services in the county where the program is to be operated.

(b) A social worker shall provide technical assistance and shall conduct a study of the program using the Division of Aging Adult Services Form DAAS-1500 or DASS-6205.

(c) The county of social services shall submit the initial certification package to the state Division of Aging and Adult Services. The materials and forms to be included in the package are:

- (1) program policies;
- (2) organizational diagram;
- (3) job descriptions;
- (4) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;
- (5) a floor plan of the facility showing measurements, restrooms and planned use of space;
- (6) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the

facility, no more than 30 days prior to submission with the certification package;

- (7) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent completed and signed by the local building inspector indicating approval of the facility, no more than 30 days prior to submission with the certification package;
- (8) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian, indicating approval of the facility, no more than 30 days prior to the submission with the certification package;
- (9) written notice and the effective date if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
- (10) a copy of the articles of incorporation, bylaws and names and addresses of board members for adult day care programs sponsored by a non-profit corporation;
- (11) the name and mailing address of the owner if a proprietary program;
- (12) a written medical statement from a physician, nurse practitioner or a physician's assistant, completed within the 12 months prior to submission of the certification package, for each proposed staff member certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
- (13) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will have direct contact with participants. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Emergency Medical Services;
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented on an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in

- which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by a copy of the instructor's certification;
- (14) evidence of the completion of a statewide criminal history records search for the past five years for the program owner and each proposed staff member having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
 - (15) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) No more than 60 days prior to the end of the current period of certification, the county department of social services shall submit to the Division of Aging and Adult Services the following forms and materials which make up a certification package for the renewal of a certification.
- (1) Form DOA-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector, indicating approval of the facility, dated no more than 12 months prior to submission with the certification package;
 - (2) Form DOA-1499 (Building Inspection Report for Adult Day Care Centers), DOA-1499a (Building Inspection Form for Adult Day Care Homes), or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector indicating approval of the facility, within 30 days following completion of the structural building modifications;
 - (3) Form DENR-4054 (Sanitation Evaluation Report) or the equivalent completed and signed by a local environmental health specialist, indicating approval of the facility, no more than 12 months prior to submission with the certification package;
 - (4) a written medical statement from a physician, nurse practitioner or physician's assistant for each staff member hired subsequent to the previous certification or recertification expiration date, certifying absence of a health condition that would pose a risk to others and that the employee can perform the duties normally assigned on the job;
 - (5) an updated copy of the program policies, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Form 732a-ADS (Daily Rate Sheet) or the equivalent showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (7) verification of standard first aid and cardio-pulmonary resuscitation certification (CPR) for each proposed staff member who is physically able and who will have direct contact with participants. If a staff member is determined to be physically unable to complete this training, a signature by a licensed physician, physician's assistant or nurse practitioner attesting to such shall be provided indicating the time limit of such physical inability. The first aid and CPR training shall be:
 - (A) taught by an instructor certified through the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute or Emergency Medical Services;
 - (B) current, as determined by the organization conducting the training and issuing the certification; and
 - (C) documented by an official attendance card issued by the organization certifying the training, or documented by the attendance course roster, in which case the roster shall be signed by the instructor, indicate pass or fail for each student, indicate the length of time the training is valid and be accompanied by the instructor's certification.
 - (8) Evidence of the completion of a statewide criminal history records search for the past five years for each staff member hired subsequent to the previous certification or recertification expiration date having direct contact with participants, conducted by an agency approved by the North Carolina Administrative Offices of the Courts; and
 - (9) DAAS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the county department of social services to the Division of Aging and Adult Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.
- (e) Following review of the certification package, a pre-certification visit may be made by staff of the State Division of Aging and Adult Services.
- (f) Within 14 business days, the Division of Aging and Adult Services shall provide written notification to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

History Note: Authority G.S. 131D-6; 143B-153;

*Eff. January 1, 1986;
Amended Eff. September 1, 2007; July 1, 2007; July 1, 2000;
May 1, 1992; July 1, 1990.*

10A NCAC 06S .0204 STAFF REQUIREMENTS

(a) Standards as set forth in 10A NCAC 06R .0305(a), (b) and (d) shall be met by adult day health programs.

(b) The program director for adult day health programs with a capacity of 10 or fewer participants may also serve as the health care coordinator provided that the individual meets all the requirements set forth in 10A NCAC 06R .0305(b) and in Paragraph (c) of this Rule and if requirements in Rule .0203 of this Section related to program capacity are met. If requirements of 10A NCAC 06R .0305(b) and Paragraph (c) of this Rule are met, and the capacity is greater than 10 participants, the program director may serve as the substitute health care coordinator for up to but not exceeding three consecutive weeks.

(c) Health Care Coordinator of Adult Day Health Programs:

(1) Adult day health programs shall have a health care coordinator to coordinate the delivery of health care services and participate in direct care as specified in Subparagraph (c)(2) of this Rule. The health care coordinator shall be on-site a minimum of four hours per day and any additional hours necessary to meet the requirements for the provision of health care services as set forth in this Subchapter.

(2) The nursing responsibilities of the health care coordinator, consistent with the Nursing Practice Act, include:

(A) completing preadmission health assessment for initial acceptance into program, including problem-identification and care planning;

(B) implementing the health care components of the established service plan which include medication administration, wound care, enteral or parenteral feedings, bowel or bladder training and maintenance programs, tracheotomy care and suctioning, and delegating nursing care tasks to unlicensed personnel;

(C) monitoring participant's response to medical treatment plan and nursing interventions and revising plan of care as necessary;

(D) reporting and recording results of the nursing assessment, care rendered and participant's response to care;

(E) collaborating with other health care professionals and caregivers regarding provision of participant's health care;

(F) educating other staff members to emergency procedures and providing information to staff and caregivers

about health concerns and conditions of participants;

(G) providing first aid treatment as needed; and

(H) making certain health and personal care services as outlined in 10A NCAC 06S .0403 are provided to participants consistent with the participant's service plans.

(3) The health care coordinator:

(A) shall be either a registered nurse or a licensed practical nurse licensed to practice in North Carolina;

(B) if the health care coordinator is a licensed practical nurse, supervision shall be provided by a registered nurse consistent with the Nursing Practice Act G.S. 90-171 and 21 NCAC 36 .0224 through .0225. Copies of these Rules may be obtained from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, telephone (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and twenty-five cents (\$.25) for each additional page, or available at the following website: <http://reports.oah.state.nc.us/ncac.asp>. The licensed practical nurse shall also receive on-site supervision by a registered nurse as needed, or at minimum, every two weeks.

(C) shall have knowledge and understanding of the physical and emotional aspects of aging, the resultant diseases and infirmities, and related medications and rehabilitative measures;

(D) shall be at least 18 years of age;

(E) shall present, prior to beginning employment, a written medical statement completed within the prior 12 months by a physician, nurse practitioner, or physician's assistant, certifying that the employee has no illness or health condition that would pose a risk to others and ability to perform the duties assigned on the job; and

(F) shall provide at least three reference letters or the names of individuals with whom a reference interview may be conducted, including at least one former employer. The individuals providing reference information shall have knowledge of the applicant

coordinator's background and qualifications.

(d) Staff Responsible for Personal Care in Adult Day Health Programs. All day health program staff providing personal care shall present evidence of meeting the following qualifications prior to assuming such responsibilities:

- (1) successful completion of nurse's aide, home health aide or equivalent training course, or
- (2) a minimum of one year of experience in caring for impaired adults.

History Note: Authority G.S. 131D-6; 143B-153;

Eff. September 1, 1990;

Amended Eff. September 1, 2007; July 1, 2007; May 1, 1992.

10A NCAC 70E .0101 PURPOSE
10A NCAC 70E .0102 METHOD OF MUTUAL HOME ASSESSMENT
10A NCAC 70E .0103 ASSESSMENT PROCESS
10A NCAC 70E .0104 USE OF REFERENCES
10A NCAC 70E .0105 PERIODIC REASSESSMENT OF HOME

History Note: Authority G.S. 131D, Art. 1A; 131D-10.5; 143B-153;

Eff. February 1, 1976;

Readopted Eff. October 31, 1977;

Amended Eff. July 18, 2002; May 1, 1990;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0106 AGENCY FOSTER PARENT AGREEMENT

History Note: Authority G.S. 131D-10.5; 143B-153;

Eff. July 1, 1983;

Amended Eff. July 18, 2002; May 1, 1990;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0201 LICENSE APPLICATION
10A NCAC 70E .0202 AGENCY FOSTER PARENTS' AGREEMENT
10A NCAC 70E .0203 DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

History Note: Authority G.S. 131D, Art. 1A; 131D-10.5; 143B-153;

Eff. February 1, 1976;

Readopted Eff. October 31, 1977;

Amended Eff. July 18, 2002; May 1, 1990;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0301 DEFINITIONS
10A NCAC 70E .0302 FAMILY FOSTER HOME: QUALIFICATIONS

History Note: Authority G.S. 131D, Art. 1A; 131D-10.3; 131D-10.5; 143B-153;

Eff. July 1, 1982;

Temporary Amendment Eff. February 1, 2002;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. August 1, 2004;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0401 CLIENT RIGHTS AND CARE OF FOSTER CHILDREN

10A NCAC 70E .0402 CRITERIA FOR THE FAMILY

10A NCAC 70E .0403 PHYSICAL FACILITY

History Note: Authority G.S. 131D-10.5; 143B-153;

Eff. July 1, 1982;

Amended Eff. May 1, 1990; May 1, 1994; July 1, 1983;

Temporary Amendment Eff. February 14, 2002;

Amended Eff. July 18, 2002;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0404 LICENSING COMPLIANCE VISITS

History Note: Authority G.S. 131D-10.5; 143B-153;

Eff. July 1, 1983;

Amended Eff. July 18, 2002; July 1, 1997; May 1, 1990;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0405 CRIMINAL HISTORIES

History Note: Authority G.S. 131D-10.5; 143B-153;

Temporary Adoption Eff. January 1, 1996;

Eff. April 1, 1997;

Temporary Amendment Eff. October 28, 1997;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. February 1, 2002;

Amended Eff. July 18, 2002;

Repealed Eff. September 1, 2007.

10A NCAC 70E .0501 RESPONSIBILITY

10A NCAC 70E .0502 NEW LICENSES

10A NCAC 70E .0503 RENEWAL

10A NCAC 70E .0504 CHANGE IN FACTUAL INFORMATION ON THE LICENSE

10A NCAC 70E .0505 TERMINATION

10A NCAC 70E .0506 REVOCATION OR DENIAL

10A NCAC 70E .0507 LICENSING AUTHORITY FUNCTION

10A NCAC 70E .0508 KINDS OF LICENSES

10A NCAC 70E .0509 OUT-OF-STATE FACILITIES AND FAMILY FOSTER HOMES

History Note: Authority G.S. 131D, Art. 1A; 131D-10.5; 143B-153; (See S.L. 2002-164);

Eff. July 1, 1982;

Amended Eff. May 1, 1990; February 1, 1986; April 1, 1984;

July 1, 1983;

Temporary Amendment Eff. February 1, 2002;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. July 1, 2003;

*Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on October 16, 2003;
Repealed Eff. September 1, 2007.*

**10A NCAC 70E .0510 REPORTS OF ABUSE AND
NEGLECT**

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. April 1, 1987;
Amended Eff. July 18, 2002;
Repealed Eff. September 1, 2007.*

**10A NCAC 70E .0511 CRIMINAL HISTORY CHECKS
10A NCAC 70E .0512 TRAINING REQUIREMENTS**

*History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; S.L. 1993, c. 769, s. 25.11;
Temporary Adoption Eff. January 1, 1996 (Rule .0511);
Eff. April 1, 1997;
Temporary Amendment Eff. October 28, 1997;
Amended Eff. July 18, 2002; April 1, 1999;
Repealed Eff. September 1, 2007.*

10A NCAC 70E .0601 SCOPE

- (a) The North Carolina Department of Health and Human Services, Division of Social Services is the licensing authority for family foster homes and therapeutic foster homes.
- (b) The rules in this Subchapter apply to the licensing of family foster homes and therapeutic foster homes and those persons who receive children for the purpose of placement in family foster homes and therapeutic foster homes.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0602 DEFINITIONS

Except when the context of the Rule indicates that the term has a different meaning the following definitions shall apply to the rules in Subchapter 70E:

- (1) "Agency" means a child placing agency as defined in G.S. 131D-10.2 that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.
- (2) "Family Foster Home" has the meaning as defined in G.S. 131D-10.2(8).
- (3) "Family Foster Care" means a planned, goal-directed service in which the temporary protection and care of children take place in a family foster home. Family foster care is a child welfare service for children and their parents who must live apart from each other for a period of time due to abuse, neglect, dependency, or other circumstances necessitating out-of-home care.
- (4) "Licensing Authority" means the North Carolina Division of Social Services.
- (5) "Owner" means any person who holds an ownership interest of five percent or more of

the applicant. A person includes a sole proprietor, co-owner, partner or shareholder, principal or affiliate, or any person who is the applicant or any owner of the applicant.

- (6) "Supervising Agency" means a county department of social services or a private child-placing agency that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes. Supervising agencies are responsible for recruiting, training, and supporting foster parents. Supervising agencies recommend the licensure of foster homes to the licensing authority.

- (7) "Therapeutic Foster Care" means a foster home where the foster parent has received additional training in providing care to children with behavioral mental health or substance abuse problems.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

**10A NCAC 70E .0701 LICENSING AUTHORITY
FUNCTION**

- (a) The supervising agency shall submit the licensing application for family foster care and therapeutic foster care to the licensing authority. When the licensing authority receives licensing materials, the licensing authority shall review the licensing materials relative to standards, policies, and procedures for licensing. The licensing authority shall communicate with the supervising agency submitting the materials if additional information, clarification or materials are needed to make a decision regarding license approval.

- (b) A license is valid for the period of time stated on the license for the number of children specified and for the place of residence identified on the license.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0702 RESPONSIBILITY

Each supervising agency providing foster care services shall access its applicants and licensees. Supervising agencies shall submit to the licensing authority information and reports that are used as the basis of either issuing or continuing to issue licenses.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0703 NEW LICENSES

- (a) The supervising agency shall submit all licensing materials to the licensing authority dated within 180 days prior to submitting an application for a new license. The supervising agency shall submit medical examinations of the members of the

foster home to the licensing authority dated within 12 months prior to submitting an application for a new license.

(b) The supervising agency shall submit all licensing application materials required for a license to the licensing authority at one time. The licensing authority shall return incomplete licensing applications to the supervising agency.

(c) The licensing authority shall issue a new license, if approved according to the rules in this Section, effective the date the application and all required materials are received by the licensing authority.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0704 RELICENSURE AND RENEWAL

(a) Foster homes shall be relicensed in accordance with the expiration date on the license. Materials for renewing a license are due to the licensing authority prior to the date the license expires.

(b) All relicensing materials shall be completed and dated within 180 days prior to the date the supervising agency submits materials for licensure to the licensing authority. Medical examinations of the members of the foster home shall be completed and dated within 12 months prior to submitting materials for relicensure.

(c) All relicensing materials shall be submitted at one time to the licensing authority. Incomplete relicensure applications shall be returned to the supervising agency.

(d) If materials are submitted after the foster home license expires, a license, if approved, shall be issued effective the date the licensing materials are received by the licensing authority.

(e) When a foster home license is terminated for failure to submit relicensure materials, the home shall be relicensed if the relicensure materials are submitted to the licensing authority within one year of the date the license was terminated and all requirements are met. After one year, the supervising agency shall submit a new licensure application to the licensing authority.

(f) When a foster home license has been terminated in good standing and the foster family wishes to be licensed again, the license shall be renewed if there are no changes or the changes meet the requirements of the rules of this Section. The period of time for this renewed license is from the date the request is received by the licensing authority to the end date of the license period in effect when the license was terminated.

(g) Unless previously licensed foster parents who have not been licensed within the last 24 consecutive months demonstrate mastery of the parenting skills listed in 10A NCAC 70E .1117(1) to the satisfaction of the supervising agency and documented to the licensing authority, the foster parents shall complete the 30 hours of pre-service training specified in 10A NCAC 70E .1117(1).

(h) Unless previously licensed therapeutic foster parents who have not been licensed within the last 24 consecutive months demonstrate mastery of the therapeutic skills listed in 10A NCAC 70E .1117(2) to the satisfaction of the supervising agency and documented to the licensing authority, the

therapeutic foster parents shall complete the 10 hours of pre-service training specified in 10A NCAC 70E .1117(2).

(i) The supervising agency shall provide documentation to the licensing authority that trainings for first aid, CPR, and universal precautions are updated.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0705 CHANGE IN FACTUAL INFORMATION ON THE LICENSE

(a) A license may be changed during the time it is in effect if the change is in compliance with licensing standards.

(b) The supervising agency shall submit supportive data to the licensing authority for the following:

- (1) changes in age range, number of children, and sex; or
- (2) change in residence

(c) A foster home license may not be changed to a residential child-care facility license. The foster home license shall be terminated and materials shall be submitted in accordance with 10A NCAC 70I or 10A NCAC 70J in order to be licensed as a residential child-care facility.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0706 FOSTER HOME TRANSFER PROCEDURES

(a) A foster home licensed and in good standing with the licensing authority may transfer from the supervision of a county department of social services or a private child-placing agency to the supervision of another county department of social services or private child-placing agency upon request. Procedures for transferring licenses include:

- (1) the current supervising agency providing copies of the most recent mutual home assessment, training, and licensing documents to the receiving supervising agency;
- (2) the current supervising agency notifying the custodian(s) of the foster children placed in the home of the transfer;
- (3) the receiving supervising agency notifying the custodian(s) of the foster children placed in the home of the transfer;
- (4) a Foster Care Facility License Action Request Form from the previous supervising agency that is marked terminated shall be submitted to the licensing authority;
- (5) a Foster Care Facility License Action Request Form from the receiving supervising agency that is marked new license shall be submitted to the licensing authority;
- (6) a cover letter from the previous supervising agency stating they are aware of the transfer shall be submitted to the licensing authority;

- (7) a cover letter from the receiving supervising agency requesting transfer shall be submitted to the licensing authority; and
- (8) a mutual home assessment written by the receiving supervising agency shall be submitted to the licensing authority.

(b) The materials in Paragraph (a) of this Rule shall be submitted to the licensing authority within 90 days after the foster parents request to transfer to another supervising agency.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0707 TERMINATION

- (a) Licenses terminate at the end of the license period unless all relicensing materials have been received by the licensing authority prior to the license expiration date.
- (b) If a supervising agency wishes to terminate a license before the license expiration date, the agency must notify the foster parents.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0708 REVOCATION OR DENIAL

- (a) The licensing authority may revoke licenses when an agency authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.
- (b) The licensing authority may revoke a license when the foster home is not in compliance with licensing standards.
- (c) The licensing authority shall base the revocation on the following:

- (1) a child's circumstances;
- (2) a child's permanency plan;
- (3) the nature of the non-compliance; and
- (4) the circumstances of the placement.

(d) Foster parents shall be notified in writing of the reasons for the licensing authority's decision to revoke a license. When a license has been revoked, foster parents shall submit their license to the supervising agency so it can be returned to the licensing authority.

(e) The licensing authority may deny licensure to an applicant who has a finding or pending investigation that may result in a finding that will place the applicant on the Health Care Personnel Registry in accordance with G.S. 131E-256.

(f) The licensing authority may also deny licensure to an applicant under any of the following circumstances:

- (1) the applicant was the owner of a licensable facility or agency pursuant to Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 of the General Statutes, and that a facility or agency had its license revoked;
- (2) the applicant is the owner of a licensable facility or agency and that facility or agency incurred a penalty for a Type A or B violation under G.S. 122C, Article 3;

(3) the applicant is the owner of licensable facility or agency that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a), or G.S. 131D, Article 1A, or had its license summarily suspended or denied under G.S. 110, Article 7;

(4) the applicant was the owner of a licensable facility or agency pursuant to G.S. 122C, G.S. 131D, or G.S. 110, Article 7, who voluntarily relinquished that facility or agency's license after the initiation of revocation or summary suspension proceedings, or there is a pending appeal of a denial, revocation, or summary suspension of that facility or agency's license; or

(5) the applicant has as any part of its governing body or management an owner who previously held a license that was revoked or summarily suspended pursuant to G.S. 122C, G.S. 131D, or G.S. 110, Article 7.

(g) The denial of licensure pursuant to Paragraph (f) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

(h) Appeal procedures specified in 10A NCAC 70L .0301 shall be applicable for persons seeking an appeal to the licensing authority's decision to revoke or deny a license. If the action is reversed on appeal, the application shall be approved back to the date of the denied application if all qualifications are met.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0709 KINDS OF LICENSES

(a) Full License. A full license shall be issued for no more than two years when all licensing requirements are met.

(b) Provisional License.

- (1) A provisional license shall be issued for no more than six months while some below standard component is being corrected.
- (2) A provisional license for the same below standard program component shall not be renewed.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0710 OUT-OF-STATE FACILITIES AND FOSTER HOMES

The use of out-of-state residential child-care facilities and foster homes for the placement of children in the custody of a North Carolina county department of social services shall be in accordance with the following:

- (1) Prior to placement into an out-of-state foster home, group home, child-caring institution, maternity home or any other residential child-

care facility, the county department of social services placing the child in the out-of-state facility shall determine that the foster home, group home, child-caring institution, maternity home, or any other residential child-care facility is licensed according to the standards of that state.

- (2) The county department of social services shall monitor the licensing and relicensing of the out-of-state foster home, group home, child-caring institution, maternity home or any other residential child-care facility to ensure that no child for whom they have responsibility is in an unlicensed foster home, group home, child-caring institution, maternity home or any other residential child-care facility.
- (3) The county department of social services shall submit to the licensing authority written documentation that an out-of-state foster home, group home, child-caring institution, maternity home or any other residential child-care facility has been licensed and that an Interstate Compact for the Placement of Children Form for the child to be placed out of state has been signed by both states in order for the foster home, group home, child-caring institution, maternity home or any other residential child-care facility to be issued a license identification number for foster care reimbursement purposes.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0801 PURPOSE

- (a) The supervising agency shall conduct a mutual home assessment study of the foster home to determine if the home meets the requirements for licensure and is suitable for family foster care of children needing family foster care services or therapeutic foster care of children needing therapeutic foster care services.
- (b) The supervising agency shall provide information to applicants that will make it possible for the applicants to make a knowledgeable decision about their interest in pursuing licensure. The supervising agency shall learn enough about the applicants to determine whether the applicants can meet the needs of children and care for children in accordance with licensing requirements. The supervising agency shall also learn enough about the applicants to determine the kind of child they can best serve.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0802 METHOD OF MUTUAL HOME ASSESSMENT

The mutual home assessment shall be carried out in a series of planned discussions between the supervising agency staff, the prospective foster parent applicants and other members of the household. The family shall be seen by the social worker in the family's home and in the supervising agency's office. For two-parent homes, separate as well as joint discussions with both parents shall be arranged. For foster homes with more than two parents, separate as well as joint discussions with all parents shall be arranged.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .0803 ASSESSMENT PROCESS

- (a) The supervising agency shall advise the applicants at the first contact with the agency of the North Carolina licensing requirements for foster care. The supervising agency shall make a decision whether to continue a mutual home assessment.
- (b) The supervising agency shall inform the applicants about the services, policies, procedures, standards, and expectations of the agency regarding the provision of foster care services. The applicants shall weigh the responsibilities entailed in providing foster care services and make a decision whether to continue a mutual home assessment.
- (c) Mutual Assessment of the Home and the Family:
 - (1) The mutual home assessment shall be presented and recorded in such a way that other staff of the supervising agency can make use of the family as a resource for children. The assessment of the home shall indicate whether the home is in compliance with licensing standards.
 - (2) A mutual home assessment shall include a family history of applicants, including information about parents, siblings, marriages and family support systems; ability to cope with problems, stress, frustrations, crises, and loss; disciplinary methods used by the applicants' parents; personal experiences of abuse and neglect and domestic violence; criminal convictions; drug or alcohol abuse; emotional stability and maturity; ability to give and receive affection; religious orientation, if any; and educational and employment history.
 - (3) A mutual home assessment shall be made of the applicants' skills and abilities to provide care for children as set forth in 10A NCAC 70E .1104(a).
 - (4) All members of the household shall be assessed with respect to their commitment to providing care for children.
 - (5) The foster home shall be assessed to determine if there is space to accommodate the number of children recommended for the license capacity.
 - (6) The foster home applicants shall be assessed with respect to their willingness to participate in shared parenting requirements.

- (7) The foster home applicants shall be assessed with respect to their financial ability to provide foster care.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0804 USE OF REFERENCES

References shall be used to supplement the information obtained through interviews and observation regarding the applicants. All adult members of the foster home shall provide three references to the supervising agency.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0805 PERIODIC REASSESSMENT OF HOME

- (a) A foster home shall be reassessed at least biennially.
(b) Reassessment shall include a mutual assessment with the foster parents of their skills and abilities to provide care for children, including ways in which they have been able to meet the needs of children placed in their home and areas in which they need further development.
(c) Any changes in physical set up and in the foster parents' capacities for providing foster care since the original home assessment or previous reassessments shall be documented in the family's record.
(d) Reassessment shall be used as a tool for relicensing the home.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0806 AGENCY FOSTER PARENT AGREEMENT

The supervising agency Foster Parents Agreement, defining each party's rights and obligations shall be reviewed and signed by the foster parents and the licensing worker at the time of the initial licensing and no less than biennially thereafter.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0901 LICENSE APPLICATION

Application for a license shall be made on a form provided by the licensing authority. The supervising agency director or his/her designee shall sign the form and thereby indicate both the home meets the licensing standards, and the supervising agency intends to use the home in accordance with the license and provide services to the foster parents. The foster parents shall sign the application indicating their agreement with the information provided, declaring it is true and accurate and understand that according to G.S. 132-1, the information may be

furnished to others upon request. The form shall be submitted to the licensing authority at least biennially.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .0902 AGENCY FOSTER PARENTS' AGREEMENT

(a) Foster parents shall sign an agreement under which the foster parents shall:

- (1) allow the representative of the supervising agency to visit the home in conjunction with licensing procedures, foster care planning, and placement;
- (2) accept children into the home only through the supervising agency and not through other individuals, agencies, or institutions;
- (3) treat a child placed in the home as a member of the family, and when so advised by the supervising agency, make every effort to support, encourage, and enhance the child's relationship with the child's parents or guardian;
- (4) maintain continuous contact and exchange of information between the supervising agency and the foster parents about matters affecting the adjustment of any child placed in the home. The foster parents shall agree to keep these matters confidential and discuss them only with the supervising agency staff members, or with other professional people designated by the agency;
- (5) obtain the permission of the supervising agency if the child is to be out of the home for a period exceeding two nights;
- (6) report to the supervising agency any changes in the composition of the household, change of address, or change in the employment status of any adult member of the household;
- (7) make no independent plans for a child to visit the home of the child's parents, guardian, or relatives without prior consent from the supervising agency;
- (8) adhere to the supervising agency's plan of medical care, both for routine care and treatment, and emergency care and hospitalization; and
- (9) provide any child placed in the home with supervision at all times while the child is in the home, not leave the child unsupervised, and adhere to the supervision requirements specified in the out-of-home family services agreement or person-centered plan.

(b) The supervising agency shall sign an agreement under which the supervising agency shall:

- (1) assume responsibility for the overall planning for the child and assist the foster parents in

- meeting their day-to-day responsibility towards the child;
- (2) inform the foster parents concerning the agency's procedures and financial responsibility for obtaining medical care and hospitalization;
- (3) pay the foster parents a monthly room and board payment, and if applicable, a respite care payment for children placed in the home;
- (4) discuss with the foster parents any plans to remove a child from the foster home;
- (5) give the foster parents notice before removing a child from the foster home;
- (6) visit the foster home and child according to the out-of-home family services agreement or person-centered plan and be available to give needed services and consultation concerning the child's welfare;
- (7) respect the foster parents' preferences in terms of sex, age range, and number of children placed in the home;
- (8) provide or arrange for training for the foster parents;
- (9) include foster parents as part of the decision-making team for a child; and
- (10) allow foster parents to review and receive copies of their licensing record.

(c) The agreement shall also contain any other provisions mutually agreed by the parties.

(d) The foster parents and a representative of the supervising agency shall sign and date the agreement initially and at each relicensure. The foster parents and the supervising agency shall retain copies of the agreements.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .0903 DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

(a) Before children are placed in a foster home in a county (the supervising county) other than the county of their home (the responsible county), the two county departments of social services shall agree in writing that the supervising county shall:

- (1) accept responsibility for supervising the child;
- (2) not initiate placement planning for the child without prior agreement from the responsible county, except when an emergency placement in another foster home or licensed facility is necessary;
- (3) immediately inform the responsible county when an emergency placement in another foster home or licensed facility precludes prior approval;
- (4) engage in no treatment or planning relationship with the child's parents, guardian, or relatives, except upon request of the responsible county;
- (5) keep the case confidential; and

- (6) submit to the responsible county, at intervals specified in the agreement, a written evaluation of the child's adjustment.

(b) In the agreement, the responsible county shall agree to:

- (1) make payments for room and board and difficulty of care or respite care, if applicable, to the supervising county in the amounts and at the times specified in the agreement;
- (2) take responsibility for placement of the child;
- (3) make restitution, in accordance with a plan specified in the agreement, for damage that the child causes to the foster parents' property;
- (4) inform the supervising county concerning future planning for the child; and
- (5) write the room and board check in a manner specified in the agreement, in order to protect confidentiality.

(c) The agreement shall specify the manner in which payment for clothes, medical costs, and allowances shall be made.

(d) The agreement shall specify the dates between which the agreement shall be effective. The agreement shall be signed by the directors of the two county departments of social services. The responsible county and the supervising county shall each have a signed copy of the agreement. The responsible county shall provide the children's services program representative with a copy of the signed agreement, if requested.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007.

10A NCAC 70E .1001 FOSTER HOME

(a) Effective September 1, 2007 not more than five children shall reside in any newly licensed family foster home at any time. Effective July 1, 2008 not more than five children shall reside in any family foster home at any time. These five children shall include the foster parent's own children, children placed for family foster care, licensed capacity for in-home day care children, children kept for babysitting or any other children residing in the home. Children kept for in-home day care and babysitting are considered residents of the home.

(b) Effective September 1, 2007 not more than four children including not more than two foster children shall reside in a newly licensed therapeutic foster home at any time. Effective January 1, 2008 not more than four children including not more than two foster children shall reside in any therapeutic foster home at any time. The four children shall include the foster parent's own children, children placed for therapeutic foster care, children placed for family foster care or any other children living in the home. Therapeutic foster parents shall not provide in-home day care or baby sitting services in the therapeutic foster home.

(c) With prior approval from the licensing authority, an exception to these standards may be made:

- (1) if written documentation is submitted to the licensing authority for family foster care that siblings will be placed together and the foster home complies with Subparagraphs (3) and (4) of this Paragraph. The out-of-home family

services agreement for each sibling shall specify that siblings will be placed together and shall also address the foster parents' skill, stamina, and ability to care for the children;

- (2) if written documentation is submitted to the licensing authority for therapeutic foster care that siblings will be placed together and the foster home complies with Subparagraphs (3) and (4) of this Paragraph. The person-centered plan or out-of-home family services agreement for each sibling shall specify that siblings shall be placed together and shall also address the foster parents' skill, stamina, and ability to care for the children;
- (3) if written documentation is submitted to the licensing authority that the foster home complies with 10A NCAC 70E .1108; and
- (4) if written documentation is submitted to the licensing authority that the foster home complies with 10A NCAC 70L .0102.

(d) Family foster homes and therapeutic foster homes shall not provide Community Alternative Programs for Disabled Adults (CAP/DA) unless the disabled adult was placed in the foster home as a Community Alternatives Programs for Children (CAP C) client prior to his/her 18th birthday. This disabled adult shall be included in the capacity for the foster home.

(e) Members of the household 18 years old and over and not receiving foster care services are not included in capacity, but there shall be physical accommodations in the home to provide them room and board.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .1101 CLIENT RIGHTS

(a) Foster parents shall ensure that each foster child:

- (1) has clothing to wear that is appropriate to the weather;
- (2) is allowed to have personal property;
- (3) is encouraged to express opinions on issues concerning care;
- (4) is provided care in a manner that recognizes variations in cultural values and traditions;
- (5) is provided the opportunity for spiritual development and is not denied the right to practice religious beliefs;
- (6) is not identified in connection with the supervising agency in any way that would bring the child or the child's family embarrassment;
- (7) is not forced to acknowledge dependency on or gratitude to the foster parents;
- (8) is encouraged to contact and have telephone conversations with family members, when not contraindicated in the child's visitation and contact plan;

- (9) is provided training and discipline that is appropriate for the child's age, intelligence, emotional makeup, and past experience;
- (10) is not subjected to cruel or abusive punishment;
- (11) is not subjected to corporal punishment;
- (12) is not deprived of a meal or contacts with family for punishment or placed in isolation time-out except when isolation time-out means the removal of a child to an unlocked room or area from which the child is not physically prevented from leaving. The foster parent may use isolation time-out as a behavioral control measure when the foster parent provides it within hearing distance of a foster parent. The length of time alone shall be appropriate to the child's age and development;
- (13) is not subjected to verbal abuse, threats, or humiliating remarks about himself/herself or his/her families;
- (14) is provided a daily routine in the home that promotes a positive mental health environment and provides an opportunity for normal activities with time for rest and play;
- (15) is provided training in good health habits, including proper eating, frequent bathing, and good grooming. Each child shall be provided food with nutritional content for normal growth and health. Any diets prescribed by a licensed medical provider shall be provided;
- (16) is provided medical care in accordance with the treatment prescribed for the child;
- (17) of mandatory school age maintains regular school attendance unless the child has been excused by the authorities;
- (18) is encouraged to participate in neighborhood and group activities, have friends visit the home and visit in the homes of friends;
- (19) assumes responsibility for himself/herself and household duties in accordance with his/her age, health, and ability. Household tasks shall not interfere with school, sleep, or study periods;
- (20) is provided opportunities to participate in recreational activities;
- (21) is not permitted to do any task which is in violation of child labor laws or not appropriate for a child of that age;
- (22) is provided supervision in accordance with the child's age, intelligence, emotional makeup, and experience; and
- (23) if less than eight years of age and weighs less than 80 pounds is properly secured in a child passenger restraint system that is approved and installed in a manner authorized by the Commissioner of Motor Vehicles.

(b) Foster parents shall initially and at relicensure sign a Discipline Agreement that specifically acknowledges their agreement as specified in Subparagraphs (a)(9), (10), (11), (12),

and (13) of this Rule, as well as discipline requirements outlined in the out-of-home family services agreement or person-centered plan. The foster parents and the supervising agency shall retain copies of these agreements.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1102 MEDICATION

Foster parents shall be responsible for the following regarding medication:

- (1) General requirements:
 - (a) retain the manufacturer's label with expiration dates visible on non-prescription drug containers not dispensed by a pharmacist;
 - (b) administer prescription drugs to a child only on the written order of a person authorized by law to prescribe drugs;
 - (c) allow prescription medications to be self-administered by children only when authorized in writing by the child's licensed medical provider;
 - (d) allow non-prescription medications to be administered to a child taking prescription medications only when authorized by the child's licensed medical provider; allow non-prescription medications to be administered to a child not taking prescription medication, with the authorization of the parents, guardian, legal custodian, or licensed medical provider;
 - (e) allow injections to be administered by unlicensed persons who have been trained by a registered nurse, pharmacist, or other legally qualified person;
 - (f) immediately record in a Medication Administration Record (MAR) provided by the supervising agency all drugs administered to each child. The MAR shall include the following: child's name; name, strength, and quantity of the drug; instructions for administering the drug; date and time the drug is administered, discontinued, or returned to the supervising agency or the person legally authorized to remove the child from foster care; name or initials of person administering or returning the drug; child requests for changes or clarifications concerning medications; and child's refusal of any drug; and

- (g) follow-up for child requests for changes or clarifications concerning medications with an appointment or consultation with a licensed medical provider.
- (2) Medication disposal:
 - (a) return prescription medications to the supervising agency or person legally authorized to remove the child from foster care; and
 - (b) return discontinued prescription medications to the supervising agency for disposal, in accordance with 10A NCAC 70G .0211(c).
- (3) Medication storage:
 - (a) store prescription and over-the-counter medications in a locked cabinet in a clean, well-lighted, well-ventilated room other than bathrooms, kitchen, or utility room between 75° F (24° C) and 80° F (26.7° C);
 - (b) store medications in a refrigerator, if required, between 36° F (2° C) and 46° F (8° C). If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container within the refrigerator; and
 - (c) store prescription medications separately for each child.
- (4) Psychotropic medication review:
 - (a) arrange for any child receiving psychotropic medications to have his/her drug regimen reviewed by the child's licensed medical provider at least every six months;
 - (b) report the findings of the drug regimen review to the supervising agency; and
 - (c) document the drug review in the MAR along with any prescribed changes, if applicable.
- (5) Medication errors:
 - (a) report drug administration errors or adverse drug reactions immediately to a licensed medical provider or pharmacist; and
 - (b) document the drug administered and the drug reaction in the MAR.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1103 PHYSICAL RESTRAINTS

- (a) Foster parents who utilize physical restraint holds shall not engage in discipline or behavior management that includes:
- (1) protective or mechanical restraints;

- (2) drug used as a restraint, except as outlined in Paragraph (b) of this Rule;
- (3) seclusion of a child in a locked room; or
- (4) physical restraint holds except for a child who is at imminent risk of harm to himself/herself or others until the child is calm.

(b) Foster parents shall not administer drugs to a foster child for the purpose of punishment, foster parent convenience, substitution for adequate supervision or for the purpose of restraining the child. A drug used as a restraint means a medication used only to control behavior or to restrict a child's freedom of movement, and is not a standard to treat a psychiatric condition.

(c) Before a foster parent shall administer physical restraint holds, each foster parent shall complete training that includes at least 16 hours of initial training in behavior management, including techniques for de-escalating problem behavior, the appropriate use of physical restraint holds, monitoring of vital indicators, and debriefing children and foster parents involved in physical restraint holds. Foster parents authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training including techniques for de-escalating problem behavior. This training shall count toward the training requirements as set forth in 10A NCAC 70E .1117(6). Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds.

(d) Foster parents shall be trained by instructors who have met the following qualifications and training requirements:

- (1) instructors shall demonstrate competence by scoring 100 percent on testing in a training program aimed at preventing, reducing, and eliminating the need for restrictive interventions;
- (2) instructors shall demonstrate competence by scoring 100 percent on testing in a training program teaching the use of physical restraint;
- (3) instructors shall demonstrate competence by scoring a passing grade on testing in an instructor training program as determined by the North Carolina Division of Mental Health, Developmental Disabilities and Substance Abuse;
- (4) the instructors' training shall be competency-based, and shall include measurable learning objectives, measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course;
- (5) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, and shall include presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures;
- (6) instructors shall be retrained at least annually and demonstrate competence in the use of physical restraint to the North Carolina

Interventions (NCI) Quality Assurance Committee;

- (7) instructors shall be trained in CPR;
- (8) instructors shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach, and trainers shall teach a program on the use of physical restraints at least once annually; and
- (9) instructors shall complete a refresher instructor training at least every two years.

(e) In administering physical restraints, the following shall apply:

- (1) foster parents shall use only those physical restraint holds approved by the North Carolina Interventions (NCI) Quality Assurance Committee. Approved physical restraint holds can be found at the following web site: <http://www.dhhs.state.nc.us/mhddsas/training/rscurricula/agencylist10-18-06web.pdf> (Reviewed Restrictive and Physical Interventions Curricula by Name) which are hereby incorporated by reference including subsequent amendments and editions;
- (2) before employing a physical restraint hold, the foster parent shall take into consideration the child's medical condition and any medications the child may be taking;
- (3) no child shall be restrained utilizing a protective or mechanical device;
- (4) no child or group of children shall be allowed to participate in the physical restraint of another child;
- (5) physical restraint holds shall:
 - (A) not be used for purposes of discipline or convenience;
 - (B) be used only when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
 - (C) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
 - (D) end when the child becomes calm.
- (6) The foster parent shall:
 - (A) ensure that any physical restraint hold utilized on a child is administered by a trained foster parent with a second trained foster parent or with a second trained adult in attendance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a foster parent shall monitor the child's breathing, ascertain the child is verbally responsive and motorically in control, and ensure the child

remains conscious without any complaints of pain. The supervising agency may seek a waiver from the licensing authority for a foster parent to administer a physical restraint hold without a second trained adult in attendance, and completion of the waiver request form. The licensing authority shall grant the waiver if it receives written approval from the child's parent, guardian, or custodian that the administering of a physical restraint hold without a second trained person present is acceptable, written approval from the supervising agency that the foster parent is authorized to administer a physical restraint hold without a second trained person present, and documentation that there is approval by the child and family team and documented in the person-centered plan or out-of-home family services agreement that it is acceptable for the foster parent to administer a physical restraint hold without a second trained person present;

- (B) immediately terminate the physical restraint hold or adjust the position to ensure that the child's breathing and motor control are not restricted, if at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control;
 - (C) immediately seek medical attention for the child, if at any time the child appears to be in distress; and
 - (D) conduct an interview with the foster child about the incident following the use of a physical restraint hold.
- (7) The supervising agency shall interview the foster parent administering the physical restraint hold about the incident following the use of a physical restraint hold by the supervising agency.
- (8) The supervising agency shall document each incident of a child being subjected to a physical restraint hold on an incident report provided by the licensing authority. The incident report shall include:
- (A) the child's name, age, height, and weight;
 - (B) the type of hold utilized;
 - (C) the duration of the hold;
 - (D) the trained foster parent administering the hold;
 - (E) the trained foster parent or trained adult witnessing the hold;

- (F) the less restrictive alternatives that were attempted prior to utilizing physical restraint;
- (G) the child's behavior that necessitated the use of physical restraint; and
- (H) whether the child's condition necessitated medical attention.

(f) Foster parents shall annually receive written approval from the executive director or his/her designee of the supervising agency before administering physical restraint holds. The foster parent shall retain a copy of the written approval and a copy shall be placed in the foster home record.

*History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.*

10A NCAC 70E .1104 CRITERIA FOR THE FAMILY

(a) Foster parents shall be persons whose behaviors, circumstances, and health are conducive to the safety and well-being of children. Foster parents shall also be selected on the basis of demonstrating strengths in the skill areas of Subparagraphs (1) through (12) of this Paragraph which permit them to undertake and perform the responsibilities of meeting the needs of children, in providing continuity of care, and in working with the supervising agency. Foster parents shall demonstrate skills in:

- (1) assessing individual and family strengths and needs and building on strengths and meeting needs;
- (2) using and developing effective communication;
- (3) identifying the strengths and needs of children placed in the home;
- (4) building on children's strengths and meeting the needs of children placed in the home;
- (5) developing partnerships with children placed in the home, parents or the guardians of the children placed in the home, the supervising agency and the community to develop and carry out plans for permanency;
- (6) helping children placed in the home develop skills to manage loss and skills to form attachments;
- (7) helping children placed in the home manage their behaviors;
- (8) helping children placed in the home maintain and develop relationships that will keep them connected to their pasts;
- (9) helping children placed in the home build on positive self-concept and positive family, cultural, and racial identity;
- (10) providing a safe and healthy environment for children placed in the home which keeps them free from harm;
- (11) assessing the ways in which providing family foster care or therapeutic foster care affects the family; and

- (12) making an informed decision regarding providing family foster care or therapeutic foster care.

(b) Age. A license may be issued to persons 21 years of age and older.

(c) Health. The foster family shall be in good physical and mental health as evidenced by:

- (1) a medical examination completed by a licensed medical provider on each member of the foster home within the last 12 months prior to the initial licensing application date, and biennially thereafter;
- (2) documentation that each adult member of the household has had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider or religious beliefs. The foster parents' children are required to be tested only if one or more of the parent's tests positive for TB;
- (3) a medical history form completed on each member of the household at the time of the initial licensing application and on any person who subsequently becomes a member of the household;
- (4) no indication of alcohol abuse, drug abuse, or illegal drug use by a member of the foster family;
- (5) no indication that a member of the foster family is a perpetrator of domestic violence;
- (6) no indication that a member of the foster family has abused, neglected, or exploited a disabled adult;
- (7) no indication that a member of the foster family has been placed on the North Carolina Sex Offender and Public Protection Registry;
- (8) no indication that a member of the foster family has been placed on the Nurse Aide Registry pursuant to G.S. 131E-255;
- (9) no indication that a member of the foster family has been placed on the Health Care Personnel Registry pursuant to G.S. 131E-256; and
- (10) no indication that a member of the foster family has been found to have abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child.

(d) Education. Foster parent applicants shall have graduated from high school or received a GED (Graduate Equivalency Diploma).

(e) Required Applicants. Foster parent applicants who are married are presumed to be co-parents in the same household and both shall complete all licensing requirements. Effective September 1, 2008, any adult 21 years of age or older, living in currently licensed or newly licensed foster homes who has responsibility for the care, supervision, or discipline of the foster child shall complete all licensing requirements. The supervising

agency shall assess each adult's responsibility for the care, supervision, or discipline of the foster child.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007.

10A NCAC 70E .1105 CONFLICT OF INTEREST

(a) County departments of social services and private child-placing agencies shall not supervise foster homes of members of their board of directors, governance structure, social services board, and county commission.

(b) County departments of social services and private child-placing agencies shall not supervise foster homes of agency employees and relatives of agency employees. Relatives include birth and adoptive parents, blood and half blood relative and adoptive relative including brother, sister grandparent, great-grandparent, great-great grandparent, uncle, aunt, great-uncle, great-aunt, great-great uncle, great-great aunt, nephew, niece, first cousin, stepparent, stepbrother, stepsister and the spouse of each of these relatives.

(c) Private child-placing agencies shall not supervise foster homes of agency owners.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007.

10A NCAC 70E .1106 DAY CARE CENTER OPERATIONS

If a licensed foster parent operates or plans to operate a day care center, the following criteria shall be met:

- (1) the foster home living quarters shall not be part of the day care operation;
- (2) there shall be a separate entrance to the day care operation; and
- (3) staff specified in day care center rules shall be available to provide care for the day care children.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. September 1, 2007.

10A NCAC 70E .1107 RELATIONSHIP TO SUPERVISING AGENCY

(a) Foster parents shall agree to work with the supervising agency in the following ways:

- (1) work with the child and the child's parent(s) or guardian(s) in the placement process, reunification process, adoption process, or any change of placement process;
- (2) consult with social workers, mental health personnel, licensed medical providers, and other persons authorized by the child's parent(s), guardian(s) or custodian who are involved with the child;
- (3) maintain confidentiality regarding children and their parent(s) or guardian(s);

- (4) keep records regarding the child's illnesses, behaviors, social needs, educational needs, and family visits and contacts; and
- (5) report immediately to the supervising agency any changes as required by 10A NCAC 70E .0902.

(b) In addition to Subparagraphs (a)(1) through (5) of this Rule, foster parents who provide therapeutic foster care services shall:

- (1) be trained as set out in 10A NCAC 70E .1117; and
- (2) allow weekly supervision and support from a professional as defined in 10A NCAC 27G .0104 and .0203.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .1108 FIRE AND BUILDING SAFETY

(a) Each foster home shall be in compliance with all applicable portions of the NC Building Code in effect at the time the foster home was constructed or last renovated. The NC Building Code is hereby incorporated by reference including subsequent amendments and additions. The NC Building Code may be purchased at a cost of one hundred six dollars and twenty-five cents (\$106.25) at the following web site (www.ncdoi.com – click on Code Services, click on Code Book Sales).

(b) All homes shall be protected from all fire hazards including the following:

- (1) all hallways, doorways, entrances, ramps, steps, and corridors shall be kept clear and unobstructed at all times;
- (2) an evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;
- (3) all homes shall have one smoke detector outside each sleeping area that is within 10 feet of each bedroom door, with at least one smoke detector on each level; and at least one five-pound, ABC type fire extinguisher or CO² type fire extinguisher located in the kitchen and another ABC type fire extinguisher or CO² type fire extinguisher centrally located;
- (4) all homes shall have a telephone that functions without use of electric power;
- (5) no egress door shall have a keyed dead bolt; and
- (6) the occupant utilizes Underwriters Laboratory (UL) listed extension cords. These cords shall not be substituted for permanent wiring and must be used only for portable appliances.

(c) Before a home is licensed or relicensed, it shall be inspected and receive a passing rating on the fire and building safety inspection report completed by the local jurisdiction.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .1109 HEALTH REGULATIONS

The supervising agency shall have a discussion regarding water quality and sanitation with the applicants. The supervising agency shall document the date the discussion was held and include a statement that the family is not aware of any health hazards caused by the family's water and sanitation facilities. The supervising agency shall ask the family about water testing that has been done and any immediate or past problems concerning water quality and sanitation. As part of the on-site visit, the supervising agency shall observe that the home has running water. As part of the on-site visit, the supervising agency shall observe that the home has a sanitary toilet and bathing facility. Licensure of a foster home shall not be recommended if the supervising agency has any reason to believe the water supply is not safe or the toilet and bathing facilities are not sanitary.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .1110 ENVIRONMENTAL REGULATIONS

(a) The home and yard shall be maintained and repaired so that they are not hazardous to the children in care.

(b) The house shall be kept free of uncontrolled rodents and insects.

(c) Windows and doors used for ventilation shall be screened.

(d) The kitchen shall be equipped with an operable stove and refrigerator, running water and eating, cooking, and drinking utensils to accommodate the household members. The eating, cooking, and drinking utensils shall be cleaned and stored after each use.

(e) Household equipment and furniture shall be in good repair.

(f) Flammable and poisonous substances, medications, and cleaning materials shall be stored out of the reach of children placed for foster care.

(g) Explosive materials, ammunition, and firearms shall each be stored separately, in locked places.

(h) Documentation that household pets have been vaccinated for rabies shall be maintained by the foster parents.

(i) Each home shall have heating, air-cooling, or ventilating capability to maintain a range between 65° F (18.3° C) and 85° F (29.4° C).

(j) Rooms including toilets, baths, and kitchens without operable windows, shall have mechanical ventilation to the outside.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70E .1111 ROOM ARRANGEMENTS

(a) Each home shall have a family room to meet the needs of the family including children placed for foster care.

(b) The kitchen shall be large enough for preparation of food and cleaning of dishes. Each home shall have a dining area to meet the needs of the family including children placed for foster care.

- (c) Bedrooms shall be identified on a floor plan as bedrooms and shall not serve dual functions.
- (d) Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.
- (e) Each child shall have his/her own bed. Each bed shall be provided with a supported mattress, two sheets, blanket, bedspread, and be of size to accommodate the child. No day bed, convertible sofa, or other bedding of a temporary nature shall be used for the exclusive sleeping area of the child except for temporary care for up to two weeks. The sleeping room shall not be shared by children of the opposite sex except by children age five and under. The sleeping arrangements shall provide space within the bedroom for the bed and the child's personal possessions. When children share a bedroom, a child under six shall not share a room with a child over 12, except when siblings are placed together. No more than four children shall share a room.
- (f) Separate and accessible drawer space and closet space for personal belongings and clothing shall be available for each child.
- (g) The home shall have indoor, operable sanitary toilet, hand-washing, and bathing facilities. Homes shall be designed in a manner that will provide children privacy while bathing, dressing, and using toilet facilities.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1112 EXTERIOR SETTING AND SAFETY

The exterior spaces around the foster home, including any yard spaces shall be clear of any dangerous objects or hazardous items including access to water, such as swimming pools, beaches, rivers, lakes, or streams. Access to such hazards shall be avoided by either a fence at least 48 inches high with a locked gate around the hazard, or by a fence at least 48 inches high with a locked gate around the yard and exterior space of the home while still providing play space for children. Access to water in above ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children. The supervising agency shall observe and document that the foster parents have taken measures to protect foster children from having unsupervised access to swimming pools, beaches, rivers, lakes, streams, other water sources, or other hazards.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1113 LICENSING COMPLIANCE VISITS

Quarterly Visits. Licensing social workers of supervising agencies shall visit with the foster family on at least a quarterly basis for the specific purpose of assessing licensing requirements. Two of the quarterly visits each year shall take place in the foster home. The licensing social worker may

require the remaining visits to occur at a location of the licensing social worker's preference.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1114 CRIMINAL HISTORIES

(a) An applicant shall not be licensed if the applicant, or any member of the applicant's household 18 years of age or older, refuses to consent to a criminal history check required by G.S. 131D, Article 1A.

(b) An applicant or any member of the applicant's household is not eligible for licensure if the applicant or any member of the applicant's household has been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery.

(c) An applicant or any member of the applicant's household is not eligible for licensure if the applicant or any member of the applicant's household has within the last five years been convicted of a felony involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

(d) An applicant or any members of the applicant's household with criminal convictions except those specified in Paragraph (b) of this Rule may be considered for licensure based on the following factors:

- (1) nature of the crime;
- (2) length of time since the conviction;
- (3) circumstances surrounding the commission of the offense or offenses;
- (4) number and type of prior offenses;
- (5) evidence of rehabilitation;
- (6) age of the individual at the time of the commission of the offense or offenses; and
- (7) letter of support for licensure from the executive director of the agency.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1115 RESPONSIBLE INDIVIDUALS LIST

(a) An applicant is not eligible for licensure if the applicant has within the last five years been substantiated for abuse or serious neglect and is placed on the Responsible Individuals List as defined in North Carolina General Statute 7B-311.

(b) After five years, an applicant who is on the Responsible Individuals List may be considered for licensure based on the following factors:

- (1) nature of the substantiation;
- (2) length of time since the substantiation;

- (3) circumstances surrounding the substantiation;
- (4) evidence of rehabilitation;
- (5) history of convictions and violations; and
- (6) letter of support for licensure from the executive director of the agency.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1116 CRIMINAL HISTORY CHECKS

(a) The supervising agency shall complete the following activities at initial licensure for new foster parent applicants and any member of the prospective foster parents' household 18 years of age or older:

- (1) furnish the written notice as required by G.S. 131D-10.3A(e);
- (2) obtain a signed consent form for a criminal history check and submit the signed consent form to the Department of Health and Human Services, Criminal Records Check Unit;
- (3) obtain two sets of fingerprints on SBI identification cards and forward both sets of fingerprints to the Department of Health and Human Services, Criminal Records Check Unit. Once an individual's fingerprints have been submitted to the Department of Health and Human Services, Criminal Records Check Unit, additional fingerprints shall not be required; and
- (4) conduct a local criminal history check through accessing the Administrative Office of the Courts and the Department of Corrections Offender Population Unified System and submit the results of the criminal history checks to the licensing authority on the Foster Home Application form.

(b) The supervising agency shall conduct a local criminal history check through accessing the Administrative Office of the Courts and the Department of Corrections Offender Population Unified System and submit the results of the criminal history checks to the licensing authority on the Foster Home Relicensure, Termination and Change Request Application form at relicensure for foster parents and any member of the prospective foster parents' household 18 years of age or older.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70E .1117 TRAINING REQUIREMENTS

Each supervising agency shall provide, or cause to be provided, preservice and in-service training for all prospective and licensed foster parents as follows:

- (1) Prior to licensing each applicant shall successfully complete 30 hours of preservice training. Preservice training shall include the following components:

- (a) General Orientation to Foster Care and Adoption Process;
- (b) Communication Skills;
- (c) Understanding the Dynamics of Foster Care and Adoption Process;
- (d) Separation and Loss;
- (e) Attachment and Trust;
- (f) Child and Adolescent Development;
- (g) Behavior Management;
- (h) Working with Birth Families and Maintaining Connections;
- (i) Lifebook Preparation;
- (j) Planned Moves and the Impact of Disruptions;
- (k) The Impact of Placement on Foster and Adoptive Families;
- (l) Teamwork to Achieve Permanence;
- (m) Cultural Sensitivity;
- (n) Confidentiality; and
- (o) Health and Safety.

(2) Effective January 1, 2008, therapeutic foster parent applicants shall also receive prior to licensure at least ten additional hours of preservice training in behavioral mental health treatment services including the following:

- (a) role of the therapeutic foster parent;
- (b) safety planning; and
- (c) managing behaviors.

(3) During the first year of licensure, each therapeutic foster parent shall receive additional training in the following areas:

- (a) development of the person-centered plan;
- (b) dynamics of emotionally disturbed and substance abusing youth and families;
- (c) symptoms of substance abuse;
- (d) needs of emotionally disturbed and substance abusing youth and families; and
- (e) crisis intervention.

(4) Training in first-aid, cardiopulmonary resuscitation (CPR) and universal precautions such as those provided by the American Red Cross, the American Heart Association, or equivalent organizations before a foster child is placed with the foster family. Training in CPR shall be appropriate for the ages of children in care. First-aid, CPR, and universal precautions training shall be updated as required by the American Red Cross, the American Heart Association, or equivalent organizations. The supervising agency shall ensure that family foster parents and therapeutic foster parents are trained in medication administration before a child is placed with the foster family.

(5) Child-specific training as required in the out-of-home family services agreement or person-

centered plan as a condition of the child being placed in the foster home. When the child or adolescent requires treatment for abuse – reactive, sexually reactive and sexual offender behaviors, specific treatment shall be identified in his/her person-centered plan. Training of therapeutic foster parents is required in all aspects of reactive and offender specific sexual treatment and shall be supervised by a qualified professional with sex offender-specific treatment expertise. When the child or adolescent requires treatment for substance abuse, specific treatment shall be identified in his/her person-centered plan. Training and supervision of therapeutic foster parents are required in all aspects of substance abuse and shall be made available by a provider who meets the requirements specified for a qualified professional or associate professional for substance abuse. Qualified substance abuse prevention professional (QSAPP) means, within the Mental Health, Developmental Disabilities, Substance Abuse system of care a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, post-graduate degree accumulated supervised experience in substance abuse prevention; or a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; or a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post bachelor's degree accumulated supervised experience in substance abuse prevention; or a substance abuse prevention professional who is certified as a Certified Substance Abuse Prevention Consultant (CSAPC) by the North Carolina Substance Abuse Professional Certification Board. The supervising agency shall provide or make this professional expertise available to the therapeutic foster parents. This training shall count towards the training requirements of Item (6) of this Rule.

- (6) Prior to licensure renewal, each foster parent shall successfully complete at least twenty hours of inservice training. This training may be child-specific or may concern issues relevant to the general population of children in foster care. In order to meet this requirement:
- (a) each supervising agency shall provide, or cause to be provided, at

least 10 hours of in-service training for foster parents annually;

- (b) such training shall include subjects that would enhance the skills of foster parents and promote stability for children;
 - (c) a foster parent may complete relevant training provided by a community college, a licensed supervising agency, or other departments of State or county governments; and, upon approval by the supervising agency, such training shall count towards meeting the requirements specified in this Item; and
 - (d) each supervising agency shall document in the foster parent record the type of activity the foster parent has completed pursuant to this Item.
- (7) A foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) shall complete six hours of advanced medical training annually. This training shall consist of issues relevant to HIV or AIDS. This training may count towards the training requirements Item (6) of this Rule.
- (8) Training requirements for physical restraint holds pursuant to 10A NCAC 70E .1103.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2007.

10A NCAC 70G .0301 STAFFING REQUIREMENTS

- (a) Effective July 1, 2008, social workers or case managers serving children in family foster homes shall serve no more than 15 children. Effective July 1, 2008, licensing social workers shall serve no more than 32 foster families. Effective July 1, 2008, agencies providing family foster care services may combine the duties of the social worker or case manager and licensing social worker, and serve no more than ten children and ten foster families. Effective July 1, 2008, social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Effective July 1, 2008, agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing social worker, and serve no more than eight children and eight foster families.
- (b) When an agency employs five or more social workers or case managers, the agency shall employ a social work supervisor.
- (c) Supervision of social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers or Case Managers
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70G .0302 TRAINING REQUIREMENTS

- (a) Effective July 1, 2008, social workers or case managers serving children in foster care shall receive 24 hours of continuing education annually.
- (b) Effective July 1, 2008, social work supervisors shall receive 24 hours of continuing education annually.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. September 1, 2007.

10A NCAC 70I .0101 LICENSING ACTIONS

- (a) All rules in 10A NCAC 70I apply to residential child-care facilities.

(b) License.

- (1) The Department of Health and Human Services, Division of Social Services (licensing authority) shall issue a license when it determines that a residential child-care facility is in compliance with rules in Subchapters 70I and 70J of this Chapter.
- (2) A license shall be issued for a maximum period of two years.
- (3) A residential child-care facility shall not be licensed under both G.S. 131D and G.S. 122C.

(c) Changes in any information on the license.

- (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
- (2) A residential child-care facility shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70I and 70J of this Chapter.

(d) Termination.

- (1) When a residential child-care facility voluntarily discontinues child-caring operations, either temporarily or permanently, the residential child-care facility shall notify the licensing authority in writing of the date, reason and anticipated length of closing.
- (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.

- (3) If a license issued pursuant to this Subchapter is terminated for more than 60 days, the facility shall meet all requirements for a new facility before being relicensed.
- (4) Any existing licensed residential child-care facility that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(e) Adverse Licensure Action.

- (1) The licensing authority shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the residential child-care facility, within 10 working days from the date the residential child-care facility initially received the deficiency report from the licensing authority, submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.
- (2) The licensing authority shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0301 are applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.

(f) Licensure Restriction.

- (1) An applicant who meets any of the following conditions shall have his/her licensure denied:
 - (A) owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C;

- (B) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license;
 - (C) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that is owned by the applicant;
 - (D) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and G.S. 110, Article 7 and the rules adopted under these laws;
 - (E) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E 256; or
 - (F) the applicant is an individual who has been placed on the Responsible Individuals List as defined in 10A NCAC 70A .0102.
- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.
- (3) The facility or agency shall inform the licensing authority of any current licenses or licenses held in the past five years for residential child-care facilities, child-placing agencies or maternity homes in other states. The agency shall provide written notification from the licensing authority in other states regarding violations, penalties or probationary status imposed in that state. The licensing authority shall take this information into consideration when granting a North Carolina license.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;
 Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30);
 Temporary Amendment Eff. July 1, 2003;
 Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on December 18, 2003);
 Amended Eff. September 1, 2007.

10A NCAC 70I .0801 STAFFING REQUIREMENTS

- (a) Effective July 1, 2008, there shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.
- (b) There shall be one direct care supervisor for every 15 direct care service personnel.
- (c) There shall be one social worker assigned for every 15 children.
- (d) When an agency employs five or more social workers, the agency shall employ a social work supervisor.
- (e) Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers
0	0-4
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

History Note: Authority G.S. 143B-153;
 Eff. September 1, 2007.

10A NCAC 70I .0802 TRAINING REQUIREMENTS

- (a) Effective July 1, 2008, direct care staff personnel shall receive 24 hours of continuing education annually.
- (b) Effective July 1, 2008, direct care supervisors shall receive 24 hours of continuing education annually.
- (c) Effective July 1, 2008, social workers shall receive 24 hours of continuing education annually.
- (d) Effective July 1, 2008, social work supervisors shall receive 24 hours of continuing education annually.

History Note: Authority G.S. 143B-153;
 Eff. September 1, 2007.

10A NCAC 71R .0201 FISCAL MANAGEMENT

The fiscal requirements for the Social Services Block Grant (SSBG) are as follows:

- (1) Allocation of Funds. Any allocation of SSBG Funds made directly to Department of Health and Human Services divisions or public or private agencies by the Department of Health and Human Services is based on the following criteria:
 - (a) identified need for the service program as specified in Rule .0101 of this Subchapter;
 - (b) established priorities of the department as specified in Rules .0101 and .0103 of this Subchapter;
 - (c) allowability of the program under federal and state rules and regulations as specified in Rule .0102 of this Subchapter and as established by the General Assembly;

- (d) assessed or potential performance of the service program as specified in Rule .0102 of this Subchapter;
 - (e) resource utilization as specified in this Rule and as established by the General Assembly; and
 - (f) availability of funds necessary to secure federal financial participation as specified in this Rule and as established in federal regulations and by the General Assembly.
- (2) The amount of SSBG funds allocated by the Department of Health and Human Services through the Division of Social Services to each county department of social services is based on the average of the following two factors applied to the total amount of SSBG funds available for county departments of social services:
- (a) the percentage of the statewide population residing within each county; and
 - (b) the percentage of the statewide unduplicated count of SSI recipients, food stamp recipients, TANF recipients and medicaid eligible individuals residing in each county.
- Once allocations to county departments of social services are calculated as described in this Item, they remain at that level each subsequent year.
- (3) Matching Rates for Financial Participation. The following matching rates apply to financial participation in services funded by the SSBG:
- (a) 75 percent financial participation - financial participation for provision of any service listed in this Subchapter unless otherwise provided in this Item is available at a rate of 75 percent of the cost of providing the service;
 - (b) 87-1/2 percent financial participation - financial participation for provision of in-home services - day care services for adults, preparation and delivery of meals, housing and home improvement services, and in-home aide services (levels I through IV) -- is available at a rate of 87-1/2 percent of the cost of providing the service;
 - (c) 90 percent financial participation - financial participation for provision of family planning services and the family planning component of health support services is available at a rate of 90 percent of the cost of providing the service;

- (d) 100 percent financial participation - financial participation for provision of child day care and developmental day services for children is available at a rate of 100 percent of the cost of services for those child day care services reimbursed from an agency's designated 100 percent day care allocation.
- (4) Transferred Funds. If funds from the Temporary Assistance for Needy Families (TANF) Block Grant are transferred to the SSBG for services previously funded by SSBG, the matching rates outlined in Item (3) of this Rule shall apply. If funds from TANF are transferred to SSBG for services not previously funded by SSBG, the matching rates as outlined in Item (3) of this Rule shall not apply.

History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. December 1, 1991; July 1, 1990; December 1, 1983; Temporary Amendment Eff. November 10, 1999; Amended Eff. September 1, 2007; July 17, 2000.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 11H .0102 LICENSE - STEPS

An applicant shall apply for licensure in accordance with the following steps:

- (1) For new or development stage facilities:
 - (a) The applicant shall initially submit the following items to the Commissioner for review:
 - (i) The applicant's name, address and telephone number;
 - (ii) A copy of a non-binding reservation agreement form;
 - (iii) Escrow agreement;
 - (iv) Narrative describing the facility, its mode of operation, and its location; and
 - (v) Any advertising materials to be used.
 - (b) Upon completion of step (1)(a), the applicant may:
 - (i) Disseminate materials describing the intent to develop a Continuing Care facility; and
 - (ii) Enter into fully refundable non-binding reservation agreements for up to one

- thousand dollars
(\$1,000.00). All funds
received shall be escrowed.
- (2) Start-Up Certificate:
- (a) In order to obtain a Start-Up Certificate, the applicant or provider shall submit the following to the Commissioner for review:
- (i) Application for Licensure, as required by G.S. 58-64-5(b);
 - (ii) A Disclosure Statement, as required by G.S. 58-64-20;
 - (iii) A copy of a binding reservation agreement or resident agreement; and
 - (iv) A market feasibility study.
- (b) Upon issuance of the Start-Up Certificate, the applicant or provider may:
- (i) Enter into binding; reservation agreements or resident agreements;
 - (ii) Accept entrance fees and entrance fee deposits over one thousand dollars (\$1,000.00). Any funds received shall be escrowed and shall be released only in accordance with G.S. 58-64-35;
 - (iii) Begin site preparation work; and
 - (iv) Construct model units for marketing.
- (3) Preliminary Certificate:
- (a) In order to obtain a Preliminary Certificate, the applicant or provider shall submit the following to the Commissioner for review:
- (i) An explanation of any material differences between actual costs and projected costs contained in the Start-Up Certificate submission (not required for existing operational Continuing Care facilities that are expanding);
 - (ii) An updated Disclosure Statement;
 - (iii) Current interim financial statements; and
 - (iv) Confirmation of signed agreements for at least 50 percent of the new units, reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal
- to the periodic fee for at least two months for facilities that have no entrance fee. Applicants that do not accept presale entrance fees shall place a deposit with the Commissioner. The deposit shall be either one hundred dollars (\$100.00) for each unit for 50 percent of the total proposed units, or one hundred thousand dollars (\$100,000), whichever amount is more. The deposit shall be made in accordance with G.S. 58-5-20. The deposit shall be refunded to the applicant upon receipt of a permanent license.
- (b) Upon issuance of the Preliminary Certificate, the applicant or provider may:
- (i) Purchase or construct a Continuing Care facility;
 - (ii) Renovate or develop structure(s) not already licensed as a Continuing Care facility; and
 - (iii) Expand existing Continuing Care facilities in excess of 10 percent of the current number of available Independent Living Units (ILU's) or available health related units/beds.
- (4) Permanent License:
- (a) In order to obtain a Permanent License, the applicant or provider shall submit the following to the Commissioner for review at least 60 days before the facility opening:
- (i) An updated Application for Licensure;
 - (ii) An updated Disclosure Statement; and
 - (iii) Confirmation of signed agreements for new units required by the Continuing Care facility to break-even, reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.

- (b) Upon issuance of the Permanent License and satisfaction of all other legal requirements, the applicant or provider may:
- (i) Open the Continuing Care facility; and
 - (ii) Provide Continuing Care.
- (5) Restricted or Conditional License:
- (a) If all other licensing requirements are met, the Commissioner shall, in lieu of denying the issuance of a Permanent License, issue a Restricted or Conditional License to an applicant when one or more of the following conditions exist:
 - (i) A hazardous financial condition.
 - (ii) Occupancy at the facility, or the number of executed agreements for new units at the facility, is below the level at which the facility would break-even.
 - (b) Upon issuance of the Restricted or Conditional License, the provider may operate the facility under the conditions or restrictions established by the Commissioner until such time as the Commissioner alters the conditions for continued operations or issues a Permanent License.
 - (c) Upon issuance of the Restricted or Conditional License, the provider shall file with the Commissioner quarterly financial statements and an occupancy report. These shall be due no later than 45 days following the end of each fiscal quarter.

History Note: Authority G.S. 58-2-40; 58-64-5; 58-64-65; Eff. April 1, 1993; Amended Eff. September 1, 2007; July 1, 2004.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 15 .0702 ELEVATOR, ESCALATOR, DUMBWAITER, AND SPECIAL EQUIPMENT ANNUAL INSPECTION FEES SCHEDULE

Annual inspection fees for elevator, escalator, dumbwaiter, and special equipment shall be as follows:

- | | Equipment | Unit Fee |
|-----|---|----------|
| (a) | All dumbwaiters and handicapped lifts | \$65.00 |
| (b) | All hydraulic elevators, belt man lifts, escalators,
plus all elevators not identified as either | |

- | | | |
|-----|---|----------|
| | hydraulic or traction and special lifting devices | \$175.00 |
| (c) | Traction Elevators | |
| (1) | 1-10 Floors | \$200.00 |
| (2) | Over 10 Floors | \$200.00 |

History Note: Authority G.S. 95-107; 95-95-110.5(20); Temporary Adoption Eff. October 17, 2001; Eff. July 1, 2003; Amended Eff. September 1, 2007.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02N .0201 APPLICABILITY

The provisions for "Applicability" contained in 40 CFR 280.10 (Subpart A) are hereby incorporated by reference including subsequent amendments and editions except that:

- (1) Underground storage tanks containing de minimus concentrations of regulated substances are subject to the requirements for permanent closure in Rules .0802 and .0803 of this Subchapter;
- (2) UST systems defined at 40 CFR 280.10(c) are exempted from meeting the requirements of Section .0900 of this Subchapter; and
- (3) UST systems defined at 40 CFR 280.10(d) are subject to all of the requirements of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c); Eff. January 1, 1991; Amended Eff. November 1, 2007.

15A NCAC 02N .0203 DEFINITIONS

(a) The definitions contained in 40 CFR 280.12 (Subpart A) are hereby incorporated by reference including subsequent amendments and editions except that 40 CFR 280.12 "UST system" shall be changed to read "'UST system' or 'Tank system' means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any."

(b) This Rule shall apply throughout this Subchapter except that:

- (1) "Implementing agency" shall mean the "Division of Waste Management."
- (2) "Division" shall mean the "Division of Waste Management."
- (3) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Waste Management."

(c) The following definitions shall apply throughout this Subchapter:

- (1) "De minimis concentration" means the amount of a regulated substance which does not

- exceed one percent (1%) of the capacity of a tank, excluding piping and vent lines.
- (2) "Expeditionously emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after the necessity for use of the UST system has ceased.
- (3) "Previously closed" means:
- (A) An UST system from which all regulated substances had been removed, the tank filled with a solid inert material, and tank openings were sealed or capped prior to December 22, 1988; or
- (B) An UST system removed from the ground prior to December 22, 1988.
- (4) "Temporarily closed" means:
- (A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or
- (B) Any UST system in use as of December 22, 1988 which complies with the provisions of 15A NCAC 2N .0801
- (5) "Secondary containment" means a method or combination of methods of release detection for UST systems that includes:
- (A) For tank installations or replacements completed prior to November 1, 2007, double-walled construction and external liners (including vaults);
- (B) For underground piping installations or replacements completed prior to November 1, 2007, trench liners and double-walled construction;
- (C) For tank installations or replacements completed on or after November 1, 2007, double-walled construction and interstitial release detection monitoring which meet the requirements of Section .0900 of this Subchapter; and
- (D) For all other UST system component installations or replacements completed on or after November 1, 2007, double-walled construction or containment within a liquid-tight sump, and interstitial release detection monitoring which meet the requirements of Section .0900 of this Subchapter. The Division shall approve other methods of secondary containment for connected piping that it determines are capable of meeting the requirements of Section .0900 of this Subchapter.
- (6) "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.
- (7) "Replace" means to remove an UST system or UST system component and to install another UST system or UST system component in its place.
- (8) "UST system component or tank system component" means any part of an UST system.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c); Eff. January 1, 1991; Temporary Amendment Eff. January 7, 1991 For a Period of 180 Days to Expire on July 6, 1991; Temporary Amendment Expired July 6, 1991; Amended Eff. November 1, 2007.

15A NCAC 02N .0301 PERFORMANCE STANDARDS FOR UST SYSTEM INSTALLATIONS OR REPLACEMENTS COMPLETED AFTER DECEMBER 22, 1988 AND BEFORE NOVEMBER 1, 2007

(a) The "Performance standards for new UST systems" contained in 40 CFR 280.20 (Subpart B) are hereby incorporated by reference including subsequent amendments and editions except that:

- (1) 40 CFR 280.20(a)(4) is not incorporated by reference;
- (2) 40 CFR 280.20(b)(3) is not incorporated by reference; and
- (3) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.

(b) No UST system shall be installed within 100 feet of a well serving a public water system, as defined in 15A NCAC 18C .0102, or within 50 feet of any other well supplying water for human consumption.

(c) An UST system existing on January 1, 1991 and located within the area described in Paragraph (b) of this Rule, may be replaced with a new tank meeting the performance standards of 40 CFR 280.20 and the secondary containment provisions of 40 CFR 280.42(b)(1) through (4). The replacement UST system may not be located nearer to the water supply source than the UST system being replaced.

(d) Except as prohibited in Paragraph (b) of this Rule, an UST system must meet the requirements for secondary containment described at 40 CFR 280.42(b)(1) through (4) if installed:

- (1) Within 500 feet of a well serving a public water supply or within 100 feet of any other well supplying water for human consumption; or
- (2) Within 500 feet of any surface water classified as High Quality Water (HQW), Outstanding Resource water (ORW), WS-I, WS-II or SA.

(e) An UST system or UST system component installation completed on or after November 1, 2007 to replace an UST system or UST system component located within the areas described in Paragraphs (b), (c), or (d) of this Rule shall meet the requirements of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c); Eff. January 1, 1991; Amended Eff. November 1, 2007.

15A NCAC 02N .0302 UPGRADING OF EXISTING UST SYSTEMS AFTER DECEMBER 22, 1988 AND BEFORE NOVEMBER 1, 2007

(a) The provisions for "Upgrading of existing UST systems" contained in 40 CFR 280.21 (Subpart B) are hereby incorporated by reference including subsequent amendments and editions except that existing UST systems located within the areas defined at Rule .0301(b) and (d) of this Section shall be upgraded in accordance with the provisions of 40 CFR 280.21(b) through (d) and shall be provided secondary containment as described at 40 CFR 280.42(b)(1) through (4). An UST system so upgraded shall not be located nearer to a source of drinking water supply than its location prior to being upgraded.

(b) Owners must submit to the Division, on forms provided by the Division and within 30 days following completion, a description of the upgrading of any UST system conducted in accordance with the requirements of 40 CFR 280.21.

(c) UST systems upgraded in accordance with 40 CFR 280.21 prior to January 1, 1991 are in compliance with this Rule.

(d) An UST system or UST system component installation completed on or after November 1, 2007 to upgrade or replace an UST system or UST system component described in Paragraph (a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c); Eff. January 1, 1991; Amended Eff. November 1, 2007.

15A NCAC 02N .0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(D)

(a) The following implementation schedule shall apply only to owners and operators of UST systems located within areas defined in Rule .0301(d) of this Section. This implementation schedule shall be used by the Department for tank owners and operators to comply with the secondary containment requirements contained in Rule .0301(d) for new UST systems and the secondary containment requirements contained in Rule .0302(a) for existing UST systems.

- (1) All new UST systems and replacements to an UST system shall be provided with secondary containment as of April 1, 2001.
- (2) All steel or metal connected piping and ancillary equipment of an UST regardless of

date of installation, shall be provided with secondary containment as of January 1, 2005.

- (3) All fiberglass or non-metal connected piping and ancillary equipment of an UST regardless of date of installation, shall be provided with secondary containment as of January 1, 2008.
- (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment as of January 1, 2008.
- (5) All UST systems installed after January 1, 1991 shall be provided with secondary containment as of January 1, 2016.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring as of April 1, 2001. The enhanced leak detection monitoring must consist of the following:

- (1) Install an automatic tank gauging system (ATG) for each UST;
- (2) Install an electronic line leak detector (ELLD) for each pressurized piping system;
- (3) Conduct at least one 0.1 gallon per hour (gph) test per month or at least one 0.2 gph test per week on each UST system;
- (4) Conduct a line tightness test capable of detecting a leak rate of 0.1 gph, at least once per year for each suction piping system. No release detection is required for suction piping that is designed and constructed in accordance with 40 CFR 280.41(b)(2)(i) through (iv);
- (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, sample the supply well at least once per year. The sample collected from the well must be analyzed for the constituents of petroleum using the following methods:
 - (A) EPA Methods 601 and 602, including methyl tertiary butyl ether, isopropyl ether and xylenes;
 - (B) EPA Method 625; and
 - (C) If a waste oil UST system is present which does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (4), the sample shall also be analyzed for lead and chromium using Standard Method 3030C preparation.
- (6) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000 and yearly thereafter.

(c) An UST system or UST system component installation completed on or after November 1, 2007 to upgrade or replace an UST system or UST system component described in Paragraph (a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);

Temporary Adoption Eff. May 1, 2000;

Eff. April 1, 2001;

Amended Eff. November 1, 2007.

15A NCAC 02N .0502 REQUIREMENTS FOR PETROLEUM UST SYSTEMS

The "Requirements for petroleum UST systems" provisions contained in 40 CFR 280.41 (Subpart D) are hereby incorporated by reference including subsequent amendments and editions except that UST systems located within areas defined in Rule .0301(d) of this Subchapter must meet the requirements for secondary containment described at 40 CFR 280.42(b)(1) through (4) if the UST system installation or replacement was completed before November 1, 2007. UST system or UST system component installations or replacements completed on or after November 1, 2007, must meet the secondary containment requirements of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c);

Eff. January 1, 1991;

Amended Eff. November 1, 2007.

15A NCAC 02N .0503 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS

The "Requirements for hazardous substance UST systems" provisions contained in 40 CFR 280.42 (Subpart D) are hereby incorporated by reference including subsequent amendments and editions except that hazardous substance UST systems or UST system components installed or replacements completed on or after November 1, 2007 must meet the secondary containment requirements of Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c);

Eff. January 1, 1991;

Amended Eff. November 1, 2007.

15A NCAC 02N .0901 GENERAL REQUIREMENTS

(a) This Section applies to an UST system or UST system component installation or replacement completed on or after November 1, 2007.

(b) An UST system or UST system component shall not be installed or replaced within an area defined at 15A NCAC 02N .0301(b).

(c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.

(d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.

(e) An UST system design is required for installation or replacement of an UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]

(f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described at 15A NCAC 02N .0907.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) Detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) Contain regulated substances released from an UST system until they are detected and removed;
- (3) Prevent a release of regulated substances to the environment outside of the containment system;
- (4) Direct releases to a monitoring point or points;
- (5) Provide a release detection monitoring device or monitoring method for the interstitial space;
- (6) Continuously monitor the interstitial space of double-walled tanks for releases using pressure, vacuum or hydrostatic monitoring methods;
- (7) Continuously monitor the interstitial space of non-tank components for releases using pressure, vacuum, or hydrostatic methods, or by using an electronic sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket; and
- (8) Provide a printed record of release detection monitoring results and an alarm history for each month.

(j) New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

(k) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturers written guidelines. The results of the last annual check must be recorded, maintained at the UST site or

the tank owner or operator's place of business, and made available for inspection.

(l) Releases detected in an interstitial space shall be reported in accordance with .0601 and investigated in accordance with the manufacturers written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump must also be reported in accordance with .0601 and investigated in accordance with the manufacturer's written guidelines.

(m) UST systems and UST system components shall also meet all of the installation requirements specified in 40 CFR 280.20(c), (d) and (e). In addition, overfill prevention equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. November 1, 2007.

15A NCAC 02N .0902 NOTIFICATION

(a) Owners and operators must provide notification of installation or replacement of an UST system, UST, or connected piping to the Division in accordance with 15A NCAC 02N .0303. The notice shall also include:

- (1) An UST system design.
- (2) Equipment to be installed including model and manufacturer and the materials of construction.
- (3) Device or method to be used to allow piping to be located after it is buried underground.
- (4) A site plan drawn to scale showing the proposed location of UST systems relative to buildings and other permanent structures, roadways, utilities, other UST systems, monitoring wells, and water supply wells used for human consumption within 500 feet.
- (5) A schedule for UST system installation or replacement.

(b) Owners and operators must notify the Division at least 48 hours prior to the following stages of construction so that the Division may perform an inspection of the installation:

- (1) Pre-installation tightness testing of tanks; and
- (2) Final tightness testing of piping before it is backfilled.

(c) Documents showing the following information shall be submitted to the Division within 30 days after UST system, UST, or connected piping installation or replacement is completed and shall be maintained at the UST system site or the owner's or operator's place of business for the life of the UST system. These records shall be transferred to a new tank owner at the time of a transfer of tank ownership:

- (1) Certification from the UST system installer containing:
 - (A) The UST system installer's name, address and telephone number;

training and any certification received from the manufacturer of the equipment that was installed or replaced or the equipment manufacturer's authorized representative including any certification number;

- (B) An as-built diagram drawn to scale showing: the name and address of the UST system site; the date of UST system, UST, or connected piping installation or replacement; the equipment that was installed including model and manufacturer; the information described at 15A NCAC 02N .0903(b); the method used to anchor a tank in the ground; if the equipment has single-walled or double-walled construction; the year the piping was manufactured and any production code; and the device or method used to allow piping to be located after it is buried underground. The as-built diagram shall also show the location of the installed or replaced UST systems relative to: buildings and other permanent structures, utilities, monitoring wells and other UST systems located at the site; adjacent roadways; and water supply wells used for human consumption within 500 feet;
- (C) A listing of the manufacturer's written guidelines, codes of practice, and industry standards used for installation; and
- (D) A statement that the UST system was installed in accordance with the design and the manufacturer's specifications.

- (2) Manufacturer warranties;
- (3) Any equipment performance claims; and
- (4) Records of all tightness testing performed.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. November 1, 2007.

15A NCAC 02N .0903 TANKS

(a) Tanks must be protected from external corrosion in accordance with 40 CFR 280.20(a)(1), (3) or (5).

(b) The exterior surface of a tank shall bear a permanent marking, code stamp or label showing the following information:

- (1) The engineering standard used;
- (2) The diameter in feet;
- (3) The capacity in gallons;

- (4) The materials of construction of the inner and outer walls of the tank including any external or internal coatings;
- (5) Serial number or other unique identification number designated by the tank manufacturer;
- (6) Date manufactured; and
- (7) Identity of manufacturer.

(c) Whenever an existing tank is removed prior to installation of a new tank, piping that does not meet the standards of this Section shall also be removed. The replacement tank shall not be connected to piping that does not meet the standards of this Section.

(d) Tanks that will be reused must be certified by the tank manufacturer prior to re-installation and must meet all of the requirements of this Section. Proof of certification must be submitted to the Division along with a notice of intent (Rule .0902).

(e) Tanks shall be tested for tightness before and after installation in accordance with the following requirements:

- (1) Pre- Installation Tightness Test - Before installation, the primary containment and the interstitial space shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy can be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380 at a cost of ninety-five dollars (\$95.00). The presence of soap bubbles or water droplets during a pressure test, any change in vacuum beyond the limits specified by the tank manufacturer during a vacuum test, or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (2) Post-installation Tightness Test - The interstitial space shall be checked for a loss of pressure or vacuum, or a change in liquid level in an interstitial space liquid reservoir. Any loss of pressure or vacuum beyond the limits specified by the tank manufacturer, or a change in liquid level beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (3) If a tank fails a tightness test, tank installation shall be suspended until the tank is replaced or repaired in accordance with the manufacturer's specifications. Following any repair, the tank shall be re-tested for tightness in accordance with Subparagraph (e)(1) of this Rule if it failed the pre-installation tightness test and in accordance with Subparagraph (e)(2) of this

Rule if it failed the post-installation tightness test.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. November 1, 2007.

15A NCAC 02N .0904 PIPING

(a) Piping, with the exception of flexible connectors and piping connections, shall be pre-fabricated with double-walled construction. Any flexible connectors or piping connections that do not have double-walled construction shall be installed in containment sumps that meet the requirements of 15A NCAC 02N .0905.

(b) Piping must be constructed of non-corroding materials. Metal flexible connectors and piping connections shall be installed in containment sumps that meet the requirements of 15A NCAC 02N .0905.

(c) Piping must comply with the UL 971 standard "Nonmetallic Underground Piping for Flammable Liquids;" that is in effect at the time the piping is installed. UL 971 standard "Nonmetallic Underground Piping for Flammable Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 at a cost of four hundred forty-five dollars (\$445.00).

(d) Piping that is buried underground must be constructed with a device or method that allows it to be located once it is installed.

(e) Piping that conveys regulated substances under pressure must also be equipped with an automatic line leak detector that meets the requirements of 40 CFR 280.44(a).

(f) When existing piping is replaced or extended, the entire piping system shall meet the standards of this Section. However, if only existing riser pipes, flexible connectors, fittings, flanges, valves or pumps are replaced, then only the replacement equipment must meet the standards of this Section.

(g) At the time of installation, the primary containment and interstitial space of the piping shall be initially tested, monitored during construction and finally tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." The presence of soap bubbles or water droplets or any loss of pressure beyond the limits specified by the piping manufacturer during testing shall be considered a failure of the integrity of the piping. If the piping fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's written specifications. Following any repair, the piping must be re-tested for tightness in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

(h) Piping that is not monitored continuously for releases using vacuum, pressure or hydrostatic methods, must be tested for tightness every three years following installation. The primary containment and interstitial space of the piping shall be tested in accordance with the manufacturers written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." If the piping fails a

tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the piping must be re-tested for tightness. The most recent periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

History Note: Authority G.S. 143-215.3(A)(15); 143B-282(A)(2)(H); Eff. November 1, 2007.

15A NCAC 02N .0905 CONTAINMENT SUMPS

(a) Containment sumps must be constructed of non-corroding materials.

(b) Containment sumps must be designed and manufactured expressly for the purpose of containing and detecting a release.

(c) Containment sumps must be designed, constructed, installed and maintained to prevent water infiltration.

(d) Electronic sensor probes used for release detection monitoring must be located no more than two inches above the lowest point of the containment sump.

(e) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Any change in water level shall be considered a failure of the integrity of the sump. Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

- (1) The inner surface of the sump is tested to at least six inches above the highest joint or penetration fitting, whichever is higher; and
- (2) The method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(f) If a containment sump fails an installation tightness test, the sump must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump must be re-tested for tightness in accordance with Paragraph (e) of this Rule.

Containment sumps that are not monitored continuously for releases using vacuum, pressure or hydrostatic interstitial monitoring methods shall be tested for tightness every three years following installation in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." If a containment sump fails a periodic tightness test, the sump must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump must be re-tested for tightness in accordance with Paragraph (e) of this Rule. The last periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

(g) All containment sumps shall be visually inspected at least annually for the presence of water or regulated substance. Any water or regulated substance must be removed from the sump within 48 hours of discovery. The visual inspection results must be documented and must be maintained for at least one year at the UST site or the tank owner's or operator's place of business and must be readily available for inspection.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); Eff. November 1, 2007.

15A NCAC 02N .0906 SPILL BUCKETS

(a) Spill buckets shall be pre-fabricated with double-walled construction.

(b) Spill buckets must be protected from corrosion by being constructed of non-corroding materials.

(c) Spill buckets must be designed, constructed, installed and maintained to prevent water infiltration.

(d) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Any change in vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the equipment manufacturer shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket must be re-tested for tightness in accordance with the manufacturers' written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

(e) Spill buckets that are not monitored continuously for releases using vacuum, pressure or hydrostatic methods, must be tested for tightness every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturers' written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." If the spill bucket fails a tightness test, it must be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket must be re-tested for tightness. The last periodic tightness test record must be maintained at the UST site or the tank owner or operator's place of business and must be readily available for inspection.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); Eff. November 1, 2007.

15A NCAC 02N .0907 NATIONAL CODES OF PRACTICE AND INDUSTRY STANDARDS

In order to comply with this Section, owners and operators must comply with either of the following standards:

- (1) The most recent versions of the following national codes of practice and industry standards applicable at the time of UST system installation or replacement shall be used to comply with this Section.
 - (a) American Concrete Institute (ACI) International 224R-89, "Control of Cracking in Concrete Structures." ACI International 224R-89, "Control of Cracking in Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ACI International, P.O. Box 9094, Farmington Hills, Michigan 48333-9094 at a cost of sixty-seven dollars and fifty cents (\$67.50).
 - (b) ACI International 350-06, "Environmental Engineering Concrete Structures." ACI International 350-06, "Environmental Engineering Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ACI International, P.O. Box 9094, Farmington Hills, Michigan 48333-9094 at a cost of one hundred sixty-six dollars and fifty cents (\$166.50).
 - (c) American Petroleum Institute (API) Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems." API Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of one hundred eight dollars (\$108.00).
 - (d) API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines." API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of fifty-five dollars (\$55.00).
 - (e) API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems." API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of one hundred eight dollars (\$108.00).
 - (f) API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets." API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of seventy-three dollars (\$73.00).
 - (g) API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks." API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of seventy-six dollars (\$76.00).
 - (h) API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals." API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 at a cost of fifty-nine dollars (\$59.00).
 - (i) American Society of Mechanical Engineers (ASME) International: B31.4-2006, "2006 Pipeline

- Transportation Systems for Liquid Hydrocarbons and other Liquids." ASME International: B31.4-2006, "2006 Pipeline Transportation Systems for Liquid Hydrocarbons and other Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ASME, 22 Law Drive, Box 2900, Fairfield, NJ 07007-2900 at a cost of one hundred twenty-nine dollars (\$129.00).
- (j) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code." NFPA 30, "Flammable and Combustible Liquids Code" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 at a cost of forty-two dollars and fifty cents (\$42.50).
 - (k) NFPA 30A, "Automotive and Marine Service Station Code." NFPA 30A, "Automotive and Marine Service Station Code" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 at a cost of thirty-three dollars and fifty cents (\$33.50).
 - (l) NFPA 329, "Handling Underground Releases of Flammable and Combustible Liquids." NFPA 329, "Handling Underground Releases of Flammable and Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 at a cost of thirty-three dollars and fifty cents (\$33.50).
 - (m) PEI: PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."
 - (n) Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks." Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 at a cost of fifty dollars (\$50.00).
 - (o) STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks." STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 at a cost of fifty dollars (\$50.00).
 - (p) STI 922, "Specifications for Permatank." STI 922, "Specifications for Permatank" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 at a cost of fifty dollars (\$50.00).
 - (q) Underwriters UL 58, "Steel Underground tanks for Flammable and Combustible Liquids." UL 58, "Steel Underground tanks for Flammable and Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 at a cost of four hundred forty-five dollars (\$445.00).
 - (r) UL 567, "Pipe Connectors for Petroleum Products and LP Gas." UL 567, "Pipe Connectors for Petroleum Products and LP Gas" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 at a cost of eight hundred eighty-five dollars (\$885.00).

- (s) UL 971, "Nonmetallic Underground Piping for Flammable Liquids;"
- (t) UL 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures." UL 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 at a cost of four hundred forty-five dollars (\$445.00); or
- (u) UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks." UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 at a cost of eight hundred eighty-five dollars (\$885.00); or
- (2) Other appropriate codes or standards applicable at the time of UST system installation or replacement may be used provided they are developed by ACI, American National Standards Institute (ANSI), API, ASME, ASTM, NFPA, PEI, STI and UL.

History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Eff. November 1, 2007.

15A NCAC 02S .0101 SCOPE AND PURPOSE

The purpose of this Subchapter is to establish the criteria for determining eligibility for certification into the North Carolina Dry-Cleaning Solvent Cleanup Fund program, minimum management practices, a risk-based approach for assessment and remediation of certified facilities, and the criteria for the disbursement of funds from the North Carolina Dry-Cleaning Solvent Cleanup Fund.

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Eff. August 1, 2000; Amended Eff. September 1, 2007.

15A NCAC 02S .0401 PRIORITIZATION ASSESSMENT

History Note: Authority G.S. 143-215.104D(b); 150B-21.2; Temporary Adoption Eff. June 1, 2001;

Eff. August 1, 2002; Repealed Eff. September 1, 2007.

15A NCAC 02S .0501 PURPOSE AND APPLICABILITY

The purpose of this Section is to establish a risk-based corrective action approach for assessment and remediation of contamination at certified dry-cleaning facilities or abandoned sites. This Rule applies to risk-based corrective action undertaken pursuant to the terms of assessment and remediation agreements between petitioners and the Division.

History Note: Authority G.S. 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0502 ABATEMENT OF IMMINENT HAZARD

If the Division determines that contamination or conditions at a site constitute an imminent hazard as defined in G.S. 143-215.104B(b)(16), the Division may require the development and implementation of a plan to abate the imminent hazard. Actions taken to abate the imminent hazard may include, but are not limited to, provision of alternate sources of drinking water, soil excavation, vapor mitigation and well abandonment.

History Note: Authority G.S. 143-215.104C; 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0503 PRIORITIZATION OF CERTIFIED FACILITIES AND SITES

(a) The Division shall determine the priority ranking of certified facilities and abandoned sites for the initiation and scheduling of assessment and remediation activities.

(b) The Division shall consider the following factors in determining the priority ranking of a facility or site:

- (1) Proximity of contamination to public and private water supply wells and surface water;
- (2) Existing or potential impacts to public and private water supply wells and surface water;
- (3) Existing or potential vapors from contamination entering buildings and other structures;
- (4) Existing or potential exposure to contaminated soils;
- (5) The degree of contamination in soil, groundwater and surface water; and
- (6) Any other factor relevant to the degree of harm or risk to public health and the environment posed by the existence or migration of contamination at the facility or site.

(c) The Division shall determine the initial priority of facilities and sites based on information available to the Division.

(d) The ranking of facilities and sites shall be updated and revised to reflect changes in site conditions and current information.

History Note: Authority G.S. 143-215.104C; 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0504 CONTAMINATED SITE CHARACTERIZATION

(a) A site assessment shall describe:

- (1) The source, types and levels of contamination at the site;
- (2) Any immediate actions required to abate any imminent hazard to public health, safety, or welfare or the environment;
- (3) All receptors and exposure pathways;
- (4) The horizontal and vertical extent of soil and groundwater contamination;
- (5) The geology and hydrogeology of the contaminated site, and features influencing the movement, chemical, and physical character of the chemicals of concern;
- (6) The current and anticipated uses of property and groundwater at the site.

(b) The Division shall determine the scope of any assessment necessary to adequately characterize a site.

History Note: Authority G.S. 143-215.104C; 143-215.104D; 150B-21.2;

Eff. September 1, 2007.

15A NCAC 02S .0505 PRELIMINARY SOURCE REMOVAL

The Division may authorize the performance of preliminary source removal at a site that does not present an imminent hazard as set forth in 15A NCAC 02S .0502 prior to approval of a remedial action plan if the Division determines that:

- (1) The removal would eliminate or significantly reduce a continuing source of contamination at the site, thereby reducing the risk to public health and the environment;
- (2) Current conditions at the site allow the removal to be conducted in a manner that will result in cost savings to the Fund; and
- (3) There is sufficient money in the Fund to pay for the removal and funding is appropriate based on the relative priority of the site.

History Note: Authority G.S. 143-215.104D(b)(3); 150B-21.2;

Eff. September 1, 2007.

15A NCAC 02S .0506 TIERED RISK ASSESSMENT

(a) A tiered risk assessment shall be conducted to establish risk-based screening levels or site-specific target levels for a site.

(b) A site conceptual model shall be developed including the following elements:

- (1) The type and distribution of chemicals of concern;
- (2) The geology and hydrogeology;
- (3) An exposure model that identifies the receptors, including sensitive subgroups, and the exposure pathways; and
- (4) Land use classification as either residential or non-residential.

(c) Tier 1. A Tier 1 risk assessment is based on chemical-specific risk-based screening levels. The representative concentrations of chemicals of concern that exist at a site shall be compared to these risk-based screening levels for all complete and potentially complete exposure pathways. If the concentrations exceed the risk-based screening levels, the Division may require remediation of the site to risk-based screening levels or the performance of a Tier 2 risk assessment to establish site-specific target levels. Factors considered by the Division when determining if a Tier 2 assessment is warranted shall include:

- (1) Whether the assumptions on which the risk-based screening levels are based are representative of the site-specific conditions;
- (2) Whether the site-specific target levels developed under Tier 2 either are likely to be significantly different than the risk-based screening levels or will significantly modify remediation activities; or
- (3) Whether the cost of remediation to achieve risk-based screening levels will likely be greater than the cost of further tier evaluation and subsequent remediation.

(d) Tier 2. A Tier 2 assessment shall allow consideration of site-specific information in order to calculate site-specific target levels. This information includes the locations of actual points of exposure and points of demonstration as well as site-specific geologic, hydrogeologic and contaminant fate and transport parameters. All parameters and procedures used during the Tier 2 risk assessment shall be provided by the Division. The representative concentrations of chemicals of concern that exist at a site shall be compared to these Tier 2 site-specific target levels for all complete and potentially complete exposure pathways. If the concentrations exceed the Tier 2 site-specific target levels, the Division may require remediation of the site to Tier 2 site-specific target levels or the performance of a Tier 3 risk assessment to establish alternative site-specific target levels. Factors considered by the Division when determining if a Tier 3 assessment is warranted shall include:

- (1) Whether the assumptions on which the Tier 2 site-specific target levels are based are sufficiently representative of the site-specific conditions;
- (2) Whether the alternative site-specific target levels developed under Tier 3 either are likely to be significantly different than the Tier 2 site-specific target levels or will significantly modify remediation activities; or
- (3) Whether the cost of remediation to achieve Tier 2 site-specific target levels will likely be greater than the cost of further tier evaluation and subsequent remediation.

(e) Tier 3. A Tier 3 risk assessment shall allow consideration of additional site-specific and toxicological data in order to calculate alternative site-specific target levels. This data may include alternative, technically defensible toxicity factors, physical and chemical properties, site-specific exposure factors, and alternative fate and transport models. The representative concentrations of chemicals of concern that exist at a site shall

be compared to these Tier 3 site-specific target levels for all complete and potentially complete exposure pathways. If the concentrations exceed the Tier 3 site-specific target levels, the Division shall consider the results of the Tier 2 and Tier 3 assessments to determine the site-specific target levels.

(f) The determination of risk-based screening levels and site-specific target levels shall be based on the following assumptions and requirements:

- (1) Concentrations of chemicals of concern in soil shall not exceed Tier 1 residential risk-based screening levels on land classified as residential land use. Concentrations in soil may exceed Tier 1 residential risk-based screening levels on property containing both residential and non-residential land use if the ground-level uses are non-residential and the potential for exposure to contaminated soil has been eliminated;
- (2) An ecological risk evaluation shall be conducted with guidance provided by the Division to determine the risk to plant and animal receptors and habitats.
- (3) The most recent versions of the following references, in order of preference, shall be used to obtain the quantitative toxicity values necessary to calculate risk to identified receptors:
 - (A) Integrated Risk Information System (IRIS);
 - (B) Provisional Peer Reviewed Toxicity Values (PPRTVs);
 - (C) Published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (4) All current and probable future use of groundwater shall be protected. If groundwater has been contaminated or is likely to be contaminated, a point of exposure must be established to quantitatively evaluate the groundwater use pathway. The point of exposure shall be established at the nearest to the source of the following locations:
 - (A) Closest existing water supply well;
 - (B) Likely nearest future location of a water supply well;
 - (C) Hypothetical point of exposure located at a distance of 500 feet from the downgradient property boundary of the facility site; or
 - (D) Hypothetical point of exposure located at a distance of 1000 feet downgradient from the source.
- (5) For chemicals of concern for which there is a groundwater quality standard in 15A NCAC 02L, concentrations at the point of exposure shall not exceed the groundwater quality standards as specified in 15A NCAC 02L. For chemicals of concern for which there are no groundwater quality standards, concentrations

at the point of exposure shall not exceed the risk-based screening levels or site-specific target levels for these chemicals of concern that assume ingestion based on domestic water use;

- (6) Concentrations of chemicals of concern shall be measured and evaluated at a point of demonstration well to ensure that concentrations are protective of any point of exposure.
- (7) Surface water is protected. The standards for surface water shall be the water quality standards in 15A NCAC 02B.

Note: Portions of this rule extracted, with permission, from E2081-00(2004)e1 Standard Guide for Risk-Based Corrective Action, copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, www.astm.org .

History Note: Authority G.S. 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0507 REMEDIAL ACTION PLAN

(a) If the level of contamination of any chemical of concern exceeds risk-based screening levels or site-specific target levels, a remedial action plan shall be developed and implemented at the site.

(b) A remedial action plan must be sufficient to meet the risk-based screening levels or site-specific target levels established for the site and shall include, if applicable:

- (1) A summary of the results of all assessment and interim remedial activities conducted at the site;
- (2) Justification for the remediation method selected based on an analysis of each of the following factors:
 - (A) Results from any pilot studies or bench tests;
 - (B) The remediation methods considered and why other alternatives were rejected;
 - (C) Practical considerations in implementing the remediation, including ease of construction, site access, and required permits;
 - (D) Operation and maintenance requirements;
 - (E) The risks and effectiveness of the proposed remediation including an evaluation of the type, degree, frequency, and duration of any post-remediation activity that may be required, including operation and maintenance, monitoring, inspection, reporting, and other activities necessary to protect public health, safety, and welfare and the environment;

- (F) Long-term reliability and feasibility of engineering and institutional controls;
 - (G) Technical feasibility of the proposed method to reduce the concentrations of chemicals of concern at the site;
 - (H) Estimated time required to achieve risk-based screening levels or site-specific target levels;
 - (I) Cost-effectiveness of installation, operation and maintenance, when compared to other remediation alternatives; and
 - (J) Community acceptance.
- (3) An evaluation of the expected breakdown chemicals or by-products resulting from natural processes;
 - (4) A discussion of the proposed treatment or disposition of contaminated media that may be produced by the remediation system;
 - (5) An operation and maintenance plan and schedule for the remediation system;
 - (6) Design drawings of the proposed remediation system;
 - (7) A groundwater monitoring plan to monitor plume stability and effectiveness of the remediation;
 - (8) A plan to evaluate the effectiveness of the remedial efforts and the achievement of risk-based screening levels or site-specific target levels;
 - (9) A plan that addresses the health and safety of nearby residential and business communities;
 - (10) A discussion of how the remedial action plan will protect ecological receptors;
 - (11) All required land-use restrictions and notices prepared in accordance with G.S. 143-215.104M and 15A NCAC 02S. 0508; and
 - (12) Measures necessary to protect plant and animal receptors and habitats.
- (c) Monitored natural attenuation of chemicals of concern may be approved as an acceptable remediation method, provided:
- (1) All free product has been removed or controlled to the maximum extent practicable;
 - (2) Contaminated soil is not present in the unsaturated zone above risk-based screening levels or site-specific target levels for the soil-to-groundwater pathway for the site unless it is demonstrated that the soil does not constitute a continuing source of contamination to groundwater at concentrations that pose a threat to human health, safety or the environment, and it is demonstrated that the rate of natural attenuation of chemicals of concern in groundwater exceeds the rate at which the chemicals of concern are leaching from the soil;
 - (3) The physical, chemical and biological characteristics of each chemical of concern and its by-products are conducive to degradation or attenuation under the site-specific conditions;
 - (4) The travel time and direction of migration of chemicals of concern can be predicted with reasonable certainty;
 - (5) Available data shows an apparent or potential decrease in concentrations of chemicals of concern;
 - (6) The chemicals of concern will not migrate onto adjacent properties that are not served by an existing public water supply system, unless the owners have consented to the migration of chemicals of concern onto their property;
 - (7) If any of the chemicals of concern are expected to intercept surface waters, the groundwater discharge will not exceed the standards for surface water contained in 15A NCAC 02B .0200;
 - (8) All necessary access agreements needed to monitor groundwater quality have been or can be obtained; and
 - (9) A monitoring program, sufficient to track the degradation and attenuation of chemicals of concern and by-products within and down-gradient of the plume and detect chemicals of concern and by-products at least one year's travel time prior to their reaching any existing or foreseeable receptor, is developed and implemented. Analytical data collected during monitored natural attenuation shall be evaluated on an annual basis to determine if the annual rate of expected progress is being achieved.
- (d) If the Division determines that it is technically impracticable to achieve a risk-based screening level or site-specific target level for a specific chemical of concern due to geological conditions, remediation technology limitations, site conditions, physical limitations or other factors, the Division may approve or modify the remedial action plan to provide for the use of institutional controls, engineering controls, and long-term monitoring until the risk-based screening levels or site-specific target levels are met. Methods that may be used to demonstrate that remediation is technically impracticable include the following:
- (1) A full-scale field demonstration consisting of an operating remediation system;
 - (2) A pilot study applying a remediation technology on a small portion of the contaminated site;
 - (3) Predictive analyses or modeling that shows the potential for the migration and remediation of chemicals of concern to occur at the site;
 - (4) Comparison of specific conditions at the subject site to those of similar sites in case studies or peer-reviewed and published research papers;
 - (5) A combination of the above methods; or

- (6) Other equivalent methods that demonstrate that remediation is technically impracticable.

History Note: Authority G.S. 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0508 LAND-USE RESTRICTIONS

- (a) The Division may require the imposition, recordation and enforcement of land-use restrictions pursuant to G.S. 143-215.104M.
- (b) All land use restrictions and notices shall be on forms provided by the Division.

History Note: Authority G.S. 143-215.104D; 143-215.104M; 150B-21.2; Eff. September 1, 2007.

15A NCAC 02S .0509 NO FURTHER ACTION CRITERIA

- (a) The Division shall issue a "No Further Action" letter if each of the following criteria is met:

- (1) Risk-based screening levels or site-specific target levels for each chemical of concern have been achieved, and, if applicable, plant and animal receptors and their habitats have been protected.
- (2) The stability of the plume has been verified by a monitoring period of at least one year after achievement of the goals set forth in the remedial action plan; and
- (3) All required land-use restrictions and notices have been recorded.

(b) The Division shall not issue a "No Further Action" letter if the Division has determined that it is technically impracticable to remediate the site to risk-based screening levels or site-specific target levels.

(c) If site conditions change or additional information becomes available to the Division to indicate that the "No Further Action" letter no longer applies, the site poses an unacceptable risk to human health, safety or the environment, or the land-use restrictions imposed in accordance with G.S. 143-215.104M are violated, the Division may rescind the "No Further Action" letter and require further remedial action at the site.

History Note: Authority G.S. 143-215.104D; 150B-21.2; Eff. September 1, 2007.

15A NCAC 07H .1102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian

- (2) property owners indicating that they have no objections to the proposed work; or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff determines that the project exceeds the guidelines established by the General Permit Process, DCM shall notify the applicant that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the proposed bulkhead alignment may be appropriately marked. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the bulkhead or riprap structure shall be completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. October 1, 2007; September 1, 2006; January 1, 1990; December 1, 1987.

15A NCAC 07H .1202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff shall

review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the general authorization may be reissued.

(d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal Management.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. October 1, 2007; August 1, 1998; January 1, 1990.

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice. The notice shall also indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be

completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the general authorization may be reissued.

(d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal Management.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. October 1, 2007; August 1, 2004; May 1, 1990; January 1, 1990.

15A NCAC 07H .2102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff determines that the project exceeds the guidelines established by the General Permit Process, DCM shall notify the applicant that he must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the proposed breakwater alignment may be appropriately marked. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the breakwater shall be completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

History Note: Authority G.S. 113A-107; 113A-118.1; Eff. June 1, 1994; Amended Eff. October 1, 2007; September 1, 2006; August 1, 2000.

15A NCAC 07H .2402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.

(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section. If DCM staff finds that the comments are worthy of more in-depth review, DCM shall notify the applicant that he must submit an application for a major development permit.

(d) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative so that the wetland protection structure may be appropriately marked. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the wetland protection structure shall be completed within 120 days of the issuance of the general authorization or the authorization expires and it shall be necessary to re-examine the alignment to determine if the general authorization may be reissued.

History Note: Authority G.S. 113A-107; 113A-118.1;

Eff. August 1, 2000;

Amended Eff. October 1, 2007.

15A NCAC 07H .2702 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development. The applicant shall provide information on site location, dimensions of the project area, and applicant name and address.

(b) The applicant shall provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The

notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection.

(c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit.

(d) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. Written authorization to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the general authorization or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the general authorization may be reissued.

History Note: Authority G.S. 113A-107; 113A-118.1;

Temporary Adoption Eff. June 15, 2004;

Eff. April 1, 2005;

Amended Eff. October 1, 2007.

15A NCAC 07M .0307 ELIGIBLE APPLICANTS/GRANT SELECTION CRITERIA

(a) Any local government in the 20 coastal county region having ocean beaches, estuarine or public trust waters within its jurisdiction may apply for access funds.

(b) Eligible projects include:

- (1) Land acquisition, including acquisition of unbuildable lots;
- (2) Local Access Sites;
- (3) Neighborhood Access Sites;
- (4) Regional Access Sites;
- (5) Multi-regional Access Sites;
- (6) Urban waterfront development projects;
- (7) Reconstruction or relocation of existing, damaged facilities; and
- (8) Reconstruction or replacement of aging facilities.

(c) The following criteria shall be used to select projects that may receive financial assistance:

- (1) Applicant demonstrates a need for the project due to a high demand for public access and limited opportunities;
- (2) Project is identified in a local beach or waterfront access plan;
- (3) Applicant has not received previous assistance from this grant program or the applicant has received assistance and demonstrated its ability to complete previous projects successfully with funds from this grant program;
- (4) Applicant's commitment of matching funds exceeds the required local share of the total

project cost provided in Paragraphs (d) and (e) of this Rule;

- (5) Project proposal includes multiple funding sources;
- (6) The project location includes donated land deemed unbuildable due to regulations or physical limitations;
- (7) Applicant has demonstrated its ability to complete previous projects successfully with funds from this grant program.

(d) Land acquisition, including acquisition of unbuildable lots, shall include a local government contribution of at least 15 percent of the acquisition cost, except for Tier 1 and Tier 2 counties as designated by the N.C. Department of Commerce, and their respective municipalities which shall have a contribution of at least 10 percent. At least one half of the local contribution shall be cash match, the remainder may be in-kind match.

(e) Local government contributions for access site improvements shall be at least 25 percent of the project costs, except for Tier 1 and Tier 2 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

(f) Federal and other State funds may be used as the local government cash contribution, provided such funds are not already being used as matching funds for other state programs.

(g) Multi-phase projects and previous contingency projects shall be considered on their own merits within the pool of applications being reviewed in any year.

*History Note: Authority G.S. 113A-124; 113A-134.3;
Eff. January 1, 1998;
Amended Eff. September 1, 2007; August 1, 2000.*

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 10 .0505 CONTINUING EDUCATION REQUIREMENTS FOR COUNTY ASSESSORS

(a) Any person who serves as county assessor must attend at least 30 hours of instruction in the appraisal or assessment of property during each two-year period to be eligible for reappointment. A combination of continuing education programs may fulfill this requirement. The Department of Revenue must approve all continuing education programs.

(b) The Department of Revenue shall consider the presenter, content of the program, actual length of the program, and instruction provided in the appraisal or assessment of property when approving continuing education programs. A continuing education program for county assessors may consist of courses, workshops, seminars, conferences, or regional tax meetings.

*History Note: Authority G.S. 105-262; 105-289(d); 105-294(d);
Eff. August 1, 1984;
Amended Eff. September 1, 2007; July 1, 2000; July 1, 1993.*

17 NCAC 10 .0507 CONTINUING EDUCATION REQUIREMENTS FOR COUNTY APPRAISERS

(a) County appraisers must attend at least one course of instruction every two years in the appraisal or assessment of the type of property they are responsible for appraising. A course of instruction, as referenced in G.S. 105-296(b), is at least 30 hours of instruction. A combination of continuing education programs may fulfill this requirement. The Department of Revenue must approve all continuing education programs.

(b) The Department of Revenue shall consider the presenter, content of the program, actual length of the program, and instruction provided in the appraisal or assessment of property when approving continuing education programs. A continuing education program for county appraisers may consist of courses, workshops, or seminars.

*History Notes: Authority G.S. 105-262; 105-289(d); 105-296(b);
Eff. August 1, 1984;
Amended Eff. September 1, 2007; July 1, 1993.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .0211 PASSING SCORE

To pass Step 3 of the USMLE the applicant shall attain a score of at least 75. Step 3 shall be passed within seven years of passing Step 1 OR within 10 years if the reason for the delay is based on an applicant's obtaining an MD/PhD degree. Exceptions to this Rule may also be granted to an applicant who experienced a situation of extreme hardship which by its severity would necessarily cause a delay to the applicant's medical study and training. All factors to be considered must be verified and documented in the applicant's file. Such factors may include whether the conditions were within the control of the applicant and whether there is another option available to the applicant to satisfy the rule.

*History Note: Authority G.S. 90-9; 90-12; 90-15;
Eff. February 1, 1976;
Amended Eff. January 1, 1983; November 8, 1977;
Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;
Amended Eff. November 1, 1985; May 1, 1985;
Recodified from 21 NCAC 32B .0111 Eff. April 5, 1989;
Amended Eff. September 1, 2007; July 1, 2004; July 1, 1993;
May 1, 1989.*

21 NCAC 32B .0314 PASSING EXAM SCORE

USMLE – Applicants who have taken USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) A score of at least 75 is required on Step 3; and

- (2) The USMLE Step 3 shall be passed within seven years of the date of passing Step 1 OR within 10 years if the reason for the delay is based on an applicant's obtaining a MD/PhD degree. Exceptions to this Rule may also be granted to an applicant who experienced a situation of extreme hardship which by its severity would necessarily cause a delay to the applicant's medical study and training. All factors to be considered must be verified and documented in the applicant's file. Such factors may include whether the conditions were within the control of the applicant and whether there is another option available to the applicant to satisfy the rule.
- (3) An applicant shall not be deemed to have received a passing score on any Step of the USMLE unless applicant has received a passing score on that Step within six attempts. Step 2 consists of two components: Clinical Knowledge (CK) and Clinical Skills (CS). An applicant must receive a passing score within six attempts on Step 2 (CK) and, likewise, must receive a passing score within six attempts on Step 2 (CS).
- (4) The Board shall not issue a license to practice medicine to any applicant who has failed to receive a passing score on any Step, or component thereof, of the USMLE within six attempts unless it is determined, in the Board's discretion, that the applicant has successfully completed additional training or education which is approved and accepted by the Board.

History Note: Authority G.S. 90-6; 90-10; 90-13; Eff. January 1, 1983; Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. November 1, 1985; May 1, 1985; Recodified from 21 NCAC 32B .0214 Eff. April 5, 1989; Amended Eff. September 1, 2007; October 1, 2006; July 1, 2004; July 1, 1993; January 1, 1992; May 1, 1989.

21 NCAC 32V .0101 SCOPE

The rules of this Subchapter are designed to implement Article 40 of Chapter 90.

History Note: Authority G.S. 90-681; 90-682; 90-685(1)(3); Eff. September 1, 2007.

21 NCAC 32V .0102 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) Approved educational program – Any program within the United States approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or the Accreditation Committee for Perfusion Education (AC-PE), or any Canadian educational program recognized by the

- Conjoint Committee on Accreditation of the Canadian Medical Association (CMA).
- (2) Board – The entity referred to in G.S. 90-682(5) and its agents.
- (3) Committee – The entity referred to in G.S. 90-682(2) and its agents.
- (4) Provisional licensed perfusionist - The person who is authorized to practice perfusion pursuant to 90-698.
- (5) Registering - Renewing the license by paying the biennial fee and complying with Rule .0104 of this Subchapter.
- (6) Supervising - Overseeing the activities of, and accepting the responsibility for, the perfusion services rendered by a provisional licensed perfusionist. Supervision shall be continuous but, except as otherwise provided in the rules of this Subchapter, shall not be construed as requiring the physical presence of the supervising perfusionist at the time and place that the services are rendered. Supervision shall not mean direct, on-site supervision at all times, but shall mean that the supervising perfusionist shall be readily available for consultation and assistance whenever the provisional licensee is performing or providing perfusion services.
- (7) "Supervising Perfusionist" means a perfusionist licensed by the Committee and who serves as a primary supervising perfusionist or as a back-up supervising perfusionist.
 - (a) The "Primary Supervising Perfusionist" is the perfusionist who, by signing the designation of supervising perfusionist form provided by the Committee, accepts responsibility for the provisional licensed perfusionist medical activities and professional conduct at all times, whether the perfusionist is personally providing supervision or the supervision is being provided by a Back-up Supervising Perfusionist.
 - (b) The "Back-up Supervising Perfusionist" means the perfusionist who accepts the responsibility for supervision of the provisional licensed perfusionist's activities in the absence of the Primary Supervising Perfusionist. The Back-up Supervising Perfusionist is responsible for the activities of the provisional licensed perfusionist only when providing supervision.

History Note: Authority G.S. 90-681; 90-682; 90-685(1)(3); Eff. September 1, 2007.

21 NCAC 32V .0103 QUALIFICATIONS FOR LICENSE

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

- (1) satisfies the requirements of G.S. 90-686;
- (2) is not disqualified for any reason set out in G.S. 90-691; and
- (3) submits to the Committee any information the Committee deems necessary to evaluate the application; and

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

History Note Authority G.S. 90-685(1)(3) and (5); 90-686; Eff. September 1, 2007.

21 NCAC 32V .0104 REGISTRATION

(a) Each person who holds a license as a perfusionist in this state, other than a provisional licensed perfusionist, shall register his or her perfusionist license every two years prior to its expiration date by:

- (1) completing the Committee's registration form;
- (2) submitting the required fee.

(b) A perfusionist who indicates on the registration form that he or she is not currently certified by the American Board of Cardiovascular Perfusion (ABCP) may be asked to appear before the Committee.

History Note: Authority G.S. 90-685(1)(3)(5) and (6); 90-690; Eff. September 1, 2007.

21 NCAC 32V .0105 CONTINUING EDUCATION

The licensed perfusionist must maintain documentation of 30 hours of continuing education (CE) completed for every two year period. Of the 30 hours, at least 10 hours must be Category I hours as recognized by the American Board of Cardiovascular Perfusion (ABCP), the remaining hours may be Category II or III hours as recognized by the ABCP. CE documentation must be available for inspection by the Committee or Board or an agent of the Committee or Board upon request.

History Note: Authority G.S. 90-685(3) and (8); Eff. September 1, 2007.

21 NCAC 32V .0106 SUPERVISION OF PROVISIONAL LICENSED PERFUSIONISTS

The supervising perfusionist shall exercise supervision of a provisional licensed perfusionist as defined in Rule .0102(6) of this Subchapter, assume responsibility for the services provided by the provisional licensee, be responsible for determining the nature and level of supervision required for the provisional licensee, and be responsible for evaluating and documenting the professional skill and competence of the provisional licensee.

History Note: Authority G.S. 90-685(1)(2) and (3);

Eff. September 1, 2007.

21 NCAC 32V .0107 SUPERVISING PERFUSIONIST

(a) A licensed perfusionist wishing to serve as a primary supervising perfusionist must be licensed to practice perfusion by the Board and not prohibited by the Board from supervising a provisional licensed perfusionist.

(b) A perfusionist wishing to serve as a back-up supervising perfusionist must be licensed to practice perfusion by the Board, not prohibited by the Board from supervising a provisional licensed perfusionist, and approved by the primary supervising perfusionist as a person willing and qualified to assume responsibility for the care rendered by the provisional licensed perfusionist in the absence of the primary supervising perfusionist. The primary supervising perfusionist must maintain an ongoing list of all approved back-up supervising perfusionist(s), signed and dated by each back-up supervising perfusionist, the primary supervising perfusionist, and the provisional licensed perfusionist, and this list must be retained and made available for inspection upon request by the Committee or Board.

History Note: Authority G.S. 90-685 (1)(2) and (3); Eff. September 1, 2007.

21 NCAC 32V .0108 DESIGNATION OF PRIMARY SUPERVISING PERFUSIONIST FOR PROVISIONAL LICENSEE

(a) Prior to the performance of perfusion under the supervision of any primary supervising perfusionist, or new primary supervising perfusionist, a provisional licensed perfusionist shall submit a designation of primary supervising perfusionist(s) on forms provided by the Committee. The provisional licensed perfusionist shall not commence practice until acknowledgment of the designation of primary supervising perfusionist(s) form is received from the Committee. Such designation shall include:

- (1) the name, practice addresses, and telephone number of the provisional licensed perfusionist; and
- (2) the name, practice addresses, and telephone number of the primary supervising perfusionist(s).

(b) The primary supervising perfusionist shall notify the Committee of any terminations or cessations of practice of a provisional licensed perfusionist under his or her supervision in a previously acknowledged designation within 15 days of the occurrence.

History Note: Authority G.S. 90-685(1) and (3); Eff. September 1, 2007.

21 NCAC 32V .0109 CIVIL PENALTIES

(a) In carrying out its duties and obligations under G.S. 90-691 and G.S. 90-693, the following shall constitute aggravating factors:

- (1) Prior disciplinary actions
- (2) Patient harm
- (3) Dishonest or selfish motive

- (4) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (5) Vulnerability of victim
- (6) Refusal to admit wrongful nature of conduct
- (7) Willful or reckless misconduct
- (8) Pattern of misconduct (repeated instances of the same misconduct)
- (9) Multiple offenses (more than one instance of different misconduct)

(b) The following shall constitute mitigating factors:

- (1) Absence of a prior disciplinary record
- (2) No patient harm
- (3) Absence of a dishonest or selfish motive
- (4) Full cooperation with the Committee
- (5) Physical or mental disability or impairment
- (6) Rehabilitation or remedial measures
- (7) Remorse
- (8) Remoteness of prior discipline

(c) Before imposing and assessing a civil penalty, the Committee shall make a determination of whether the aggravating factors outweigh the mitigating factors, or whether the mitigating factors outweigh the aggravating factors. After making such a determination, and if the Committee decides to impose a civil penalty, the Committee shall impose the civil penalty consistent with the following schedule:

- (1) First Offense:
Presumptive Fine - \$250.
Finding of Mitigation \$0 to \$249.
Finding of Aggravation \$251 to \$1,000.
- (2) Second Offense:
Presumptive Fine - \$500.
Finding of Mitigation \$0 to \$499.
Finding of Aggravation \$501 to \$1,000.
- (3) Third or More Offense:
Presumptive Fine - \$1000.
Finding of Mitigation \$0 to \$999.
Finding of Aggravation \$1,000.

History Note: Authority G.S. 90-685(1) and (3); 90-693(b)(4); Eff. September 1, 2007.

21 NCAC 32V .0110 IDENTIFICATION REQUIREMENTS

A licensed perfusionist shall keep proof of current licensure and registration available for inspection at the primary place of practice and shall, when engaged in professional activities, wear a name tag identifying the licensee as a perfusionist consistent with G.S. 90-640(a).

History Note: Authority G.S. 90-640(a); 90-685(3); Eff. September 1, 2007.

21 NCAC 32V .0111 PRACTICE DURING A DISASTER

In the event of a declared disaster or state of emergency that authorizes the Board to exercise its authority under G.S. 90-12.2, and if the Board does exercise its authority pursuant to G.S. 90-

12.2, the Board may allow a perfusionist licensed in any other state, or a current, active certified clinical perfusionist who practices in a state where licensure is not required, to perform perfusion during a disaster within a county in which a disaster or state of emergency has been declared or counties contiguous to a county in which a disaster or state of emergency has been declared (in accordance with G.S. 166A-6). The perfusionist who enters the State for purposes of this Rule shall notify the Board within three business days of his or her work site and provide proof of identification and current licensure or certification.

History Note: Authority G.S. 90-12.2; 90-685(3); Eff. September 1, 2007.

21 NCAC 32V .0112 TEMPORARY LICENSURE

The Board may grant temporary licensure to a licensed or certified clinical perfusionist in good standing from another state who appears to be qualified for licensure in this State pursuant to G.S. 90-686 and who enters North Carolina to work on an emergency basis. The temporary license shall be valid for a period not to exceed 60 days. Within 10 days of receiving a temporary license, the temporary licensed perfusionist must make application for a full license, including payment of the requisite application fee. If the temporary licensed perfusionist fails to submit a full application within the 10 day period, his or her temporary license shall immediately expire. After making application for a full license, the Committee and Board must decide the application before the expiration of the temporary license. For purposes of this Rule, "emergency" shall mean the sudden death or illness, or unforeseen and unanticipated absence, of a licensed perfusionist working at a North Carolina hospital that leaves the hospital unable to provide surgical care to patients in a manner that compromises patient safety. As part of the temporary license process, the hospital must certify to the Committee, on forms provided by the Committee that an emergency exists. "Good standing" for purposes of this Rule shall mean that the applicant is currently able to practice perfusion in another state without any restriction or condition.

History Note: Authority G.S. 90-685(3); 90-686; Eff. September 1, 2007.

21 NCAC 32V .0113 ORDERS FOR ASSESSMENTS AND EVALUATIONS

(a) The Committee and Board may require a perfusionist or applicant to submit to a mental or physical examination by physicians designated by the Committee or Board before or after charges may be presented against the perfusionist if the Committee or Board has reason to believe a perfusionist may be unable to perform perfusion with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical, mental or behavioral abnormality.

(b) The results of the examination shall be admissible in evidence in a hearing before the Committee.

(c) The Committee or Board may require a perfusionist to submit to inquiries or examinations, written or oral, by members of the Committee or by other perfusionists, as the Committee or

Board deems necessary to determine the professional qualifications of such licensee.

*History Note: Authority G.S. 90-685(3)(5)(11);
Eff. September 1, 2007.*

**21 NCAC 32V .0114 PROVISIONAL LICENSE TO
FULL LICENSE**

A provisional licensed perfusionist who becomes a certified clinical perfusionist as defined by G.S. 90-682(1) at any time while he or she holds a provisional license may request that his

or her provisional license be converted to a full license. The provisional licensee must make the request upon forms provided by the Committee and must make payment of an additional one hundred seventy-five dollars (\$175.00) fee. The Committee may request additional information or conduct an interview of the applicant to determine the applicant's qualifications.

*History Note: Authority G.S. 90-685(3)(5); 90-689;
Eff. September 1, 2007;
Eff. Pending Consultation per G.S. 12-3.1.*

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) 733-2698. 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

Sammie Chess Jr.
Selina Brooks
Melissa Owens Lassiter
Don Overby

Beecher R. Gray
A. B. Elkins II
Joe Webster
Shannon Joseph

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