RRC STAFF OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .0901

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*It is unclear in (c) what the operator must do when food brought from home that does “reflect familial, cultural and ethnic preferences” – as allowed by the rule – “does not meet the nutritional requirements specified in … this Rule” for the foods forbidden by the rule. It is not clear if the operator must forbid the child from eating it if the “food has little or no nutritional value” or is otherwise forbidden by the rule. This is the result that is required by various portions of the rule – see e.g., paragraphs (f) and (i). But if the operator must forbid the child from eating it then allowing it to be brought from home is a meaningless sham. If the operator must “provide additional food necessary to meet those requirements” then regardless of what the child is allowed to bring from home, the meal the child is required to eat may end up not meeting the “familial, cultural and ethnic preferences” of the family in the meal that is brought from home, thus resulting in another meaningless that appears to allow something to the family.*

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AGENCY: CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .1702

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In (c)(6) it is unclear what types of heaters are allowed. Certain types of heaters are allowed if they are “listed and approved by the Department of Insurance for that installation….” At the same time “unvented fuel burning heaters and portable electric space heaters of all types are prohibited. It is not clear if the agency intends for that prohibition to apply to heaters meeting that description that are also “listed and approved by the Department … for that installation. If they do intend to prohibit them, it is not clear why they would do so. Presumably the Department has determined that they are safe enough for residents of those buildings, including children, in permitting them under the building code.*

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AGENCY: CHILD CARE COMMISSION

RULE CITATION: 10A NCAC 09 .1706

RECOMMENDED ACTION:

 Return the rule to the agency for failure to comply with the Administrative Procedure Act

 Approve, but note staff’s comment

X Object, based on:

 Lack of statutory authority

X Unclear or ambiguous

 Unnecessary

 Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*It is unclear in (b) what the operator must do when food brought from home that does “reflect familial, cultural and ethnic preferences” – as allowed by the rule – “does not meet the nutritional requirements specified in … this Rule” for the foods forbidden by the rule. It is not clear if the operator must forbid the child from eating it if the “food has little or no nutritional value” or is otherwise forbidden by the rule, or does not meet the other requirements in this rules. This is the result that is required by various portions of the rule – see e.g., paragraphs (d), (l), (m) and (n). But if the operator must forbid the child from eating it then allowing it to be brought from home is a meaningless sham. If the operator must “provide additional food necessary to meet those requirements” then regardless of what the child is allowed to bring from home, the meal the child is required to eat may end up not meeting the “familial, cultural and ethnic preferences” of the family in the meal that is brought from home, thus resulting in another meaningless provision in the rule that appears to allow something to the family but in fact is not allowed.*