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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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Rule Review and Legal Issues

Rules Review Commission
1307 Glenwood Ave., Suite 159 — (919) 733-2721
Raleigh, North Carolina 27605 — (919) 733-9415 FAX

contact:	Joe DeLuca Jr., Staff Attorney	joe.deluca@ncmail.net	(919) 715-8655
	Bobby Bryan, Staff Attorney	bobby.bryan@ncmail.net	(919) 733-0928
	Lisa Johnson, Administrative Assistant	lisa.Johnson@ncmail.net	(919) 733-3962

Fiscal Notes & Economic Analysis

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

contact:	Nathan Knuffman, Economist III	nathan.Knuffman@ncmail.net	(919)807-4728
	Jonathan Womer, Asst. State Budget Officer	jonathan.womer@ncmail.net	(919)807-4737

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 — (919) 733-2578
Raleigh, North Carolina 27611 — (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 — (919) 715-2893
Raleigh, North Carolina 27603

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

NC League of Municipalities — (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

contact:	Anita Watkins	awatkins@nclm.org

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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)	270th 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
21:23	06/01/07	05/10/07	06/16/07	07/31/07	08/20/07	10/01/07	05/08	02/26/08
21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	0702/07	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

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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.

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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.*

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

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101 as follows:

  (1) to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1910 promulgated as of February 14, 2007; and

  (2) To give notice to the regulated community that the settlement agreement published in 71 FR 63238 (October 30, 2006) and included as Appendix A to 29 CFR 1910.1026, is not adopted in North Carolina. The 22 States with OSHA-approved State plans covering private sector employment were not parties to the negotiations that resulted in this amendment. Accordingly, North Carolina is not bound by the Agreement.

- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions and amendments concerning:

- Electrical Standard
  (72 FR 7136 - 7221, February 14, 2007)
- Occupational Exposure to Hexavalent Chromium
  (71 FR 63238 – 63245, October 30, 2006)

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

For additional information, please contact:

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

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

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

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

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1915 promulgated as of October 17, 2006, except as specifically described, and

- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment (71 FR 60843, October 17, 2006)

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

For additional information, please contact:

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

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

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

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *NC Building, Fire and Residential Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: To incorporate changes in the NC Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.

Public Hearing: June 11, 2007, 1:00PM, McKimmon Center, 1101 Gorman Street, Raleigh, NC 27695.

Comment Procedures: Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, c/o NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comment period expires on July 16, 2007.

Statement of Subject Matter:

1. Request by Dan Tingen, Chairman, to amend the 2002 NC Residential Code to address R302.1. The proposed amendment is as follows:

Exception:
Tool and Storage sheds, playhouses and similar structures exempted from permits by Chapter 1 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
In Townhouse construction (3 or more attached dwellings) non combustible soffit material, not including aluminum, shall be used and shall be securely attached to framing members or shall have a 1 hour fire rating as required by code. Vented noncombustible soffit shall be permitted.

This item was presented as an emergency & temporary rule by Chairman, Dan Tingen. Motion/Second/Passed – This Petition was Granted unanimously. The emergency rule is effective 4/5/07.

2. Request by Wayne Hamilton, to amend the 2006 NC Building and Fire Codes, Section 905.2. The proposed amendment is as follows:

905.2 Installation standards. Standpipe systems shall be installed in accordance with this section and NFPA 14.

~~Exception: In other than high rise buildings, where buildings are sprinklered in accordance with Section 903.3.1.1, the water supply is not required to meet the higher pressures required for a standpipe system.~~

Motion/Second/Passed – The Petition was Granted unanimously.

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION/ NPDES PROGRAM
1617 MAIL SERVICE CENTER
RALEIGH, NC 27699-1617
NOTIFICATION OF INTENT TO REISSUE A NPDES WASTEWATER GENERAL PERMIT

On the basis of thorough staff review and application of NC General Statute 143.21, Public law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue the National Pollutant Discharge Elimination System (NPDES) General Permit for point source discharges of wastewater associated with the following activities:

NPDES General Permit No. NCG500000 for discharge of treated wastewater resulting from Non-Contact cooling water, cooling tower and boiler blowdown, condensate, exempt stormwater, cooling waters associated with hydroelectric operations, and similar wastewaters.

Written comments regarding the proposed general permit renewal will be accepted no later than June 15, 2007. All comments received within the comment period will be considered in the final determination regarding permit reissuance. The Director of the NC Division of Water Quality may decide to hold a public hearing for the proposed permit should the Division receive a significant degree of public interest.

Copies of the draft permit, Fact Sheet, and other supporting information used to determine conditions present in the draft permit are available upon request and payment of the costs of reproduction. Mail comments and/or requests for information to the NC Division of Water Quality at the above address, or contact Jim McKay with the Division's Point Source Branch at (919) 733-5082, extension 595, or email at James.McKay@ncmail.net. Please include the NPDES permit number (NCG500000) in any communication. Interested persons may also visit the Division of Water Quality at 512 N. Salisbury Street, Raleigh, NC 27604-1148 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday to review information on file

PUBLIC NOTICE
STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION/ NPDES UNIT
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

NOTIFICATION OF INTENT TO REISSUE A NPDES WASTEWATER GENERAL PERMIT

On the basis of thorough staff review and application of NC General Statute 143.21, Public law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue a National Pollutant Discharge Elimination System (NPDES) General Permit for point source discharges of wastewater associated with the following activities:

NPDES General Permit No. NCG550000 for the discharge of treated domestic wastewater from single family residences and other discharges with similar characteristics

Written comments regarding the proposed permit will be accepted until June 15, 2007. All comments received prior to that date are considered in the final determinations regarding the permit issuance. The Director of the NC Division of Water Quality may decide to hold a public hearing for the proposed permit should the Division receive a significant degree of public interest.

Copies of the draft permit, fact sheet, and other supporting information on file used to determine conditions present in the draft permit are available upon request and payment of the costs of reproduction. Mail comments and/or requests for information to the NC Division of Water Quality at the above address, or contact Toya Fields at (919) 733-5083 extension 551, or toya.fields@ncmail.net. Please include the NPDES permit number (NCG550000) in any communication. Interested persons may also visit the Division of Water Quality at 512 N. Salisbury Street, Raleigh, NC 27604-1148 between the hours of 8:00 a.m. and 5:00 p.m. to review information on file.

21:22

U.S. Department of Justice
Civil Rights Division

JKT:MSR:ANS:par
DJ 166-012-3
2007-0917

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

April 11, 2007

Mr. David A. Holec
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to thirteen annexations (adopted between December 14, 2006, and January 11, 2007) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 27, 2007.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

John Tanner
Chief, Voting Section

Note from the Codifier: *The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.*
Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rules cited as 10A NCAC 70E .0601 - .0602, .0701 - .0710, .0801 - .0806, .0901 - .0903, .1001, .1101 - .1117; 70G .0301 - .0302; 70I .0801 - .0802, amend the rule cited as 10A NCAC 70I .0101; 71R .0201 and repeal the rules cited as 10A NCAC 70E .0101 - .0106, .0201 - .0203, .0301 - .0302, .0401 - .0405, .0501 - .0512.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *July 18, 2007*
Time: *10:00 a.m.*
Location: *Room 832, Albemarle Building, 325 North Salisbury Street, Raleigh, NC*

Reason for Proposed Action:
10A NCAC 70E .0101 - .0106, .0201 - .0203, .0301 - .0302, .0401 - .0405, .0501 - .0512, .0601 - .0602, .0701 - .0710, .0801 - .0806, .0901 - .0903, .1001, .1101 - .1117. *- The proposed amendments and adoption of these Administrative Rules will update foster home licensing standards. In early 2004, workgroups were formed by the Division of Social Services to update foster care rules. The composition of the workgroups included staff from the Division of Social Services, foster parents, staff from county departments of social services, staff from private child-placing agencies, staff from the Division of Mental Health, Developmental Disabilities and Substance Abuse, Division of Medical Assistance and staff from Local Management Entities. Rules and regulations from national accreditation bodies and other states were reviewed. The North Carolina Association of County Directors of Social Services through their committee structure reviewed and approved the revisions. The revised rules will provide a clear distinction between family foster care and therapeutic foster care. Requirements for each are clearly delineated. Therapeutic foster care standards were written to be consistent with service definitions and Medicaid requirements promulgated by the Division of Mental Health, Developmental Disabilities and Substance Abuse and the Division of Medical Assistance. The proposed changes in these rules will ensure that consistent standards are enforced in the various agencies licensed by the Division of Social Services. The rules were revised to assist in achieving federal mandates related to reducing maltreatment of children in foster care and improving retention of foster parents.*
10A NCAC 70G .0301 - .0302 *– The Division of Social Services, private providers of foster care services, members of the Child and Family Services Association, representatives from the Division of Mental Health, Mental Retardation and Substance Abuse Services and the DHHS Controller's Office have been working together for over two years to develop best practice standards for the provision of foster care services. The adoption of these two rules will provide consistency in standards for private child-placing agencies providing foster care services and county departments of social services. The proposed adoption of these two rules are essential for DHHS to establish best practice standards related to caseload and training standards for private child-placing agencies providing foster care services. These standards will also enable DHHS to set one standard rate for the provision of foster care services rather than individual rates for the 80 private child-placing agencies providing foster care services licensed in North Carolina.*
10A NCAC 70I .0101 *– The Division of Social Services currently licenses 83 residential child-care facilities. The purpose of these facilities is to provide group care for foster children who need out of home placement primarily due to abuse and neglect. Currently, the rules under which these facilities are licensed are inconsistent with other facilities licensed by the Division and are out of compliance with NC Building Codes. The proposed amendments to this rule bring residential child-care into compliance with NC Building Codes and provide for consistency in several areas. The Division of Facility Services, Construction Section, provided guidance on rules that relate to construction and building standards according to North Carolina requirements as established by the Department of Insurance. This guidance affects facilities for which licenses that have been terminated for 60 days and for residential child-care facilities that have been closed or vacant for a year. Currently, NCGS 131C-103(e) permits licensure for agencies/ facilities licensed by the Division of Social Services for a period not to exceed 24 months. All agencies licensed by the Division of Social Services receive a two year license except residential child-care. A two year license for residential child-care will be consistent for licenses for foster care, child-placing agencies for foster care, child-placing agencies for adoption and maternity care.*
10A NCAC 70I .0801 - .0802 *– The Division of Social Services, private providers of residential child-care services, members of the Child and Family Services Association, representatives from the Division of Mental Health, Mental Retardation and Substance Abuse Services and the DHHS Controller's Office have been working together for over two years to develop best practice standards for the provision of residential child-care services. The proposed adoption of these two rules are essential for DHHS to establish best practice standards related to caseload and training standards for residential child-care facilities. These standards will also enable DHHS to set one*

standard rate for the provision of residential child-care services rather than individual rates for 80 private residential child-care agencies licensed in North Carolina.

***10A NCAC 71R .0201** – The Social Services Block Grant (SSBG) is a capped federal funding source that funds states for the provision of social services directed toward achieving economic self-support or self-sufficiency, preventing or remedying neglect, abuse, or the exploitation of children and adults, preventing or reducing inappropriate institutionalization, and securing referral for institutional care, where appropriate. Funds are allocated to states on the basis of population. When this rule was initially implemented and the methodology for allocation of funding to counties was established, there was no intention that the allocation would be recalculated each year for the continuing SSBG funds. While some of the factors in the calculation might change from year to year, counties need to be able to count on the funding to support staff and programs established by the initial allocation. If recalculation occurred annually, counties would lose the stability necessary to maintain effective programs for North Carolina's most vulnerable families and children. This proposed amendment clarifies the original intention that the initial calculations remain the same. If new federal SSBG funding becomes available, that new funding will be allocated to counties based on the same formula using updated data.*

Procedure by which a person can object to the agency on a proposed rule: *Carlotta Dixon, NC Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, email Carlotta.dixon@ncmail.net*

Comments may be submitted to: *Carlotta Dixon, NC Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, fax (919) 733-9386, email Carlotta.dixon@ncmail.net*

Comment period ends: *July 18, 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**

CHAPTER 70 – CHILDREN'S SERVICES

SUBCHAPTER 70E – LICENSING OF FAMILY FOSTER HOMES

SECTION .0100 - FOSTER MUTUAL HOME ASSESSMENT

10A NCAC 70E .0101 PURPOSE

~~(a) The agency shall conduct a mutual home assessment study of the family foster home to determine if the home meets the basic requirements of the agency, and if the home is suitable for foster family care of a child or behavioral mental health treatment services for a child.~~

~~(b) The mutual home assessment aims to protect the child from harmful experiences, including unnecessary replacements, to promote permanency and to make sure the child has the most favorable conditions for development. The mutual home assessment shall also provide reliable data on which the family and worker will be able to mutually determine the family's skills and abilities to meet the needs of children and provide care for children in accordance with licensing requirements.~~

~~(c) The 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 agency shall learn enough about the applicants to determine whether they can meet the needs of children, provide and care for children in accordance with licensing requirements, and the kind of child they can best serve.~~

Authority G.S. 131D, Art. 1A; 143B-153.

10A NCAC 70E .0102 METHOD OF MUTUAL HOME ASSESSMENT

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

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

10A NCAC 70E .0103 ASSESSMENT PROCESS

~~(a) Applications. When the applicants first contact the agency, an assessment must be made through a discussion with the applicants of the licensing requirements to determine eligibility in terms of the agency's non negotiable requirements. A decision whether to continue a mutual home assessment must be made as soon as possible.~~

~~(b) Exchange of Information. Applicants shall be informed about the services, policies, procedures, standards, and expectations of the agency, so that they may weigh the responsibilities entailed in foster family care and behavioral mental health treatment services, decide whether they are able to and wish to undertake such responsibilities, and be prepared for them if they become foster parents.~~

(c) Mutual Assessment of Home and the family

(1) The mutual home assessment of the family must be presented and recorded in such a way that other staff of the agency can make optimum use of the family as a resource for children. The assessment of the home must indicate whether the home is in compliance with licensing standards.

(2) A mutual home assessment must be made of the applicants' skills and abilities to provide care for children.

(3) All members of the household must be assessed with respect to their commitment to providing care for children.

(4) The home must be assessed to determine if there is adequate space to accommodate the number of children recommended for the license capacity.

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

10A NCAC 70E .0104 USE OF REFERENCES

References shall be used to supplement the information obtained through interviews and observation regarding the applicants. All adult members of the family foster home shall provide references who can attest to their suitability to care for children.

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

10A NCAC 70E .0105 PERIODIC REASSESSMENT OF HOME

(a) A family 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 and home areas in which they need further development.

(c) Any changes in physical set-up and in the foster parents' capacities for providing child care since the original home assessment or previous reassessment shall be documented in the family's record.

(d) Reassessment shall be used as a tool in assessing the home for relicensing.

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

10A NCAC 70E .0106 AGENCY FOSTER PARENT AGREEMENT

A written agreement such as the agency Foster Parents Agreement, defining each party's rights and obligations must be reviewed and signed by the foster parents and the licensing worker at the time of the initial licensing and biennially thereafter.

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

SECTION .0200 – FORMS

10A NCAC 70E .0201 LICENSE APPLICATION

Application for a license shall be made on a form which gives identifying information about the home, and lists forms which are attached to the application. The agency director or designee shall sign the form and thereby indicate both that the home meets the licensing standards, and that the agency intends to use the home in accordance with the license and to provide services to the foster parents. The form shall be submitted to the licensing authority biennially.

Authority G.S. 131D, Art. 1A; 143B-153.

10A NCAC 70E .0202 AGENCY FOSTER PARENTS' AGREEMENT

(a) The agency and the foster parents shall sign a written agreement under which the foster parents agree:

(1) to allow the representative of the agency to visit the home in conjunction with licensing procedures, foster care planning, and placement;

(2) to accept children into the home only through the agency and not through other individuals, agencies, or institutions;

(3) to treat a child placed in the home as a member of the family, and when so advised by the agency, to make every effort to support, encourage, and enhance the child's relationship with the child's birth parents;

(4) that there will be continuous contact and exchange of information between the agency and the foster parents about matters affecting the adjustment of any child placed in the home. The parents shall agree to keep these matters confidential and to discuss them only with the agency staff members, or with other professional people designated by the agency;

(5) to obtain the permission of the agency if the child is to be out of the home for a period exceeding two nights;

(6) to report to the 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) to make no independent plans for a child to visit the home of the child's birth parents or relatives without prior consent from the agency;

(8) to adhere to the agency's plan of medical care, both for routine care and treatment and for emergency care and hospitalization;

(9) to provide any child placed in the home with responsible supervision at all times while the child is in the home, and not leave the child unsupervised.

(b) Under the agreement, the agency shall agree:

(1) to assume responsibility for the overall planning for the child, and to assist the foster parents in meeting their day to day responsibility toward the child;

(2) to inform the foster parents concerning the agency's procedures and financial responsibility for obtaining medical care and hospitalization;

(3) to pay the foster parents a monthly room and board payment, and if applicable, a difficulty of care payment or respite care payment for children placed in the home; to discuss with the parents any plans to remove a child from the family foster home; and to give the foster parents reasonable notice before removing a child;

(4) to visit the family foster home and child according to the case plan and to be available to give needed services and consultation concerning the child's welfare;

(6) to respect to the extent possible the foster parents' preferences in terms of sex, age range, and number of children placed in the home;

(7) to provide or arrange for training for the foster parents; and

(8) to include foster parents as part of the decision making team for a child

(c) The agreement shall also contain any special provisions of agreement. The foster parents and a representative of the agency shall sign and date the agreement. The foster parents shall retain a copy of the agreement, as shall the agency.

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

10A NCAC 70E .0203 DEPARTMENT OF SOCIAL SERVICES INTERCOUNTY AGREEMENT

(a) When children are placed in a family 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 will:

(1) accept full responsibility for supervising the child;

(2) not initiate placement planning for the child without prior agreement from the responsible county, except where emergency replacement is necessary;

(3) immediately inform the responsible county when emergency replacement precludes prior approval;

(4) engage in no treatment or planning relationship with the child's birth parents 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, difficulty of care or respite care, if applicable, to the supervising county, in amounts and at 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 will be made.

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

Authority G.S. 131D, Art. 1A; 143B-153.

SECTION .0300 –DEFINITIONS

10A NCAC 70E .0301 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 Chapter 70:

(1) 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 family foster homes or adoptive homes.

(2) Owner means any individual who is a sole proprietor, co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the agency.

Authority G.S. 131D; 131D-10.3; 131D-10.5; 143B-153.

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

(a) Not more than seven children may be provided care in any family foster home at any given time. These seven children shall include the foster parent's own children, children placed for foster or therapeutic care, day care children or any other children.

(b) Not more than five children placed for foster care shall reside in a family foster home at any one time. Not more than three children placed for therapeutic care shall reside in a family foster home at any given time. With prior approval from the Children's Services Section, an exception to these standards may be made if:

(1) Written documentation is submitted to the licensing authority that the family foster home meets the fire and building safety standards of the North Carolina State Building Code applicable for the number of children in the

home. The North Carolina State Building Code is hereby incorporated by reference including subsequent amendments and additions. The North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina 27603 at a cost of one hundred eighteen dollars ($118.00).

(2) Written documentation is submitted to the licensing authority regarding the foster parents' skill, stamina, and capacity to care for the children

(c) Members of the household 18 years old and over are not included in capacity, but there must be physical accommodations in the home to provide them room and board.

Authority G.S. 131D, Art. 1A; 143B-153.

SECTION .0400 – STANDARDS FOR LICENSING

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

(a) The 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 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 parents;

(8) is encouraged to contact and have telephone conversations with family members, when not contraindicated in the child's treatment or service 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, severe, or unusual punishment;

(11) is not subjected to corporal punishment; s.

(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 a separate 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 and sight of another 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 themselves or their families;

(14) is provided a daily routine in the home that promotes good mental health 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 appropriate nutritional content for normal growth and health. Any diets recommended by a physician must 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 officially excused by the proper authorities ;

(18) is encouraged to participate in neighborhood and group activities, to have friends visit the home and to visit in the homes of friends;

(19) assumes some responsibility for himself and household duties in accordance with his age, health and ability. Household tasks shall not interfere with school, sleep, play or study periods;

(20) is not permitted to do any task which is in violation of child labor laws or not appropriate for a child of that age;

(21) is provided supervision in accordance with the child's age, intelligence, emotional makeup and past experience; and

(22) if less than six years of age is properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.

(b) Foster parents shall be responsible for the following regarding medication.

(1) Medication administration:

(A) retain the manufacturer's label with expiration dates clearly 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 physician. When a child is taking prescription medications, allowing non-prescription medications to be self-administered

by a child only when authorized in writing by the child's physician;

(D) allow non-prescription medications to be administered to a child, not on prescription medication, with the authorization of the legal custodian;

(E) allow medications, including injections, to be administered only by licensed persons, or by unlicensed persons trained by a registered nurse, pharmacist or other legally qualified person and privileged to prepare and administer medications;

(F) immediately record after administration in a Medication Administration Record (MAR) all drugs administered to, discontinued, and disposed of regarding each child and document medications at the times of discontinuation or disposal. The MAR is to include the following:

(i) child's name;

(ii) name, strength, and quantity of the drug;

(iii) instructions for administering the drug;

(iv) date and time the drug is administered; discontinued or disposed of;

(v) name or initials of person administering or disposing of the drug;

(vi) child requests for medication changes or checks; and

(vii) child's refusal of any drug; and

(G) follow up child requests for medication changes or checks with an appointment or consultation with a physician.

(2) Medication disposal: Return controlled substances to the agency;

(3) Medication Storage:

(A) store medications in a securely locked cabinet in a clean, well-lighted, ventilated room between 59º and 86º F.;

(B) if required, store medications in a refrigerator, between 36º and 46º F. If the refrigerator is used for food items, medications shall be kept in a separate, locked compartment or container;

(C) store prescription medication separately for each child; and

(D) if approved by a physician for a child to self-administer medication, then store in a manner that it is inaccessible to non-approved children.

(4) Medication review:

(A) If the child receives psychotropic drugs, coordinate the review by the child's physician of each child's drug regimen at least every six months;

(B) report the findings of the drug regimen review to the agency; and

(C) document the drug review in the MAR along with corrective action, if applicable.

(5) Medication errors:

(A) report drug administration errors or significant adverse drug reactions immediately to a physician or pharmacist. An adverse drug reaction is significant based on its severity, frequency, magnitude or duration; and

(B) document the drug administered and the drug reaction in the MAR.

(c) Foster parents who utilize physical restraint holds shall not engage in discipline or behavior management, which includes:

(1) Mechanical restraints;

(2) Drug used as a restraint, except as outlined in Paragraph (d) of this Rule;

(3) Seclusion of a child in a locked room; or

(4) Physical restraint holds except when the physical restraint hold of a child is physically holding a child who is at imminent risk of harm to himself or others until the child is calm.

(d) Drug used as a restraint means a medication used to control behavior or to restrict a child's freedom of movement and is not a standard treatment for the child's medical or psychiatric condition. A drug used as a restraint shall be employed only if required to treat a medical condition. It shall not be employed for the purpose of punishment, foster parent convenience or as a substitute for adequate supervision.

(e) Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child. The following shall apply.

(1) 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.

(2) No child shall be physically restrained utilizing a protective or mechanical device.

(3) Physical restraint holds shall:

(A) not be used for purposes of discipline or convenience;

(B) only be used 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.

(4) 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 foster parent 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:

(i) monitor the child's breathing;

(ii) ascertain that the child is verbally responsive and motorically in control; and

(iii) ensure that the child remains conscious without any complaints of pain.

If at any time during the administration of a physical restraint hold the child complains of being unable to breathe or loses motor control, the foster parent administering the physical restraint hold shall immediately terminate the hold or adjust the position to ensure that the child's breathing and motor control are not restricted. If at any time the child appears to be in distress, the foster parent shall immediately seek medical attention for the child.

Following the use of a physical restraint hold, the foster parent shall conduct an interview with the child about the incident, and the foster parent administering the physical restraint hold shall be interviewed about the incident by the agency.

(B) Document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include:

(i) the child's name, age, height and weight;

(ii) the type of hold utilized;

(iii) the duration of the hold;

(iv) the parent administering the hold;

(v) the parent witnessing the hold;

(vi) less restrictive alternatives that were attempted prior to utilizing physical restraint;

(vii) the child's behavior which necessitated the use of physical restraint; and

(viii) whether the child's condition necessitated medical attention.

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

10A NCAC 70E .0402 CRITERIA FOR THE FAMILY

(a) Qualities. 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 will permit them to undertake and perform the responsibilities of meeting the needs of children, in providing continuity of care, and in working with the 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, birth families, the 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 foster or therapeutic care affects the family; and

(12) making an informed decision regarding providing foster or therapeutic 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 physical examination completed by a physician, physician's assistant or a certified nurse practitioner on each member of the family foster home within at least three

months prior to the initial licensing 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 physician or religious beliefs. The foster parents' children shall be required to be tested only if one or more of the parents tests positive for TB; and

(3) a medical history form must be completed on each member of the household at the time of the initial licensing and on any person who subsequently becomes a member of the household.

(d) The homes of Agency Employees, Social Services Board Members, and County Commissioners may be licensed if such licensure does not constitute a conflict of interest regarding supervision of children placed in the home. The agency's position concerning conflict of interest questions shall be documented in the family's record.

(e) Day Care and Baby Sitting Services in the Family Foster Home. With prior approval from the agency, a foster parent may keep day care children or provide baby sitting services provided the family foster home is not overcrowded according to the definition of capacity for family foster homes as set forth in Section .0300 of this Subchapter.

(f) Day Care Centers Operated by Foster Parents. If a licensed foster parent operates or plans to operate a day care center, the following criteria must be met:

(1) The family foster home living quarters can not be part of the day care operation.

(2) There must be a separate entrance to the day care operation.

(3) Staff as specified in day care center rules must be available to provide care for the day care children.

(g) Relationship to Responsible Agency. Foster parents must agree to work constructively with the agency in the following ways:

(1) Work with the child and the child's birth family, when appropriate: in the placement process, reunification process, adoption process, or replacement process;

(2) Consult with social workers, mental health personnel and physicians and other authorized persons who are involved with the child;

(3) Maintain confidentiality regarding children and their birth parent(s);

(4) Keep records regarding the child's, illnesses, behavior, social needs, school, family visits, etc.; and

(5) Report immediately to the agency any changes as required by 10A NCAC 70E .0202.

(h) In addition to Subparagraphs (g)(1) – (5) of this Rule, the foster parents who provide behavioral mental health treatment services shall:

(1) be trained to work with children who have mental heath developmental disability or substance abuse needs in accordance with 10A NCAC 70E .0512 (c);

(2) provide for children with intensive living, social, therapeutic and skill learning needs; and

(3) accept weekly supervision and support from a professional as defined in 10A NCAC 27G .0203.

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

10A NCAC 70E .0403 PHYSICAL FACILITY

(a) Fire and Building Safety.

(1) Each home shall be in compliance with all applicable portions of the NC Building Code in effect at the time the 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 obtained from the North Carolina Department of Insurance, Code Council Building, 410 North Boylan Avenue, Raleigh, North Carolina 27603 at a cost of one hundred eighteen dollars ($118.00), at the time of adoption of this Rule. Where strict conformance with current requirements would be impractical, or because of extraordinary circumstances or unusual conditions, the licensing authority may approve alternative methods or procedures, addressing criteria and functional variations for the physical plant requirements, when it can be effectively demonstrated to the licensing authority that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the home.

(2) All homes shall be reasonably protected from all fire hazards, included but not limited to the following:

(A) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times;

(B) an evacuation plan shall be developed, and all persons in the home shall be knowledgeable of the plan;

(C) all homes shall have one smoke detector outside each bedroom 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; and

(D) all homes shall have a telephone that functions without use of electric power.

(3) Before a home is fully licensed, and biennially thereafter, it must be inspected and receive a

passing rating on the fire and building safety inspection report completed by the local jurisdiction.

(b) Health Regulations.

(1) All homes must meet the minimum sanitation standards for a residential care facility as set forth by the North Carolina Health Services Commission and codified in 15A NCAC 18A .1600 which is incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained from the Office of Administrative Hearings (OAH) Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents ($2.50) for up to 10 pages and fifteen cents ($0.15) for each additional page at the time of adoption of this Rule.

(2) Before a home not on public water and sewer systems, is fully licensed, and annually thereafter, it must be inspected by the county sanitarian and receive a passing rating on the inspection form for residential care facilities.

(c) Environmental Regulations.

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

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

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

(4) 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.

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

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

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

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

(9) Comfort Zone: each home shall have heating, air cooling or ventilating capability to maintain a comfort range between 65 and 85 degrees F.

(10) Rooms including toilets, baths, and kitchens, in family foster homes licensed for the first time after the effective date of these Rules, without operable windows must have mechanical ventilation to the outside.

(d) Room Arrangements.

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

(2) Kitchen and Dining Area. 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.

(3) Bedrooms. Bedrooms shall be clearly identified on a floor plan as bedrooms and shall not serve dual functions.

(A) Space. Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.

(B) Sleeping Arrangements.

(i) Each child shall have his own bed except:

(I) siblings of same sex may share a double bed;

(II) two children, other than siblings, of the same sex and near the same age may at the discretion of the foster parents and agency share a double bed, but only if the children so desire.

(ii) Each bed shall be provided with a comfortable, supported mattress, two sheets, blanket, and bedspread, and be of a size to accommodate the child.

(iii) No day bed, convertible sofa, or other bedding of a temporary nature shall be used except for temporary care of up to two weeks.

(iv) Sleeping room shall not be shared by children of opposite sex except children age five and under may share a room.

(v) Sleeping arrangements shall be such that space is provided within the bedroom for the bed, and the child's personal possessions.

(vi) When children share a bedroom, a child under six shall not share a room with a child over 12, except when siblings are being placed together. No more than four children shall share a room.

(C) Storage. Separate and accessible drawer space for personal belongings and sufficient closet space for indoor and outdoor clothing shall be available for each child.

(4) Bathrooms. 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.

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

10A NCAC 70E .0404 LICENSING COMPLIANCE VISITS

Quarterly Visits. Agency staff shall visit with the foster family on at least a quarterly basis each year for the specific purpose of assessing licensing requirements. Two of the quarterly visits each year shall take place in the home.

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

10A NCAC 70E .0405 CRIMINAL HISTORIES

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

(b) An applicant may not be eligible for licensure if the licensing authority determines based on the criminal history, that the applicant or any member of the applicant's household 18 years of age or older is unfit to have responsibility for the safety and well-being of children.

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

SECTION .0500 - LICENSING REGULATIONS AND PROCEDURES

10A NCAC 70E .0501 RESPONSIBILITY

Each agency providing family foster home services has the responsibility for studying and mutually assessing its applicants and licensees. Completed information and reports which are used as the basis of either issuing or continuing to issue licenses shall be submitted to the licensing authority, in accordance with licensing standards.

Authority G.S. 131D, Art. 1A; 143B-153.

10A NCAC 70E .0502 NEW LICENSES

(a) All licensing material must be completed and dated within 90 days prior to submitting material for licensure.

(b) All licensing information and reports required for a license must be submitted at one time.

(c) A new license, if approved according to these Rules, shall be issued effective the date the application and all required licensing materials are received by the licensing authority.

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

10A NCAC 70E .0503 RENEWAL

(a) Licenses must be renewed at least biennially in accordance with the expiration date on the license. Materials for renewing a license are due prior to the date the license expires.

(b) All relicensing material must be completed and dated within 90 days prior to the date the agency submits material for licensure to the licensing authority.

(c) All relicensing material must be submitted at one time to the licensing authority.

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

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

10A NCAC 70E .0504 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 minimum licensing standards.

(b) The 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.

(d) A family foster home license cannot be changed to a residential child care facility license. The family foster home license must be terminated and materials must be submitted in accordance with 10A NCAC 70I or 10A NCAC 70J in order to be licensed as a residential child care facility.

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

10A NCAC 70E .0505 TERMINATION

Licenses are automatically terminated at the end of the license period unless all licensing materials have been received by the licensing authority prior to the license expiration date.

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

10A NCAC 70E .0506 REVOCATION OR DENIAL

(a) The Department of Health and Human Services 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 Department of Health and Human Services may revoke a license when the foster family home is not in compliance with licensing standards.

(c) The Department of Health and Human Services 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) When foster parents' license have been revoked, they must submit their license to the agency for it to be returned to the Division of Social Services, Family Support and Child Welfare Services Section.

(e) The Department of Health and Human Services may deny licensure to an applicant when it is determined that an applicant meets any of the following conditions:

(1) the Department 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 which was previously held by the applicant and the applicant voluntarily relinquished the license;

(2) 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 which is owned by the applicant;

(3) the applicant has an individual as part of its governing body or management who previously held a license which 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; or

(4) 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.

(f) The denial of licensure pursuant to Paragraph (e) 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. Appeal procedures specified in 10A NCAC 70L .0102, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department'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.

Authority G.S. 131D-10.5; 143B-153(See S. L. 2002-164).

10A NCAC 70E .0507 LICENSING AUTHORITY FUNCTION

(a) When the licensing authority receives licensing materials, the licensingmaterials are reviewed relative to standards, policies, and procedures for licensing. The licensing authority will communicate with the agency submitting the materials if additional information, clarification or materials are needed to make a decision regarding license approval.

(b) A license shall be 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.

(c) When a family under the administrative auspices of a county department of social services moves from one county to another county with a child placed for foster care, a notice of termination of the license must be submitted to the licensing authority and the licensemay be kept for a maximum of three months in order to give the county where the family moved time to complete a mutual home assessment. Within the three month time period of the foster parents' move from one county to another county, licensing materials must be submitted by the new county department of social services and the procedure for issuing a new license shall be followed.

(d) When a family under the administrative auspices of an agency transfers licensure from one agency to another agency, a license application and mutual home assessment must be submitted by the new agency and the procedure for transferring a license shall be followed.

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

10A NCAC 70E .0508 KINDS OF LICENSES

(a) Full License. A full license is issued for a maximum of two years when all minimum licensing requirements are met.

(b) Provisional License.

(1) A provisional license is issued for a maximum of 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.

Authority G.S. 131D, Art. 1A; 143B-153.

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

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

(1) Prior to placement into an out-of-state family foster home, group home, child caring institution, maternity home or any other residential child-care facility, the county department of social services must determine that the group home, child caring institution, maternity home, residential child-care facility or family foster home is licensed according to the standards of that state.

(2) The county department of social services shall monitor the relicensing of the out-of-state residential child care facility or family foster home to ensure that no child for whom they have responsibility is placed in an unlicensed residential child care facility or family foster home.

(3) The county department of social services shall submit to the licensing authority written documentation that an out-of-state group home, child caring institution, maternity home, residential child care facility or family foster home has been licensed and that an Interstate Compact for the Placement of Children Form 100 A for the child to be placed out of state has been signed by both states in order for the group home, child caring institution, maternity home, residential child care facility or family foster home to be issued a license identification number for foster care reimbursement purposes.

Authority G.S. 131D, Art. 1A; 143B-153.

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

~~The agency shall respond to reports of abuse or neglect as required by 10A NCAC 71F .0205.~~

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

10A NCAC 70E .0511 CRIMINAL HISTORY CHECKS

~~The agency shall carry out the following for all foster parents applying for relicensure of a family foster home, new foster parent applicants and any member of the foster parents' or 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 licensing authority;~~

~~(3) obtain two sets of fingerprints on SBI identification cards and forward both sets of fingerprints to the licensing authority. Once an individual's fingerprints have been submitted to the licensing authority, 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 application form.~~

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

10A NCAC 70E .0512 TRAINING REQUIREMENTS

~~(a) In order to provide improved services to children and families, each agency shall provide, or cause to be provided, preservice training for all prospective foster parents. Training shall be subject to the specifications of Paragraph (b) of this Rule.~~

~~(b) As a condition of licensure for foster parent applicants, each applicant shall successfully complete 30 hours of preservice training. Preservice training shall include the following components:~~

~~(1) General Orientation to Foster Care and Adoption Process;~~

~~(2) Communication Skills;~~

~~(3) Understanding the Dynamics of Foster Care and Adoption Process;~~

~~(4) Separation and Loss;~~

~~(5) Attachment and Trust;~~

~~(6) Child and Adolescent Development;~~

~~(7) Behavior Management;~~

~~(8) Working with Birth Families and Maintaining Connections;~~

~~(9) Lifebook Preparation;~~

~~(10) Planned Moves and the Impact of Disruptions;~~

~~(11) The Impact of Placement on Foster and Adoptive Families;~~

~~(12) Teamwork to Achieve Permanence;~~

~~(13) Cultural Sensitivity;~~

~~(14) Confidentiality; and~~

~~(15) Health and Safety.~~

~~(c) The individual identified as the primary therapeutic foster home parent shall receive specific training in treatment services which shall include, but not be limited to, the following:~~

~~(1) Dynamics of emotionally disturbed and substance abusing youth and families,~~

~~(2) Symptoms of substance abuse,~~

~~(3) Needs of emotionally disturbed and substance abusing youth in family settings,~~

~~(4) Development of the treatment plan,~~

~~(5) Medication Administration, and~~

~~(6) Crisis Intervention.~~

~~(d) 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:~~

~~(1) During the first year following initial licensure, the parent identified as the primary parent shall receive training in the following:~~

~~(A) First Aid,~~

~~(B) CPR, and~~

~~(C) Universal Precautions.~~

~~(2) Each agency shall provide, or cause to be provided, at least 10 hours of inservice training for foster parents annually.~~

~~(3) Such training shall include subjects that would enhance the skills of foster parents and promote stability for children.~~

~~(4) A foster parent may complete relevant training provided by: a community college, a licensed child placing agency, or other departments of State or county governments and, upon approval by the agency, such training shall count toward meeting the requirements specified in this Section.~~

~~(5) Each agency shall document in the foster parent record the type of activity the foster parent has completed in pursuance of this Section.~~

~~(e) In order for a foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) to receive the HIV supplemental payment, that family shall attend six hours of advanced medical training annually. This training shall consist of issues relevant to HIV or AIDS. This training shall count toward the training requirements of Paragraph (d) of this Rule.~~

~~(f) In order for a foster parent to utilize physical restraint holds, each foster parent shall complete at least 16 hours of 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. Thereafter, 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 of Paragraph (d) of this Rule.~~

Authority G.S. 143B-153; S.L. 1993, c. 769, s. 25.11.

SECTION .0600 – GENERAL

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.

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

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" means a place of residence of a family, person or persons licensed to provide family foster care services to children under the supervision of a county department of social services or a licensed private child-placing agency.

(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.

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

SECTION .0700 – LICENSING REGULATIONS AND PROCEDURES

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.

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

10A NCAC 70E .0702 RESPONSIBILITY

Each supervising agency providing foster care services has the responsibility for studying and mutually assessing 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.

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

10A NCAC 70E .0703 NEW LICENSES

(a) All licensing materials shall be completed and dated within 180 days prior to submitting an application for a new license. Medical examinations of the members of the foster home shall be completed and dated within 12 months prior to submitting an application for a new license.

(b) All licensing application materials required for a license shall be submitted at one time. Incomplete licensing applications shall be returned to the supervising agency.

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

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

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 will be 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)(a)-(o) 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)(a)-(o).
(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)(a)-(c) 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 .1117(2)(a)-(c).
(i) The supervising agency shall also provide documentation to the licensing authority that trainings for first aid, CPR, and universal precautions are updated.

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

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 cannot 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.

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

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 shall 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) documentation that the current supervising agency has notified the custodian(s) of the transfer if there are foster children placed in the home;
(3) documentation that the receiving supervising agency has notified the custodian(s) of the transfer if there are foster children placed in the home;
(4) a Foster Care Facility License Action Request Form from the previous supervising agency that is marked terminated;
(5) a Foster Care Facility License Action Request Form from the receiving supervising agency that is marked new license;
(6) a cover letter from the previous supervising agency stating they are aware of the transfer;
(7) a cover letter from the receiving supervising agency requesting transfer; and
(8) a mutual home assessment written by the receiving supervising agency.
(b) Transfer materials shall be submitted to the licensing authority within 90 days after the foster parents request to transfer to another supervising agency.

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

10A NCAC 70E .0707 TERMINATION

(a) Licenses are terminated 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) Licenses requested to be terminated by the supervising agency before the license expiration date require notification by the supervising agency to the foster parents.

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

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.

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

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.

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

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.

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

SECTION .0800 - MUTUAL HOME ASSESSMENT

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.

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

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.

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

10A NCAC 70E .0803 ASSESSMENT PROCESS
(a) Applications. When the applicants first contact the supervising agency, an assessment shall be made through a discussion with the applicants of the licensing requirements to determine eligibility in terms of North Carolina requirements for foster care. A decision whether to continue a mutual home assessment shall be made as soon as possible.
(b) Exchange of Information. Applicants shall be informed about the services, policies, procedures, standards, and expectations of the agency, so they may weigh the responsibilities entailed in family foster care services and therapeutic foster care services, decide whether they are able to and wish to undertake such responsibilities, and be prepared for them if they become foster parents.
(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 be made of the applicants' skills and abilities to provide care for children.
(3) All members of the household shall be assessed with respect to their commitment to providing care for children.
(4) The foster home shall be assessed to determine if there is space to accommodate the number of children recommended for the license capacity.
(5) The foster home applicants shall be assessed with respect to their willingness to participate in shared parenting requirements.
(6) The foster home applicants shall be assessed with respect to their financial ability to provide foster care.

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

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.

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

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.

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

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.

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

SECTION .0900 – FORMS

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.

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

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

(a) The 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 difficulty of care payment, or 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.

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

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.

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

SECTION .1000 – CAPACITY

10A NCAC 70E .1001 FOSTER HOME

(a) 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) Not more than four children including not more than two therapeutic foster children shall reside in a therapeutic foster home at any time. The four children shall include the foster parent's own children, children placed for therapeutic foster care, or any other children living in the home. A child who has been residing in the therapeutic foster home and no longer meets the criteria for therapeutic foster care may remain in the therapeutic foster home as a family foster care child until his/her permanent plan is attained. 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 (c)(3) and (4) of this Rule. 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 (c)(3) and (4) of this Rule. 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) 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.

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

SECTION .1100 – STANDARDS FOR LICENSING

10A NCAC 70E .1101 CLIENT RIGHTS

(a) The 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 herself/himself or their 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 proper 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 herself/himself and household duties in accordance with her/his 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 or 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.

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

10A NCAC 70E .1102 MEDICATION

(a) 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 child-placing

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 75º F (24° C) and 80º F (26.7° C);

(B) store medications in a refrigerator, if required, between 36º F (2º C) and 46º F (8º 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 their 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. An adverse drug reaction is significant based on its severity, frequency, magnitude, or duration; and

(B) document the drug administered and the drug reaction in the MAR.

Authority G.S. 131D-10. 1; 131D-10.3; 131D-10.5; 143B-153.

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) Use of Drugs:

(1) Drugs shall not be used for the purpose of restraining a child.

(2) 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.

(3) A drug shall not be used for the purpose of punishment, foster parent convenience, or substitution for adequate supervision.

(c) Training of Foster Parents:

(1) 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.

(2) 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.

(3) This training shall count toward the training requirements as set forth in 10A NCAC 70E .1117(f)(6).

(4) Only foster parents trained in the use of physical restraint holds shall administer physical restraint holds.

(d) Instructor Requirements:

(1) Foster parents shall be trained by instructors who have met the following qualifications and training requirements as specified in 10A NCAC 27E .0108:

(A) trainers shall demonstrate competence by scoring 100% on testing in a training program aimed at preventing, reducing, and eliminating the need for restrictive interventions;

(B) trainers shall demonstrate competence by scoring 100% on testing in a training program teaching the use of physical restraint;

(C) trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program;

(D) the 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; and

(E) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services or the Division of Social Services, and shall include, but not be limited to: (1) presentation of understanding the adult learner,

methods of teaching content of the course, evaluation of trainee performance and documentation procedures; (2) trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint; (3) trainers shall be currently trained in CPR; (4) trainers 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 (5) trainers 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 specified at the following web site: http://www.dhhs.state.nc.us/mhddsas/training/ (Training to Prevent Use of Restraints and Seclusion);

(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, based on the following criteria: completion of the waiver request form; written approval by 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) shall conduct an interview with the foster child about the incident following the use of a physical restraint hold.

(7) The supervising agency shall:

(A) interview the foster parent administering the physical restraint hold about the incident following the use of a physical restraint hold by the supervising agency; and

(B) 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: (1) the child's name, age, height, and weight; (2) the type of hold utilized; (3) the duration of the hold; (4) the trained foster parent administering the hold; (5) the trained foster parent or trained

adult witnessing the hold; (6) the less restrictive alternatives that were attempted prior to utilizing physical restraint; (7) the child's behavior that necessitated the use of physical restraint; and (8) 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 child-placing 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.

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

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 shall be required to be tested only if one or more of the parent's tests positive for TB;
(3) a medical history form shall be 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) 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. Any adult, 21 years of age or older, living in the home 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.

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

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.

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

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

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.

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

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 authorized persons 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(c)(6); and

(2) allow weekly supervision and support from a professional as defined in 10A NCAC 27G .0104 and .0203.

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

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 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 CO^2 type fire extinguisher located in the kitchen and another ABC type fire extinguisher or CO^2 type fire extinguisher centrally located; and

(4) all homes shall have a telephone that functions without use of electric power.

(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.

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

10A NCAC 70E .1109 HEALTH REGULATIONS

A discussion regarding water quality and sanitation shall be conducted 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.

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

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) Comfort Zone: each home shall have heating, air-cooling, or ventilating capability to maintain a comfort range between 65º F (18.3º C) and 85º F (29.4º C).
(j) Rooms including toilets, baths, and kitchens, in foster homes without operable windows, shall have mechanical ventilation to the outside.

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

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:
(1) Space. Children shall not be permitted to sleep in an unfinished basement or in an unfinished attic.
(2) Sleeping Arrangements. 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.
(3) Storage. Separate and accessible drawer space and closet space for personal belongings and clothing shall be available for each child.
(d) 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.

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

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.

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

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.

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

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.

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

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.

(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.

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

10A NCAC 70E .1116 CRIMINAL HISTORY CHECKS

For new foster parent applicants, relicensure of a foster home and any member of the foster parents' or prospective foster parents' household 18 years of age or older, the supervising agency shall complete the following activities:

(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 application form.

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

10A NCAC 70E .1117 TRAINING REQUIREMENTS

Each child-placing 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 child-placing 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 according to 10A NCAC 27G core rules. The child-placing agency will 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 child-placing 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 child-placing 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 Section; and

(d) each child-placing agency shall document in the foster parent record the type of activity the foster parent has completed pursuant to this Section.

(7) For a foster family caring for a child with HIV (human immunodeficiency virus) or AIDS (acquired immunodeficiency syndrome) 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.

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

SUBCHAPTER 70G – CHILD PLACING AGENCIES: FOSTER CARE

SECTION .0300 – BEST PRACTICE STANDARDS

10A NCAC 70G .0301 STAFFING REQUIREMENTS

Caseload Standards:

(1) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Licensing social workers shall serve no more than 32 foster families. 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 10 children and 10 foster families.

(2) When an agency employs five or more social workers or case managers, the agency shall employ a social work supervisor.

(3) 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.	

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

10A NCAC 70G .0302 TRAINING REQUIREMENTS

Training Standards:

(1) Social workers or case managers shall receive 24 hours of continuing education annually.

(2) Social work supervisors shall receive 24 hours of continuing education annually.

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

SUBCHAPTER 70I - MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD-CARE

SECTION .0100 - GENERAL LICENSING REQUIREMENTS

10A NCAC 70I .0101 LICENSING ACTIONS

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

~~(a)~~(b) License.

(1) The Department of Health and Human ~~Services~~ Services, Division of Social Services (licensing authority) shall issue a license when it determines that ~~the~~ a residential child-care facility is in compliance with rules in Subchapters 70I and 70J of this Chapter. ~~70J.~~

(2) A license shall be issued for a maximum period of two years. ~~remain in effect for one year.~~

(3) A residential child-care facility shall not be licensed under both G.S. 131D and G.S. 122C.

~~(3) The Department of Health and Human Services shall automatically provide a 90 day grace period at the expiration date of the license.~~

~~(4) If licensure materials are submitted after the license expires, but within the 90 day grace period, the Department of Health and Human Services shall issue a license one year from the expiration date of the previous license.~~

~~(b)~~(c) Changes in any information on the license.

(1) The ~~Department of Health and Human Services~~ 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) The Department of Health and Human Services shall not change a license during the 90 day grace period.~~

~~(3)~~(2) A residential child-care facility ~~must~~ shall notify the licensing authority ~~Children's Services Section~~ in writing of its request for a change in license, including ~~such~~ information ~~as~~ that is necessary to assure ~~that~~ the change is in compliance with the rules in Subchapters 70I and 70J of this Chapter. ~~70J.~~

~~(c)~~(d) Termination.

(1) When a residential child-care facility voluntarily discontinues ~~child caring~~ child-caring operations, either temporarily or permanently, the residential child-care facility ~~must~~ shall notify the licensing authority ~~Children's Services Section~~ in writing of the date, reason and anticipated length of closing.

(2) If a license is not renewed by the end of the ~~90 day grace~~ licensure period, the licensing authority ~~Department of Health and Human Services~~ 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.

~~(d)~~(e) Adverse Licensure Action.

(1) The ~~Department of Health and Human Services~~ 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, ~~provider~~ within 10 working days from the date the residential child-care facility initially received the deficiency report from the ~~Division of Social Services~~ 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 ~~Department of Health and Human Services~~ 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 ~~.0301, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES,~~ are applicable for persons seeking an appeal to the licensing authority's ~~Department's~~ decision to deny, suspend or revoke a license.

~~(e)~~(f) Licensure Restriction.

(1) An applicant who meets any of the following conditions shall have his/her licensure denied: ~~Licensure may be denied when it is determined that an applicant meets any of the following conditions:~~

(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; ~~or~~

(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; ~~or~~

(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 ~~G.S. 131E-256.~~

(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.

Authority G.S. 131D-10.3; 131D-10.5; 143B-153.

SECTION .0800 – BEST PRACTICE STANDARDS

10A NCAC 70I .0801 STAFFING REQUIREMENTS

(a) 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.	

Authority G.S. 143B-153.

10A NCAC 70I .0802 TRAINING REQUIREMENTS
(a) Direct care staff personnel shall receive 24 hours of continuing education annually.
(b) Direct care supervisors shall receive 24 hours of continuing education annually.
(c) Social workers shall receive 24 hours of continuing education annually.
(d) Social work supervisors shall receive 24 hours of continuing education annually.

Authority G.S. 143B-153.

CHAPTER 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71R – SOCIAL SERVICES BLOCK GRANT

SECTION .0200 - ADMINISTRATIVE REQUIREMENTS

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 will be 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.

Allocations to county departments of social services that were initially calculated as described in Item (2)(a) and (b) of this Rule remain at the same level each 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 ~~Rule .0201 of~~ this ~~Subchapter~~ Rule 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.

Authority G.S. 143B-153.

TITLE 11 – DEPARTMENT OF INSURANCE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to amend the rule cited as 11 NCAC 11H .0102.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *June 5, 2007*
Time: *10:30 a.m.*
Location: *3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC*

Reason for Proposed Action: *Provides an alternate method of making a deposit with the Commissioner for CCRCs that do not collect entrance fees in advance.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to this Rule until the expiration of the comment period on July 16, 2007.*

Comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenkel@ncdoi.net*

Comment period ends: *July 16, 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**

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11H - CONTINUING CARE FACILITIES

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 deposit with the Commissioner an amount not less than 10 percent of an equivalent entrance fee of one thousand

dollars ($1,000) for 50 percent of the total units proposed to be constructed, but not less than one hundred thousand dollars ($100,000). The deposit shall be made in accordance with G.S. 58-5-20.

(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.

Authority G.S. 58-2-40; 58-64-5; 58-64-65.

TITLE 13 – DEPARTMENT OF LABOR

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rule cited as 13 NCAC 15 .0702.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *June 13, 2007*
Time: *10:00 a.m.*
Location: *4 West Edenton Street, Raleigh, NC (Room 205)*

Reason for Proposed Action: *The NC Department of Labor proposes to amend 13 NCAC 15 .0702 in order to increase the fees charged for annual inspections of elevators, escalators, dumbwaiters, and special equipment. The Elevator Safety Act authorizes the Commissioner of Labor to establish fees "not to exceed $200.00 for the inspection and issuance of certificates of operation." The current fees were established through temporary rulemaking on October 17, 2001, and became permanent on July 1, 2003. The NC Department of Labor's Elevator and Amusement Device Bureau is a 100% fee supported Bureau that relies upon inspection receipts for its operation budget. Since the current fees were established, the expenses associated with the inspection of elevators, escalators, dumbwaiters, and special equipment throughout the State have increased such that it is necessary to increase the fees charged for said inspections in order to sustain an effective inspection*

program and to ensure the safety and well being of the citizens of North Carolina.

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted during the public hearing conducted on this rule, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on July 16, 2007.*

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

Comment period ends: *July 16, 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 (**≥$3,000,000**)**
☐ **None**

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0700 – FEES

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	~~$35.00~~ $65.00
(b)	All hydraulic elevators, belt man lifts, escalators, plus all elevators not identified as either hydraulic or traction and special lifting devices	~~$118.00~~ $175.00
(c)	Traction Elevators	
(1)	1-10 Floors	~~$155.00~~ $200.00
(2)	Over 10 Floors	$200.00

Authority G.S. 95-107; 95-95-110.5(20).

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0315.*

Proposed Effective Date: *November 1, 2007*

Public Hearing:
Date: *Thursday, May 31, 2007*
Time: *6:30 p.m.*
Location: *Auditorium, Helena Elementary School, 355 Helena Moriah Road, Timberlake, NC*

Reason for Proposed Action: *From a review of available data for Deep Creek (Durham and Person Counties, Neuse River Basin), DWQ staff determined the ORW classification to be suitable for recognizing existing uses. This creek is currently classified as Class Water Supply-III (WS-III) Nutrient Sensitive Waters (NSW), and is proposed to be reclassified to Class WS-III ORW NSW. This proposed reclassification consists of the entire watershed of Deep Creek, from its source to the Flat River. The land along the waters to be reclassified exists solely within the jurisdiction of Person and Durham Counties. The purpose of this rule amendment would be to provide supplementary protection for the resources and quality of the subject waters. DWQ staff determined that the subject waters meet Class ORW criteria because these waters: (a) are a fish community site serving as a regional reference site because of high quality instream and riparian habitat characteristics, (b) support a very diverse fish community, (c) include a portion of the North Carolina Natural Heritage Program's Flat River Aquatic Habitat, a state-significant site that is home to rare and endangered mussels, and (d) have excellent water quality, as confirmed by the most current (2005) good benthic and excellent fish community ratings. Approximately 22 miles of named waterbodies exist in the subject watershed, and the watershed itself measures approximately 23,660 acres. If reclassified, regulations that affect several activities and operations, including new development, NCDOT projects, and wastewater discharges, would apply. There is no proposed development that would be impacted by the proposal, and no plans for new or expanded discharges, according to local government and Raleigh Regional Office staff. NCDOT staff have determined that there is one planned DOT project in the subject area that*

would be impacted by the proposal, and this project would require additional stormwater control devices in order to meet the proposed reclassification's requirements.

Procedure by which a person can object to the agency on a proposed rule: *You may attend the public hearing and make relevant verbal comments, and/or submit written comments, data or other relevant information by July 16, 2007. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see General Statute 150B 21.2 (g)). Written comments may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, e-mail address, or fax number listed in this notice.*

Comments may be submitted to: *Elizabeth Kountis, DENR/ Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 733-5083 extension 369, fax (919) 715-5637, email elizabeth.kountis@ncmail.net*

Comment period ends: *July 16, 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 (**≥$3,000,000**)**
☐ **None**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0315 NEUSE RIVER BASIN

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

(1) ~~Clerk of Court:~~
~~Beaufort County~~
~~Carteret County~~
~~Craven County~~
~~Durham County~~
~~Franklin County~~
~~Granville County~~
~~Greene County~~
~~Johnston County~~
~~Jones County~~
~~Lenoir County~~
~~Nash County~~
~~Orange County~~
~~Pamlico County~~
~~Person County~~
~~Pitt County~~
~~Wake County~~
~~Wayne County~~
~~Wilson County~~the Internet at http://h2o.enr.state.nc.us/csu/; and

(2) the North Carolina Department of Environment and Natural Resources:

(A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina

(B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina

(C) Wilmington Regional Office
127 Cardinal Drive
Wilmington, North ~~Carolina.~~Carolina

(D) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

(1) March 1, 1977;
(2) December 13, 1979;
(3) September 14, 1980;
(4) August 9, 1981;
(5) January 1, 1982;
(6) April 1, 1982;
(7) December 1, 1983;
(8) January 1, 1985;
(9) August 1, 1985;
(10) February 1, 1986;
(11) May 1, 1988;
(12) July 1, 1988;
(13) October 1, 1988;
(14) January 1, 1990;
(15) August 1, 1990;

(16) December 1, 1990;
(17) July 1, 1991;
(18) August 3, 1992;
(19) April 1, 1994;
(20) July 1, 1996;
(21) September 1, 1996;
(22) April 1, 1997;
(23) August 1, 1998;
(24) August 1, 2002;
(25) July 1, ~~2004.~~2004;
(26) November 1, 2007.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

(1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
(2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
(3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

(1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
(2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

(1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
(2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

(1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
(2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
(3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

(1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
(2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.
(3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

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

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07J .0701 - .0703.*

Proposed Effective Date: *October 1, 2007*

Public Hearing:
Date: *July 26, 2007*
Time: *5:00 p.m.*
Location: *Holiday Inn Brownstone Hotel, 1707 Hillsborough Street, Raleigh, NC 27605*

Reason for Proposed Action: *Petitioner must acknowledge that the proposed activity is contrary to the Commission's rules and that they are asking the Commission to vary its rules based upon the merits of their petition. Petitioner must stipulate that they do not believe their permit application was improperly denied. Clarifies that if a petitioner believes that their permit application was improperly denied or conditioned, the proper avenue for appeal is through a contested case proceeding. If both the CRC and the local government's rules prevent the petitioner from undertaking their planned development, the petitioner must seek relief from their local jurisdiction prior to filing a variance petition with the CRC. There cannot be pending litigation that would make a variance proceeding moot. If a petitioner wishes to receive a contested case ruling from the OAH, they must complete that process prior to filing a petition for variance with the Commission. Petitioner must include a copy of the deed to the property on which the proposed development would occur. If the petitioner has not already been through the administrative appeals process with OAH, they must waive their right to do so when they file for a variance from the CRC. Petitioner must notify (or prove they attempted to notify) adjacent property owners and commenting agencies of their petition for variance. Petition must include a complete set of the petitioner's stipulated facts and any proposed documents for the Commission's consideration. If the petitioner postpones their appearance in front of the Commission, the date on which they request the postponement will be considered the effective date of submission, and their petition will be moved to the back of the queue. Petitioners may appear in front of the Commission on their own behalf, or may hire a licensed attorney to do so. Non-attorneys will not be allowed to represent petitioners in front of the Commission. Corporations must be represented by an attorney. 07J .0702 DCM/DOJ staff and the petitioner shall jointly compile a list of stipulated facts to be signed by both parties. DCM/DOJ staff shall present a written recommendation for the Commission. The petitioner and DCM/DOJ staff must agree on the stipulated facts at least four weeks prior to the scheduled Commission meeting at which the petition will be heard. 07J .0703 Commission shall be provided with the signed stipulated facts and staff recommendation prior to considering petitions. If the Commission is unable to reach a decision they will remand the case to DCM/DOJ staff and the petitioner to come up with additional facts or to request an administrative hearing. Clarifies that the burden of proof for all variance criteria is on the petitioner.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557.*

Comments may be submitted to: *Charles S. Jones, 400 Commerce Avenue, Morehead City, NC, phone (252) 808-2808, fax (252) 247-3330*

Comment period ends: *July 26, 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**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, AND DECLARATORY RULINGS

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15A NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person ~~who has received a final decision of an application for a CAMA major or minor development permit~~ whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the ~~CRC~~ Commission by means of the procedure described in this ~~Section.~~ Section, provided that the person does not wish to challenge the permit decision. A variance is available only when the person acknowledges that the Commission's rule(s) prohibit the development he or she wishes to undertake. If the person contends that the Division of Coastal Management or a Local Permit Officer did not correctly apply the Commission's rule(s) in denying or in placing condition(s) on the permit, the proper avenue for this dispute is a contested case hearing under 15A NCAC 07J .0301 et seq. Any person who wishes to challenge the permit decision by means of a contested case proceeding must obtain a decision by the Administrative Law Judge and a final decision by the Commission, including all appeals, prior to filing a petition for a variance. ~~In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.~~ Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the Petitioner and any other person which may make the request for a variance moot.

(b) The procedure in this Section shall ~~apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall~~ be used for all variance petitions except when:

~~(1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single hearing as described in Section .0300 of this Subchapter;~~

~~(2)~~(1) the Commission determines that more facts are ~~necessary, in which case the petition may be heard by means of a hearing; or~~ necessary; or

~~(3)~~(2) there are controverted facts that are necessary for a decision on the variance petition.

(c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural ~~Resources or CAMA local permit officers or, if not on such forms shall provide the following information:~~Resources. The following information shall be submitted before a variance petition is considered complete:

(1) the case name and location of the development as identified on the denied permit application;

(2) ~~an explanation of why the applicant believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:~~

(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;

(C) that such hardships did not result from actions taken by the petitioner; and

(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice;

(3) a copy of the permit application and denial for the development in question;

(4) the date of the petition, and the name, address, and phone number of the ~~petitioner; and~~ petitioner and his or her attorney, if applicable;

(5) a complete description of the proposed development, including a site drawing with topographical and survey ~~information.~~ information;

(6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance and a waiver of the petitioner's right to seek a contested case hearing to challenge the permit decision;

(7) notice of the variance petition sent certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management and/or the Local Permit Officer during the permit review process and copies of the documents which indicated that the certified mail notices were received or that deliveries were attempted;

(8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:

(A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;

(C) that such hardships did not result from actions taken by the petitioner; and

(D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

(9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and

(10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

~~(d) In order to have a petition for a variance considered under the procedures set forth in this Rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal shall agree that the time required to consider the petition shall not be counted in calculating the 180 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner resumes prosecution of the appeal.~~

~~(e)~~(d) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment and Natural Resources, 400 Commerce Avenue, Morehead City NC ~~28557.~~ 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

~~(f)~~(e) A variance petition shall be considered by the Commission at a ~~regularly~~ scheduled meeting. Petitions shall be scheduled ~~no later than the second regularly scheduled meeting following the~~ in chronological order based upon the date of receipt of ~~the petition~~ a complete variance petition by the Division of Coastal ~~Management,~~ Management.~~except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management.~~ A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least ~~four~~ six weeks in advance of a ~~regularly~~ scheduled ~~commission~~ Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

~~(g)~~(f) Written notice of variance hearings or ~~commission~~ Commission consideration of variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

Authority G.S. 113A-120.1; 113A-124.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the ~~commission,~~ Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete ~~applications~~ petitions and a description of the deficiencies shall be returned to the petitioner. Complete ~~requests~~ variance petitions shall be scheduled for the appropriate ~~commission~~ Commission meeting.

(b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall be prepared and signed by both parties.

~~(b)~~(c) After the facts agreed upon by the petitioner and staff,~~The~~ the staff shall prepare a written ~~description of the variance petition~~ recommendation which shall be ~~presented~~ submitted to the Commission before the petition is considered. The ~~written description~~ staff recommendation shall include:

(1) a description of the property in question;

(2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;

(3) the Stipulated Facts;

~~(3)~~(4) ~~a discussion of~~ staff's position on whether the petition meets or does not meet each of the requirements for a variance ~~including both the petitioner and the staff positions;~~ and

~~(4)~~(5) ~~and any other undisputed facts relevant to the findings set forth in G.S. 113A-120.1 which the Commission must make in order to grant a variance.~~ petitioner's position on each of the variance criteria.

Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next scheduled Commission meeting.

~~(c)~~(d) ~~The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting.~~ If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, ~~then~~ the petition shall be considered by means of an administrative ~~hearing.~~hearing to determine the relevant facts. ~~Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.~~

Authority G.S. 113A-120.1; 113A-124.

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(a) The Commission may review the variance petition and staff ~~comments~~ recommendation and hear ~~any~~ oral presentation by the ~~petitioner~~ petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

(b) The Commission or its appointed member or members shall be provided with copies of the ~~petition~~ petition, the Stipulated Facts, and ~~any comments the staff deems necessary~~ the staff recommendation before considering the petition.

(c) ~~The Commission~~ At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The applicant shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.

(d) The final decision of the ~~commission~~ Commission may be made at the meeting at which the matter is heard or in no case later than the next ~~regularly~~ scheduled meeting. The final decision shall be transmitted to the petitioner by ~~registered mail at the earliest feasible date after the final decision is reached.~~ certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its' decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings to determine the necessary facts.

(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

(f) Variances may only be granted following affirmative findings by the Commission on each of the following points:

(1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;

(3) that such hardships did not result from actions taken by the petitioner; and

(4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

(g) The burden of proof on all four findings shall be upon the Petitioner.

Authority G.S. 113A-120.1.

* *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Radiation Protection Commission intends to adopt the rules cited as 15A NCAC 11 .0363 - .0365, amend the rules cited as 15A NCAC 11 .0104, .0117, .0318, .0320 - .0322, .0333, .0356, .0359, .0360 - .0361, .0702, .1611 and repeal the rules cited as 15A NCAC 11 .0350, .0703.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *June 5, 2007*
Time: *10:00 a.m. and 7:00 p.m.*
Location: *3825 Barrett Drive, Room 101, Raleigh, NC 27609*

Reason for Proposed Action: *North Carolina entered into an agreement with the U.S. Nuclear Regulatory Commission (US NRC) to perform certain regulatory functions regarding radioactive materials within North Carolina. One of the areas of responsibility under the Agreement and G.S. 104E is to promulgate regulations commensurate with those of the US NRC. These changes are to update the North Carolina Regulations for Protection Against Radiation to be compatible with those of the US NRC.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections may be directed to Beverly O. Hall, Chief, Radiation Protection Section, 1645 Mail Service*

Center, Raleigh, NC 27699-1645. Objections may also be filed at the public meeting scheduled for June 5, 2007.

Comments may be submitted to: *Beverly O. Hall, Chief, Radiation Protection Section, 1645 Mail Service Center, Raleigh, NC 27699-1645*

Comment period ends: *July 16, 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**

CHAPTER 11 – RADIATION PROTECTION

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 11 .0104 DEFINITIONS

As used in these Rules, the following definitions shall apply.

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.

(3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.

(4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(5) "Adult" means an individual 18 or more years of age.

(6) "Agency" means the North Carolina Department of Environment and Natural Resources, Division of Environmental Health, Radiation Protection Section.

(7) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission, as defined in G.S. 104E-5(2).

(8) "Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(9) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(10) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

(a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR 20.1001 - 20.2401; or

(b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

(11) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.

(12) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in an effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2401).

(13) "Annually" means either:

(a) at intervals not to exceed 12 consecutive months; or

(b) once per year at the same time each year (completed during the same month each year over a period of multiple years).

(14) "Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. APF can be divided into the ambient airborne concentrations to estimate inhaled air concentrations.

(15) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(16) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.

(17) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.

(18) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation regulated by the agency.

(19) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second (s^{-1}).

(20) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(21) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, as defined in G.S. 104E-5(4).

(22) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:

CLASSIFICATION OF INHALED MATERIAL	
Class	Clearance half-time
Class D (Day)	less than 10 days
Class W (Weeks)	10 days to 100 days
Class Y (Years)	greater than 100 days

(23) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(24) "Commission" means the North Carolina Radiation Protection Commission.

(25) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(26) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).

(27) "Constraint (dose constraint)" means a value above which specified licensee actions are required.

(28) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

(29) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(30) "Curie" is the special unit of radioactivity. One curie is equal to 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.

(31) "Declared pregnant woman" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(32) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for either unrestricted use and termination of the license or for restricted use and termination of the license.

(33) "Deep-dose equivalent" (H_d), which applies to external whole-body exposure, is the dose

equivalent at a tissue depth of one cm (1000 mg/cm^2).

(34) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(35) "Department" means the North Carolina Department of Environment and Natural Resources.

(36) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(37) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR 20.1001 - 20.2401).

(38) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).

(39) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions. Each diagnostic clinical procedure including but not limited in content to the radiopharmaceutical, dosage and route of administration, shall be approved by an authorized user prior to inclusion in the manual. The radiation safety officer shall ensure that the manual includes the approved written procedure for all diagnostic clinical procedures performed at the facility.

(40) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(41) "Distinguishable from Background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using measurement technology, survey and statistical techniques as defined in 10 CFR 20.1003.

(42) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.

(43) "Dose equivalent" (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(44) "Dose limits" (see "Limits" defined in this Rule).

(45) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.

(46) "Effective dose equivalent" (H_E) is the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting factors (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma w_T H_T$).

(47) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(48) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(49) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of equipment which can affect compliance with these Rules by a licensee or registrant.

(50) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(51) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.

(52) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(53) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(54) "Eye dose equivalent" (See "Lens dose equivalent" as defined in this Rule).

(55) "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with

elastomeric sealing surfaces and adjustable straps.

(56) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(57) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(58) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq;), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.

(59) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).

(60) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(61) "High radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(62) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(63) "Hospital" means a facility that provides as its primary functions diagnostic services and intensive medical and nursing care in the treatment of acute stages of illness.

(64) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(65) "Individual" means any human being.

(66) "Individual monitoring" means:

(a) the assessment of dose equivalent by the use of devices designed to be worn by an individual;

(b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or

(c) the assessment of dose equivalent by the use of survey data.

(67) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(68) "Inhalation class" (see "Class" defined in this Rule).

(69) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.

(70) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(71) "Lens dose equivalent" or "LDE" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm^2).

(72) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.

(73) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.

(74) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).

(75) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.

(76) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(77) "Lost or missing licensed radioactive material" means licensed radioactive material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(78) "Lung class" (see "Class" as defined in this Rule).

(79) "Medical event" means an event that meets the criteria in Rule .0364 of this Chapter.

~~(79)~~(80) "Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

~~(80)~~(81) "Member of the public" means any individual except when that individual is receiving an occupational dose.

~~(81)~~(82) "Minor" means an individual less than 18 years of age.

(82) "Misadministration" means the administration of the following:

(a) a diagnostic radiopharmaceutical dosage:

(i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ; and

(A) the wrong patient;

(B) the wrong radiopharmaceutical;

(C) the wrong route of administration; or

(D) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or

(ii) for sodium iodide I-125 or I-131 involving:

(A) the wrong patient or wrong radiopharmaceutical; or

(B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;

(b) a therapeutic radiopharmaceutical dosage:

(i) involving:

(A) the wrong patient;

(B) wrong radiopharmaceutical;

(C) wrong route of administration; or

(D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or

(ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage;

(c) a teletherapy or accelerator radiation dose:

(i) involving:

(A) the wrong patient;

(B) the wrong mode of treatment; or

(C) wrong treatment site;

(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

(iii) when the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

(iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;

(d) a brachytherapy radiation dose:

(i) involving:

(A) the wrong patient;

(B) the wrong radioisotope; or

(C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site;

(ii) involving a sealed source that is leaking;

(iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or

(e) a gamma stereotactic radiosurgery radiation dose:

~~(i) involving the wrong patient or wrong treatment site; or~~

~~(ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.~~

(83) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(84) "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(85) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

(86) "Negative pressure respirator" means a tight-fitting respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside of the respirator.

(87) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(88) "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives.

(89) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, from voluntary participation in medical research programs, or as a member of the general public.

(90) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles.

(91) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto, as defined in G.S. 104E-5(11).

(92) "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.

(93) "Pharmacist" means ~~an individual~~a person licensed by this state to ~~compound and dispense drugs, prescriptions and poisons.~~practice pharmacy.

(94) "Physician" means an individual currently licensed to practice medicine in this state.

(95) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(96) "Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(97) "Powered air-purifying respirator (PAPR)" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(98) "Prescribed dosage" means ~~the quantity of radiopharmaceutical activity documented in a written directive by an authorized user.~~the specified activity or range of activity of unsealed radioactive material as documented:

(a) In a written directive; or

(b) In accordance with the directions of an authorized user.

(99) "Prescribed dose" means:

(a) for teletherapy or accelerator radiation:

(i) the total dose; and

(ii) the dose per fraction as documented in the written directive;

(b) for brachytherapy:

(i) the total source strength and exposure time; or

(ii) the total dose, as documented in the written directive; or

(c) for gamma stereotactic radiosurgery, the total dose as documented in the written directive.

(d) for remote brachytherapy afterloaders, the total dose and dose per fraction as documented in a written directive.

(100) "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that

admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(101) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to another source of radiation within a licensee's or registrant's control. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, or from voluntary participation in medical research programs.

(102) "Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(103) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.

(104) "Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(105) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(106) Quarterly" means either:

(a) at intervals not to exceed 13 weeks; or

(b) once per 13 weeks at about the same time during each 13 week period (completed during the same month of the quarter (first month, second month or third month) each quarter over a time period of several quarters.

(107) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).

(108) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters as defined in G.S. 104E-5(12).

(109) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(110) "Radiation dose" means dose.

(111) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated as defined in G.S. 104E-5(13).

(112) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.

(113) "Radioactive material" means any solid, liquid, or gas, which emits ionizing radiation spontaneously as defined in G.S. 104E-5(14).

(114) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.

(115) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.

(116) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.

(117) "Radiobioassay" means bioassay.

~~(118) "Recordable event" means the administration of the following:~~

~~(a) a radiopharmaceutical or radiation from a licensed source without a written directive where a written directive is required by Sub-items 167(a)(i) and 167(b)-(f) of this Rule;~~

~~(b) a radiopharmaceutical or radiation from a licensed source where a written directive is required by Sub-items 167(a)(i) and 167(b) (f) of this Rule without recording each administered radiopharmaceutical dosage or radiation dose in the appropriate record on a daily basis;~~

~~(c) a radiopharmaceutical dosage of greater than 30 microcuries of sodium iodide I-125 and I-131 when:~~

~~(i) the administered dosage differs from the prescribed dosage by more than 10~~

~~percent of the prescribed dosage; and~~

~~(ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries;~~

~~(d) a therapeutic dosage of any radiopharmaceutical dosage other than sodium iodide I-125 or I-131 when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;~~

~~(e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or~~

~~(f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than 10 percent of the prescribed dose.~~

~~(119)~~(118)"Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

~~(120)~~(119)"Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.

~~(121)~~(120)"Registration" means registration with the agency in accordance with these Rules.

~~(122)~~(121)"Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

~~(123)~~(122)"Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows:

QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent[a]
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a] Absorbed dose in rad equal to one rem or the absorbed dose in gray equal to one sievert.

If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, one rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the rules of this Chapter, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body.

If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rads to dose equivalent in rems:

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

	Neutron Energy (MeV)	Quality Factor[a] (Q)	Fluence per Unit Dose Equivalent[b] (neutrons cm^{-2} rem^{-1})
(thermal)	2.5×10^{-8}	2	980×10^{6}
	1×10^{-7}	2	980×10^{6}
	1×10^{-6}	2	810×10^{6}

1×10^{-5}	2	810×10^{6}
1×10^{-4}	2	840×10^{6}
1×10^{-3}	2	980×10^{6}
1×10^{-2}	2.5	1010×10^{6}
1×10^{-1}	7.5	170×10^{6}
5×10^{-1}	11	39×10^{6}
1	11	27×10^{6}
2.5	9	29×10^{6}
5	8	23×10^{6}
7	7	24×10^{6}
10	6.5	24×10^{6}
14	7.5	17×10^{6}
20	8	16×10^{6}
40	7	14×10^{6}
60	5.5	16×10^{6}
1×10^{2}	4	20×10^{6}
2×10^{2}	3.5	19×10^{6}
3×10^{2}	3.5	16×10^{6}
4×10^{2}	3.5	14×10^{6}

[a] Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

[b] Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

~~(124)~~(123)Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

~~(125)~~(124)"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if the burials were made in accordance with the provisions of Section .1600 of this Chapter.

~~(126)~~(125)"Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.

~~(127)~~(126)Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

~~(128)~~(127)"Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.

~~(129)~~(128)"Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

~~(130)~~(129)"Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

(130) "Sealed source and device registry" means the national registry that contains all the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

(131) "Self-contained breathing apparatus (SCBA)" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(132) "Semiannually" means either:

(a) at intervals not to exceed six months; or

(b) once per six months at about the same time during each six month period (completed during the sixth month of

each six month period over multiple six month periods).

(133) "Shallow-dose equivalent" (H_s), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2).

(134) "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.

(135) "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

(136) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(137) "Source material" means:

(a) uranium or thorium or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or

(b) ores containing one or more of the foregoing materials, in such concentrations as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material as defined in G.S. 104E-5(15).

(138) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.

(139) "Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.

(140) "Special nuclear material" means:

(a) plutonium, uranium 233,uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or

(b) any material artificially enriched by any of the foregoing, but does not include source material as defined in G.S. 104E-5(16).

(141) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:

$$\frac{175 \text{ (gram contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{or} = 1$$

(142) "State" means the State of North Carolina.

(143) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and

cancer incidence are examples of stochastic effects.

(144) "Supplied-air respirator (SAR or airline respirator)" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(145) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

(146) "These Rules" means Chapter 11 of this Title.

(147) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(148) "To the extent practicable" means to the extent feasible or capable of being done or carried out with reasonable effort.

(149) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(150) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive content, would be classified as "hazardous waste" as defined in G.S. 130A-290(8).

(151) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in Rule .0113 of this Section or may be determined by procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.

(152) "Unit dosage" means a dosage intended for medical use in an individual that has been obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements.

(153) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

(154) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.

(155) "User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(156) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).

(157) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.

(158) "Waste, Class A" is defined in Rule .1650 of this Chapter.

(159) "Waste, Class B" is defined in Rule .1650 of this Chapter.

(160) "Waste, Class C" is defined in Rule .1650 of this Chapter.

(161) "Week" means seven consecutive days starting on Sunday.

(162) "Weighting factor", w_T, for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12

Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30[a]
Whole body	1.00[b]

[a] 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

[b] For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor, w_T = 1.0, has been specified.

(163) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(164) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(165) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of 1.3 x 10^5 MeV of potential alpha particle energy.

(166) "Working level month" (WLM) means an exposure to one working level for 170 hours.

(167) "Written directive" means an order in writing for a specific ~~patient,~~patient or human research subject dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the patient or human research subject's name and the following information:

(a) for the ~~diagnostic~~ administration of ~~a radiopharmaceutical:~~greater than 30 microcuries (1.11 Megabecquerels (MBq)) of sodium iodide I-131, the dosage;

~~(i) if greater than 30 microcuries of sodium iodide I-125 or I-131, the dosage to be administered in accordance with the diagnostic clinical procedures manual; or~~

~~(ii) if not subject to Sub-item (a)(i) of this Item, the type of study to be performed in accordance with the diagnostic clinical procedures manual;~~

(b) for the therapeutic administration of a ~~radiopharmaceutical:~~radiopharmaceutical other than sodium iodide I-131:

(i)~~radiopharmaceutical;~~radionuclide;

(ii) dosage; and

(iii) route of administration;

(c) for teletherapy or accelerator radiation therapy:

(i) total dose;

(ii) dose per fraction;

(iii) treatment site; and

(iv) ~~overall treatment period;~~number of fractions;

(d) for high-dose-rate remote afterloading brachytherapy:

(i) ~~radioisotope;~~radionuclide;

(ii) treatment site; ~~and~~

(iii) ~~total dose;~~dose per fraction

(iv) number of fractions; and

(v) total dose;

(e) for all other brachytherapy:

(i) prior to implantation:

(A)~~radioisotope;~~radionuclide;

(B) ~~number of sources to be implanted;~~treatment site; and

(C) ~~source strengths in millicuries;~~dose; and

(ii) after ~~implantation but prior to completion of the procedure:~~implantation:

(A)~~radioisotope;~~radionuclide;

(B) treatment site; ~~and~~

(C) ~~either:~~number of sources;

~~(I) total source strength and exposure time; or~~

~~(II) total dose;~~

(D) total source strength and exposure time;

(E) total dose;

(f) for gamma stereotactic radiosurgery:

(i) ~~target coordinates;~~the total dose;

(ii) ~~collimator size;~~treatment site; and

(iii) ~~plug pattern; and~~values for the target coordinate settings per treatment for each anatomically distinct treatment site.

~~(iv) total dose.~~

(168) "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

Authority G.S. 104E-7(a)(2);

15A NCAC 11 .0117 INCORPORATION BY REFERENCE

(a) For the purpose of the rules in this Chapter, the following rules, standards and other requirements are hereby incorporated by reference including any subsequent amendments and editions:

(1) Appendix A, Appendix B, Appendix C, and Appendix G to 10 CFR Parts 20.1001 - 20.2401;

(2) 10 CFR Part 21, 10 CFR Part 30.1, 30.10, 10 CFR Part 31, 10 CFR Part 32, Subpart J of 10 CFR Part 35, 10 CFR 35.50, 35.51, 35.55, 35.57, 35.59, 35.190, 35.290, 35.390, 35.392, 35.394, 35.396, 35.432, 35.433, 35.457, 35.490, 35.491, 35.500, 35.590, Subpart H of 10 CFR Part 35, 35.1000, 10 CFR Part 36, 10 CFR Part 40 and 10 CFR Part 50;

(3) 10 CFR Part 61, 10 CFR Part 70, 10 CFR Part 71, 10 CFR Part 73, 10 CFR Part 110, 10 CFR Part 140 and 10 CFR Part 150;

(4) 21 CFR Part 1010, 21 CFR Part 1020 and 21 CFR Part 1040;

(5) 39 CFR Part 14 and 39 CFR Part 15;

(6) Postal Service Manual (Domestic Mail Manual) Section 124.3 [incorporated by reference in 39 CFR Section 111.11];

(7) 40 CFR Part 261;

(8) 49 CFR Parts 100-189;

(9) "Agreement Between the United States Atomic Energy Commission and the State of North Carolina for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended", signed July 21, 1964;

(10) "Standards and Specifications for Geodetic Control Networks (September 1984);

(11) "Geometric Geodetic Survey Accuracy Standards and Specifications for Geodetic Surveys Using GPS Relative Positioning Techniques";

(12) "Reference Man: Anatomical, Physiological and Metabolic Characteristics" (ICRP Publication No. 23) of the International Commission on Radiological Protection;

(13) "10 CFR, Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 FR 7540"; and

(14) American National Standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography".

(b) The rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule are available for inspection at the Department of Environment and Natural Resources, Division of Radiation Protection at the address listed in Rule .0111 of this Section. Except as noted in the Subparagraphs of this Paragraph, copies of the rules, standards and other requirements incorporated by reference in Paragraph (a) of this Rule may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost as follows:

(1) Three dollars ($3.00) for the appendixes listed in Subparagraph (a)(1) of this Rule, available from the Division of Radiation Protection;

(2) Twenty-five dollars ($25.00) for the regulations listed in Subparagraph (a)(2) of this Rule in a volume containing 10 CFR Parts 0-50;

(3) Eighteen dollars ($18.00) for the regulations listed in Subparagraph (a)(3) of this Rule in a volume containing 10 CFR Parts 51-199;

(4) Eighteen dollars ($18.00) for the regulations listed in Subparagraph (a)(4) of this Rule in a volume containing 21 CFR Parts 800-1299;

(5) Sixteen dollars ($16.00) for the regulations listed in Subparagraph (a)(5) of this Rule in a volume containing 39 CFR;

(6) Thirty-six dollars ($36.00) for the manual listed in Subparagraph (a)(6) of this Rule;

(7) Thirty-one dollars ($31.00) for the regulations listed in Subparagraph (a)(7) of this Rule in a volume containing 40 CFR Parts 260-299;

(8) For the regulations listed in Subparagraph (a)(8) of this Rule:

(A) Twenty-three dollars ($23.00) for a volume containing 49 CFR Parts 100-177; and

(B) Seventeen dollars ($17.00) for a volume containing 49 CFR Parts 178-199;

(9) One dollar ($1.00) for the agreement in Subparagraph (a)(9) of this Rule, available from the Division of Radiation Protection;

(10) Two dollars and eighty-five cents ($2.85) for the standards and specifications in Subparagraph (a)(10) of this Rule, available from the National Geodetic Information Center, N/CG174, Rockwall Building, Room 24, National Geodetic Survey, NOAA, Rockville, MD 20852;

(11) Two dollars and eighty-five cents ($2.85) for the standards and specifications in Subparagraph (a)(11) of this Rule, available from the National Geodetic Information Center, NCG174, Rockwall Building, Room

24, National Geodetic Survey, NOAA, Rockville, MD 20852;

(12) One hundred and five dollars ($105.00) for the ICRP Publication No. 23 in Subparagraph (a)(12) of this Rule, available from Pergamon Press, Inc., Maxwell House, Fairview Park, Elmsford, NY 10523;

(13) Two dollars ($2.00) for the document in Subparagraph (a)(13) of this Rule, available from the Division of Radiation Protection; and

(14) Thirty-eight dollars plus five dollars shipping and handling ($43.00) for the American National Standard N432-1980 in Subparagraph (a)(14) of this Rule, available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018, telephone number (212) 642-4900.

(c) Nothing in this incorporation by reference of 10 CFR Part 61 in Subparagraph (a)(3) of this Rule shall limit or affect the continued applicability of G.S. 104E-25(a) and (b).

Authority G.S. 104E-7; 104E-15(a); 150B-21.6.

SECTION .0300 - LICENSING OF RADIOACTIVE MATERIAL

15A NCAC 11 .0318 SPECIFIC LICENSES: GENERAL REQUIREMENTS FOR HUMAN USE

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

(1) "Authorized medical physicist" means an individual who:

(A) Meets the requirements in 10 CFR 35.51(a) and 35.59; or, before October 24, 2005, meets the requirements in 10 CFR 35.961(a), or (b), and 35.59; or

(B) Is identified as an authorized medical physicist or teletherapy physicist on:

(i) A specific medical use license issued by the U.S. Nuclear Regulatory Commission or Agreement State;

(ii) A medical use permit issued by the U.S. Nuclear Regulatory Commission master material licensee;

(iii) A permit issued by a U.S. Nuclear Regulatory Commission or Agreement State broad scope medical use licensee; or

(iv) A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee.

(2) "Authorized nuclear pharmacist" means a pharmacist who:

(A) Meets the requirements in 10 CFR 35.55(a) and 35.59; or, before October 24, 2005, meets the requirements in 10 CFR 35.980(a) and 35.59; or

(B) Is identified as an authorized nuclear pharmacist on:

(i) A specific license issued by the U.S. Nuclear Regulatory Commission or Agreement State that authorizes medical use or the practice of nuclear pharmacy;

(ii) A permit issued by the U.S. Nuclear Regulatory Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) A permit issued by a U.S. Nuclear Regulatory Commission or Agreement State broad scope medical use license that authorizes medical use or the practice of nuclear pharmacy; or

(iv) A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(C) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(D) Is designated as an authorized nuclear pharmacist in accordance with 10 CFR 32.72(b)(4).

(3) "Authorized user" means a physician who:

(A) Meets the requirements in 10 CFR 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), or 35.690(a); or on or before October 24, 2005, meets the requirements in 10 CFR 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), or 35.960(a) and 35.59; or

(B) Is identified as an authorized user on:

(i) A U.S. Nuclear Regulatory Commission or Agreement State license that authorizes medical use of radioactive material;

(ii) A permit issued by a U.S. Nuclear Regulatory Commission master material licensee that is authorized to permit the medical use of radioactive material;

(iii) A permit issued by a U.S. Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

(iv) A permit issued by a U.S. Nuclear Regulatory Commission master material license broad scope permittee that is authorized to permit the medical use of byproduct material.

(4) "Brachytherapy" means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal or interstitial application.

(5) "Brachytherapy source" means a radioactive source or a manufacture-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

(6) "High dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

(7) "Low dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of less than or equal to 2 gray (200 rads) per hour at the point or surface where the dose is prescribed.

(8) Manual brachytherapy" means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

(9) "Medium dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of greater than 200 rads (2 gray), but less than 1200 rads (12 gray) per hour at the point or surface where the dose is prescribed.

(10) "Patient intervention" means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

(11) "Pulsed dose-rate afterloader" means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

(A) is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

(B) is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

(12) "Radiation safety officer" as used in this Section, means an individual who:

(A) Meets the requirements in 10 CFR 35.50(a) or (c)(1) and 35.59; or, before October 24, 2005, 10 CFR 35.900(a) and 35.59, as incorporated by reference in 15A NCAC 11 .0117; or

(B) Is identified as a Radiation Safety Officer on:

(i) A specific medical use license issued by the U.S. or an Agreement State; or

(ii) A medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

(13) "Stereotactic radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

(14) "Therapeutic dosage" means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

(15) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

~~(a)~~(b) License required:

(1) A person shall not manufacture, produce, acquire, receive, possess, use or transfer radioactive material for medical use except in accordance with a specific license issued by the agency or as allowed pursuant to Subparagraphs ~~(a)(2)~~(b)(2) and ~~(a)(3)~~(b)(3) of this Rule.

(2) An individual may receive, possess, use, or transfer radioactive material in accordance with the rules of this Section under the supervision of an authorized user as provided in this Section unless prohibited by license condition.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with the rules of this Section under

the supervision of a pharmacist who is an authorized user or physician who is an authorized user as provided in this Section unless prohibited by license condition.

~~(b)~~(c) A license application for human use of radioactive material shall be approved if the agency determines that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these Rules;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to protect public health from radiation hazards and minimize radiological danger to life or property;

(3) The issuance of the license will not be inimical to the health and safety of the public;

(4) The following training and supervisory relationship are adhered to:

(A) the user of radioisotopes applied to humans for diagnostic, therapeutic, or investigational purposes shall be a physician authorized by a condition of a specific license, including a specific license of broad scope.

(B) An authorized physician may delegate only to persons who are physicians under the supervision of the authorized physician, the following:

(i) the approval of procedures involving the administration to patients of radiopharmaceuticals or the application to patients of radiation from radioisotope sources;

(ii) the prescription of the radiopharmaceutical or source of radiation and the dose or exposure to be administered;

(iii) the determination of the route of administration;

(iv) the interpretation of the results of diagnostic procedures in which radiopharmaceuticals are administered;

(C) The authorized physician shall review the work of the supervised individual as it pertains to the delegated work in Subparagraph ~~(b)(4)~~(c)(4) of this Rule and the records kept reflecting that work.

(5) the applicant satisfies any applicable special requirements in Rules .0319 to .0322 of this Section.

~~(c)~~(d) Subject to the provisions of Subparagraph ~~(b)(4)~~(c)(4) and Paragraphs ~~(d)~~(e) to ~~(g)~~(h) of this Rule, an authorized physician may permit technicians and other paramedic personnel to perform the following activities:

(1) preparation and quality control testing of radiopharmaceuticals and sources of radiation;

(2) measurement of radiopharmaceutical doses prior to administration;

(3) use of appropriate instrumentation for the collection of data to be used by the physician;

(4) administration of radiopharmaceuticals and radiation from radioisotope sources to patients.

~~(d)~~(e) Authorized physicians who permit activities to be performed by technicians and other paramedical personnel pursuant to Paragraph ~~(c)~~(d) of this Rule shall:

(1) prior to giving permission, determine that the technicians and other paramedical personnel have been properly trained to perform their duties with specific training in the following subjects, as applicable to the duties assigned:

(A) general characteristics of radiation and radioactive materials;

(B) physical, chemical, and pharmaceutical characteristics of each radiopharmaceutical to be used;

(C) mathematics and calculations basic to the use and measurement of radioactivity, including units of radiation dose and radiation exposure;

(D) use of radiation instrumentation for measurements and monitoring including operating procedures, calibration of instruments, and limitations of instruments;

(E) principles and practices of radiation protection;

(F) additional training in the above subjects, as appropriate, when new duties are added.

(2) assure that the technicians and other paramedical personnel receive appropriate retraining in the subjects listed in Subparagraph ~~(d)(1)~~(e)(1) of this Rule to maintain proficiency and to keep abreast of developments in the field of nuclear medical technology;

(3) keep records showing the bases for the determinations of proper training;

(4) retain responsibility as licensee or authorized user for the satisfactory performance of the activites; and

(5) review the work of the supervised individual and the records kept reflecting that work.

~~(e)~~(f) Certification in nuclear medicine technology by the American Registry of Radiologic Technologists or in nuclear ~~medical~~ medicine technology by the ~~Registry of Medical Technologists of the American Society of Clinical Pathologists~~Nuclear Medicine Technologist Certification Board or the Society of Nuclear Medicine shall be deemed to satisfy the training requirements in Subparagraphs ~~(d)(1)~~(e)(1) and (2) of this Rule.

~~(f)~~(g) An applicant for a license or for amendment or renewal of a license shall state whether he desires to permit technicians or other paramedical personnel to perform activities pursuant to Paragraph ~~(e)~~(d) of this Rule and, if so, shall include in his application for license, license amendment, or license renewal a statement of the activities to be so performed and a description of an adequate program for training the personnel, including retraining as required to keep abreast of developments in technology, or for otherwise determining that the personnel are properly trained to perform their duties.

~~(g)~~(h) Whenever a technician or other paramedical person administers a radiopharmaceutical to a patient by injection, a physician shall be immediately accessible, but not necessarily a physician authorized by the agency to be a user of radioisotopes.

~~(h) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized pharmacist as allowed by Subparagraph (a)(3) of this Rule shall:~~

~~(1) instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of radioactive material;~~

~~(2) require the supervised individual to follow the instructions given pursuant to Subparagraph (h)(1) of this Rule and to comply with the rules of this Chapter and license conditions; and~~

~~(3) require the supervising authorized pharmacist to periodically review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect that work.~~

(i) A licensee that permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user shall:

(1) In addition to the requirements in Rule .1003 of this Chapter, instruct the supervised individual in the licensee's written radiation protection procedures, written directive procedures, regulations of this Chapter, and license conditions with respect to the use of radioactive material; and

(2) Require the supervised individual to follow the instructions of the supervising authorized user for medial uses of radioactive material, written radiation protection procedures established by the licensee, written directive procedures, regulations of this Chapter, and license conditions with respect to the medical use of radioactive material.

(j) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user shall:

(1) In addition to the requirements in Paragraph (e) of this Rule and Rule .1003 of this Chapter, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(2) Require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, written radiation protection procedures established by the licensee, the regulations of this Chapter, and license conditions.

(k) A licensee that permits supervised activities under Paragraphs (d) and (e) of this Rule is responsible for the acts and omissions of the supervised individual.

~~(i)~~(l) A ~~licensee~~ licensee's management shall appoint a Radiation Safety Officer (RSO) who agrees in writing to be responsible for implementing the radiation safety program. The licensee, through the RSO, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

~~(j)~~(m) A licensee shall establish in writing the authority, duties and responsibilities of the Radiation Safety Officer.

~~(k)~~(n) A licensee shall provide the Radiation Safety Officer sufficient authority, organizational freedom, and management prerogative to:

(1) identify radiation safety problems;

(2) investigate radiation safety problems such as overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, ~~misadministrations;~~medical events, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(3) initiate, recommend or provide corrective actions for radiation safety problems;

(4) verify implementation of corrective actions; and

(5) retain records of items listed in Subparagraphs ~~(k)(1)~~(n)(1) through (4) of this Rule.

~~(l) For each individual receiving radiopharmaceutical therapy and hospitalized for compliance with Rule .0358 of this Section, a licensee shall:~~

~~(1) provide a private room with a private sanitary facility;~~

~~(2) post the individual's door with a "Radioactive Materials" sign and note on the door or the individual's chart, where and how long visitors may stay in the individual's room;~~

~~(3) promptly, after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with Section .1600 of this Chapter; and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirem per hour, the instrument used to make the survey, and~~

~~the initials of the individual who performed the survey;~~

~~(4) either monitor material and items removed from the individual's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste; and~~

~~(5) Notify the Radiation Safety Officer and authorized user as soon as feasible if the individual has a medical emergency and immediately if the patient dies.~~

(o) In addition to the requirements in Rule .1003 of this Chapter, the licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who cannot be released in accordance with the requirements of Rule .0358 of this Section. To satisfy this requirement, the instruction must be commensurate with the duties of the personnel and include:

(1) Patient or human research subject control;

(2) Visitor control, including:

(A) Routine visitation to hospitalized individuals in accordance with the provisions of Rule .1611(a)(1) of this Chapter; and

(B) Visitation authorized by Rule .1611(e) of this Chapter;

(3) Contamination control;

(4) Waste control;

(5) Notification of the Radiation Safety Officer, or his designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(p) The licensee shall retain records of the radiation safety instructions required by Paragraphs (i), (j), and (o) for three years. The record must include:

(1) List of topics covered;

(2) The date of the instruction;

(3) The name(s) of the attendee(s); and

(4) The mane(s) of the individual(s) who provided the instruction.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0320 SPECIFIC LICENSES: HUMAN USE BY INDIVIDUAL PHYSICIANS

(a) An application by an individual physician or a group of physicians for a specific license for human use of radioactive material shall be approved if:

(1) the applicant satisfies the general requirements in Rule .0318 of this Section;

(2) The application is for use in the applicant's practice in an office(s) outside a medical institution;

(3) the applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable;

(4) the applicant has ~~extensive~~ experience, which meets the requirements of ~~Subpart J~~the applicable sections of 10 CFR Part 35, in the proposed use, the handling and administration of radioisotopes, and where applicable, the clinical management of radioactive patients; and

(5) the physician(s) furnishes suitable evidence of experience along with the application, except that a statement from the medical isotope committee in the hospital where the applicant acquired experience, indicating its amount and nature, may be submitted as evidence of experience. ~~Subpart J of~~ 10 CFR Part 35 provides the requirements that meet the test for suitable evidence of experience.

(b) The agency shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a hospital unless:

(1) The use of radioactive material is limited to:

(A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;

(B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;

(C) the performance of IN VITRO diagnostic studies; or

(D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation.

(2) The physician brings the radioactive material with him and removes the radioactive material when he departs;

(3) No radioactive material is received, possessed or stored in the hospital other than the amount of material remaining in the patient; and

(4) The hospital does not hold a radioactive material license under Rule .0319 of this Section.

~~(c) The agency shall approve an application by an individual physician or group of physicians for a specific license to receive, possess, or use radioactive materials covered under Rule .0321 of this Section if:~~

~~(1) the applicant has appointed a medical isotopes committee of at least three members to evaluate all proposals for diagnostic or therapeutic use of radioisotopes within the facility; and~~

~~(2) membership of the committee includes an authorized user from each department where radioactive material is used, a representative of~~

the institution's management and a person trained in radiation safety.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0321 SPECIFIC LICENSES: GENERAL REQUIREMENTS FOR HUMAN USE OF UNSEALED RADIOACTIVE MATERIALS

(a) An application for a specific license pursuant to Rule .0318 of this Section for any diagnostic or therapeutic use of unsealed radioactive material specified in groups established in Paragraph (b) of this Rule shall be approved for all of the diagnostic or therapeutic uses within the group which include the use specified in the application if:

(1) the applicant satisfies the requirements in Rule .0319 or Rule .0320 of this Section;

(2) the applicant's proposed radiation detection instrumentation is adequate for conducting the diagnostic or therapeutic procedure specified in the appropriate group;procedure(s) requested;

(3) the physicians designated in the application as individual users, have clinical experience in the types of uses included in the group or groups incorporated by reference in Rule .0117(a)(2) of this Chapter;

(4) the physicians and all other personnel who will be involved in the preparation and use of radioactive material have training and experience in the handling of unsealed radioactive material appropriate to their participation in the uses included in the group or groupsuse of radioactive material and as incorporated by reference in Rule .0117(a)(2) of this Chapter;

(5) the applicant has detailed radiation safety operating procedures for handling and disposal of the radioactive material involved in the uses included in the group or groups that provide protection to the workers, the public and the environment from radiation exposure and radioactive contamination.

(b) The groups of diagnostic and therapeutic radiopharmaceutical uses are established as follows:

(1) Group I includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving measurement of uptake, dilution and excretion. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission or involving imaging, tumor localization or therapy.

(2) Group II includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for diagnostic studies involving imaging and tumor localizations. This group does not include the use of any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.

(3) Group III includes the use of generators and reagent kits for which a New Drug application has been approved by the U.S. Food and Drug Administration for the preparation of radiopharmaceuticals for certain diagnostic uses. This group does not include any generator or reagent kit disapproved by the North Carolina Radiation Protection Commission.

(4) Group IV includes radiopharmaceuticals for which a New Drug application has been approved by the U.S. Food and Drug Administration for therapeutic uses which do not normally require hospitalization for purposes of radiation safety. This group does not include any radiopharmaceutical disapproved by the North Carolina Radiation Protection Commission.

(c) Any licensee who is authorized to use radioactive material in one or more groups pursuant to Paragraph (a) of this Rule is subject to the following conditions:

(1) For Groups I, II and IV, no licensee shall receive, possess, or use radioactive materials except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with:

(A) a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to Section 32.72 of 10 CFR Part 32; or

(B) a specific license issued by the agency or an agreement state pursuant to equivalent regulations.

(2) For Group III, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material or shall use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material, except:

(A) reagent kits, not containing radioactive material, that are approved by the U.S. Nuclear Regulatory Commission, the U.S. Atomic Energy Commission, or an agreement state for use by persons licensed for Group III pursuant to Paragraph (a) of this Rule or equivalent regulations of an agreement state or the U.S. Nuclear Regulatory Commission;

(B) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the U.S.

Nuclear Regulatory Commission or by the agency or an agreement state pursuant to equivalent regulations;

(C) any licensee who uses generators or reagent kits shall elute the generator or process radioactive material with the reagent kit in accordance with instructions which are approved by the U.S. Nuclear Regulatory Commission or an agreement state and are furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit.

(3) For Groups I, II and III, any licensee using radioactive material for clinical procedures other than those specified in the product labeling package insert shall comply with the product labeling regarding:

(A) chemical and physical form;

(B) route of administration; and

(C) dosage range.

(4) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups also is authorized to use radioactive material under the general license in Rule .0314 of this Section for the specified IN VITRO uses without filing agency form as required by Rule .0314(b) of this Section, provided that the licensee is subject to the other provisions of Rule .0314 of this Section.

(5) Any licensee who is licensed pursuant to Paragraph (a) of this Rule for one or more of the medical use groups in Paragraph (a) of this Rule also is authorized, subject to the provisions of Parts (e)(5)(E) and (F) of this Rule, to receive, possess, and use for calibration and reference standards:

(A) Any radioactive material listed in Group I, Group II, or Group III of this Rule with a half-life not longer than 100 days, in amounts not to exceed 15 millicuries total;

(B) Any radioactive material listed in Group I, Group II, or Group III of this Rule with half life greater than 100 days in individual amounts not to exceed 200 microcuries total;

(C) Technetium 99m in individual amounts not to exceed 50 millicuries;

(D) Any radioactive material in amounts not to exceed 15 millicuries per source contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with:

(i) a specific license issued to the manufacturer by an agreement state pursuant to equivalent state regulations;

(ii) a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.74 of 10 CFR, Part 32; or

(iii) an application filed with the U.S. Atomic Energy Commission pursuant to Section 32.74 of 10 CFR, Part 32; or

(iv) an application filed with an agreement state pursuant to equivalent state regulations on or before October 15, 1974 for a license to manufacture a source that the applicant distributed commercially on or before August 16, 1974, on which application the U.S. Atomic Energy Commission or the U.S. Nuclear Regulatory Commission or the agreement state has not acted;

(E) Any licensee who possesses sealed sources as calibration or reference sources pursuant to Subparagraph (c)(5) of this Rule shall cause each sealed source containing radioactive material other than hydrogen-3 with a half-life greater than 30 days in any form other than gas to be tested for leakage or contamination at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, the sealed source shall not be used until tested. No leak tests are required when:

(i) The source contains 100 microcuries or less of beta or gamma emitting material or ten microcuries or less of alpha emitting material.

(ii) The sealed source is stored and is not being used. Such source shall be tested for leakage prior to any use or transfer unless they have been leak tested within six months prior to the date of use or transfer.

The leak test shall be capable of detecting the presence of 0.005 microcuries of radioactive material on

~~the test sample. The test sample shall be taken from the sealed source or from the surfaces of the device in which the sealed source is permanently mounted or stored on which contamination might be expected to accumulate. Records of leak test results shall be kept in units of microcuries and maintained for inspection by the agency. If the leak test reveals the presence of 0.005 microcuries or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with Commission rules. A report shall be filed within five days of the test with the agency address in Rule .0111 of this Chapter describing the equipment involved, the test results, and the corrective action taken;~~

~~(F) Any licensee who possesses and uses calibration and reference sources pursuant to Subparagraph (e)(5) of this Rule shall:~~

~~(i) follow the radiation safety and handling instructions that are required by the licensing agency to be furnished by the manufacturer on the label attached to the source or permanent container thereof or in the leaflet or brochure that accompanies the source;~~

~~(ii) maintain such instructions in a legible and conveniently available form;~~

~~(iii) conduct a quarterly physical inventory to account for all sources received and possessed; Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, location of sources and the date of the inventory.~~

(c) Any person authorized by Rules .0318, .0319, .0320, .0322, or .0324 of this Section for medical use of radioactive material may received, possess and use any of the following radioactive material for check, calibration, transmission and reference use:

(1) Sealed sources net exceeding 30 millicuries (mCi)(1.11 Gigabecquerel (GBq)) each, manufactured and distributed by a person licensed under 10 CFR 32.74 or equivalent Agreement State regulations;

(2) Sealed sources, not exceeding 30 mCi (1.11 GBq) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under 10 CFR 32.74, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions;

(3) Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 15 mCi (0,56 GBq);

(4) Any radioactive material with a half-life greater than 120 days in individual amounts not to exceed the smaller of 200 microcuries (μCi) (7.4 Megabecquerel (MBq)) or 1000 times the quantities in Appendix C of 10 CFR Part 20;

(5) Technetium-99m in amounts as needed.

(d) ~~Current lists of the radiopharmaceuticals, generators, reagent kits, and associated uses in Group I to IV are available from the agency at the address in Rule .0111 of this Chapter.~~Any licensee who possesses sealed sources as calibration and reference sources pursuant to Paragraph (c) of this Rule shall test each source for leakage and contamination prior to initial use and at intervals not to exceed six months or at other intervals approved by the U.S. Nuclear Regulatory Commission or an Agreement State in the Sealed Source and Device Registry. If there is reason to suspect that a sealed source may have been damaged, or might be leaking, it shall be tested for leakage before further use.

(e) Leak test results shall be recorded in units of microcuries and maintained for inspection by the agency.

(f) Any licensee who possesses and uses calibration and reference sources pursuant to Paragraph (c) of this Rule shall:

(1) follow the radiation safety and handling instructions that are required by the licensing agency to be furnished by the manufacturer on the label attached to the source or permanent container thereof or in the leaflet or brochure that accompanies the source;

(2) maintain such instructions in a legible and conveniently available form;

(3) conduct a quarterly physical inventory to account for all sources received an possessed under the license. Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, location of the sources and the date of the inventory.

(g) Any licensee who is licensed pursuant to .0318, .0319, .0320, or .0324 of this Section for medical use of unsealed radioactive material also is authorized to use radioactive material under the general license in Rule .0314 of this Chapter for the specified IN VITRO uses without filing agency form as required by Rule .0314(b) of the Chapter, provided that the licensee is subject to the other provisions of Rule .0314 of this Chapter.

(h) For each individual receiving radiopharmaceutical therapy and hospitalized for compliance with Rule .0358 of this Section, a licensee shall:

(1) provide a private room with a private sanitary facility;

(2) post the individual's door with a "Radioactive Materials" sign and note on the door or the individual's chart, where and how long visitors may stay in the individual's room;

(3) either monitor material or items removed from the individual's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste; and

(4) Notify the Radiation Safety Officer and authorized user as soon as feasible if the individual has a medical emergency and immediately if the patient dies.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0322 SPECIFIC LICENSES: HUMAN USE OF SEALED SOURCES

(a) In addition to the requirements set forth in Rule ~~.0318 or .0319~~.0318, .0319, or .0320 of this Section, a specific license for human use of sealed sources will be issued only if the applicant, or if the application is made by an institution, the individual user:

(1) has specialized training in the diagnostic or therapeutic use or the experience equivalent to such training, and

(2) is a physician.

(b) The licensee shall comply with the provisions of Section .0700 of this ~~Chapter.~~ Chapter and the requirements of Subpart H of 10 CFR Part 35.

(c) For medical use, a licensee may only use:

(1) Sealed sources or devices manufactured, labeled, packaged and distributed in accordance with a license issued under 10 CFR Part 30 and 10 CFR 32.74 or equivalent requirements of an Agreement State;

(2) Sealed sources or devices noncommercially transferred from a licensee licensed pursuant to Section .0300 of this Chapter, 10 CFR Part 35, or equivalent regulations of an Agreement State;

(3) Teletherapy sources manufactured and distributed in accordance with 10 CFR Part 30 or the equivalent requirements of an Agreement State;

(4) Brachytherapy sources, photon emitting remote afterlaoder units, teletherapy units or gamma stereotactic radiosurgery units for therapeutic medical use as approved in:

(A) the Sealed Sources and Device Registry; or

(B) Research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA.

(d) In addition to the requirements in Rule .1003 of this Chapter, the licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human research subjects who are receiving brachytherapy and cannot be released in accordance with Rule .0358 of this Section. To satisfy this requirement, the instruction must be commensurate with the duties of the personnel and include:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions

(3) Patient or human research subject control;

(4) Visitor control, including both:

(A) Routine visitation to hospitalized individuals in accordance with the provisions of Rule .1611(a)(1) of this Chapter; and

(B) Visitation authorized by Rule .1611(e) of this Chapter.

(5) Notification of the Radiation Safety Officer, or his designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

(e) The licensee shall retain records of the radiation safety instruction required in Paragraph (d) for three years. The record must include:

(1) List of topics covered;

(2) The date of the instruction;

(3) The name(s) of the attendee(s); and

(4) The name(s) of the individual(s) who provided the instruction.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0333 SPECIFIC LICENSES: MANUFACTURE OF RADIOPHARMACEUTICALS

An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule ~~.0321~~.0318, .0319, or .0320 of this Section for the radiopharmaceuticals and associated uses in Groups I, II or IV will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements of Rule .0317 of this Section ~~for the radiopharmaceuticals and associated uses in Groups I, II, or IV~~ will be approved, and

(2) the applicant satisfies the applicable requirements in Section 32.72 of 10 CFR Part 32 or their equivalent.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0350 RECORDS AND REPORTS OF MISADMINISTRATION

~~(a) As defined in this Rule, "patient" means the patient or the patient's responsible relative or guardian.~~

(b) For a misadministration as defined in Rule .0104 of this Chapter:

(1) The licensee shall notify the agency by telephone no later than the next business day after discovery of the misadministration.

(2) Within 15 days after the discovery of the misadministration, the licensee shall submit a written report to the agency. The written report shall include:

(A) the licensee's name;

(B) the name of the authorized user that issued the written directive;

(C) a brief description of the event recorded on the agency misadministration form;

(D) the licensee's evaluation of why the event occurred;

(E) any anticipated short and long term effects on the patient;

(F) the licensee's evaluation of improvements needed to prevent recurrence;

(G) documentation of the actions taken by the licensee to prevent recurrence; and

(H) whether or not the licensee notified the patient; and

(i) if the patient was not notified, the reason why not; or

(ii) if the patient was notified, what information was provided.

(3) The report required in Subparagraph (b)(2) of this Rule shall not include the patient's name or other information that could lead to the identification of the patient.

(4) The licensee shall notify the referring physician and the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or that, based on medical judgment, telling the patient would be harmful. The licensee is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the licensee shall notify the patient as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(5) If the patient was notified, the licensee, shall also furnish, within 15 days after discovery of the misadministration a written report to the patient by sending either:

(A) A copy of the report that was submitted to the agency; or

(B) A brief description of both the event and the consequences as they may affect the patient, provided a statement is included that the report submitted to the agency can be obtained from the licensee.

(c) Each licensee shall retain a record of each misadministration for five years. The record shall contain:

(1) the names of all individuals involved including the authorized user, allied health personnel, the patient, and the patient's referring physician;

(2) the patient's social security number or identification number if one has been assigned; and

(3) the information required in Parts (b)(2)(C) (G) of this Rule.

(d) Aside from the notification requirements, nothing in this Rule shall affect the rights or duties of licensees, and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

Authority G.S. 104E-7(a)(2).

15A NCAC 11 .0356 PROCEDURES FOR ADMINISTRATIONS REQUIRING A WRITTEN DIRECTIVE

(a) Each applicant or licensee for medical use under this Section shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from licensed sources will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(1) that, prior to administration, a written directive is prepared for any:

(A) diagnostic administration of a radiopharmaceutical;

(B) therapeutic administration of a radiopharmaceutical;

(C) brachytherapy radiation dose;

(D) teletherapy or accelerator radiation dose; or

(E) gamma stereotactic radiosurgery radiation dose;

(2) that, prior to each administration, the patient's identity is verified by more than one method as the individual named in the written directive;

(3) that final plans of treatment and related calculations for brachytherapy, teletherapy, accelerator treatment and gamma stereotactic radiosurgery are in accordance with written directives;

(4) that each administration is in accordance with the written directive; and

(5) that any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(b) Notwithstanding the requirements of Subparagraph (a)(1) of this Rule for diagnostic administration of a radiopharmaceutical, if an authorized user determines that deviation from the diagnostic clinical procedures manual is necessary for reasons other than the emergent nature of the patient's condition, an authorized user may issue an oral revision to a written directive that shall be documented in writing within 48 hours after the oral directive.

(c) Notwithstanding the requirements of Subparagraph (a)(1) of this Rule:

(1) if, due to the patient's condition, a delay in the execution of an existing written directive in order to obtain a written revision to the existing written directive would jeopardize the patient's health, an oral revision by an authorized user to an existing written directive shall be acceptable, provided that:

(A) the oral revision is documented immediately in the patient's record; and

(B) a revised written directive is signed by an authorized user within 48 hours of the oral revision;

(2) a written revision to an existing written directive may be made for any diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy or accelerator radiation dose, or the next teletherapy or accelerator radiation fractional dose;

(3) if, because of the emergent nature of the patient's condition, a delay in order to acquire a written directive by an authorized user would jeopardize the patient's health, an oral directive by an authorized user shall be acceptable, provided that:

(A) the information contained in the oral directive is documented immediately in the patient's record; and

(B) a written directive is prepared and signed by an authorized user within 48 hours of the oral directive.

(d) The medical use licensee shall:

(1) develop procedures for and conduct a review of the quality management program at intervals not to exceed 12 months to verify compliance, since the last review, with all aspects of the quality management program including an evaluation of:

(A) a representative sample of therapeutic administrations and those diagnostic administrations of greater than 30 microcuries of sodium iodide I-125 or I-131 patient administrations;

(B) all recordable events; and

(C) all misadministrations;

(2) evaluate each of these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the objectives of Paragraph (a) of this Rule; and

(3) retain records of each review in an auditable form, including the evaluations and findings of the review for three years.

(e) The medical use licensee shall evaluate and respond, within 30 days after discovery of a recordable event as defined in Rule .0104 of this Chapter, to each recordable event by:

(1) assembling the relevant facts including the cause of the event;

(2) identifying any corrective action required to prevent recurrence; and

(3) retaining a record, in an auditable form, for three years, of the information required in Subparagraphs (1) and (2) of this Paragraph.

(f) The medical use licensee shall retain:

(1) each written directive;

(2) a record of each administered radiation dose or radiopharmaceutical dosage; and

(3) retaining a record, in an auditable form, for three years, of the information required in Subparagraphs (1) and (2) of this Paragraph.

(g) The medical use licensee is authorized to make modifications to the quality management program, without prior approval by the agency, that do not degrade the program's ability to maintain exposures as low as reasonably achievable. Changes to the quality management program shall be submitted to the agency for review within 30 days of the change.

(h) Each applicant for a new medical use license shall submit to the agency a quality management program as part of the application for a license and implement the program upon issuance of the license.

(i) Each existing medical use licensee shall submit to the agency by May 1, 1995 a written certification that the quality management program has been implemented along with a copy of the program.

(a) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(1) The patient or human research subject's identity is verified before each administration; and

(2) Each administration is in accordance with the written directive.

(b) At a minimum, the procedures required by Paragraph (a) of this Rule must address the following items that are applicable to the licensee's use of radioactive material:

(1) Verifying the identity of the patient or human research subject;

(2) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(3) Checking both manual and computer-generated dose calculations; and

(4) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units.

(c) A licensee shall retain a copy of the procedures required under Paragraph (a) of this Rule until the agency terminates the pertinent license.

(d) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive shall be documented as soon as possible in writing in the patient's record. A written directive must be prepared within 48 hours of the oral directive.

(e) A written revision to an existing written directive may be made:

(1) if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose, or

(2) if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within 48 hours of the oral revision.

(f) The licensee shall retain a record of the written directive and any revisions to the written directive for three years.

Authority G.S. 104E-7; 104E-10(b).

15A NCAC 11 .0359 MEASUREMENTS/DOSAGES OF UNSEALED RADIOACTIVE MATERIAL FOR MEDICAL USE

(a) A licensee shall possess and use a dose calibrator to measure the radioactivity of dosages of photon-emitting radionuclides prior to administration to each individual. A licensee shall:

(1) develop, maintain, and implement written procedures for use of the dose calibrator;

(2) ~~check dose calibrator for constancy at the beginning of each day of use. To satisfy the requirements of this Subparagraph, the check shall be done on a frequently used setting with a sealed source of not less than 10 microcuries (0.37 megabecquerel (MBq) of radium 226 or 50 microcuries (1.85 MBq) of any other photon emitting radionuclide;~~calibrate each dose calibrator in accordance with nationally recognized standards or the manufacturer's instructions.

(3) ~~test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides who activity the manufacturer has determined within five percent of this stated activity, whose activity is at least 10 microcuries (0.37 MBq) for radium-226 and 50 microcuries (1.85 MBq) for any other photon emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;~~

(4) ~~test each dose calibrator for linearity upon installation and at least quarterly thereafter over a range with from the highest dosage that will be administered to a patient or human research subject to 30 microcuries (1.1 MBq); and~~

(5) ~~test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.~~

(b) A licensee shall ~~also perform appropriate checks and tests required by this Rule following repair of the dose calibrator.~~retain a record of each check, test, and calibration performed in accordance with this Rule for a period of three years following the test.

~~(c) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 10 microcuries (.37 MBq) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.~~

~~(d) A licensee shall retain a record of each check and test required by this Rule for three years. The records required in Subparagraphs (a)(2) (a)(5) of this Rule shall include:~~

~~(1) For Subparagraph (a)(2) of this Rule, the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;~~

~~(2) For Subparagraph (a)(3) of this Rule, the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test;~~

~~(3) For Subparagraph (a)(4) of this Rule, the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identify of the individual performing the test; and~~

~~(4) For Subparagraph (a)(5) of this Rule, the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.~~

Authority G.S. 104E-7; 104E-10(b); 104E-12.

15A NCAC 11 .0360 SURVEYS OF

RADIOPHARMACEUTICAL AREAS FOR RADIATION EXPOSURE RATE

(a) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

~~(b) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.~~

~~(c)~~(b) A licensee shall conduct the survey required by ~~Paragraphs (a) and~~Paragraph (b) of this Rule so as to be able to detect dose rates as low as 0.1 millirem (1 microsievert) per hour.

~~(d)~~(c) A licensee shall establish radiation dose rate trigger levels for the surveys required by ~~Paragraphs (a) and~~Paragraph (b) of this Rule. A licensee shall require the individual performing the survey to promptly notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

~~(e) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.~~

~~(f) A licensee shall conduct the surveys required by Paragraph (e) of this Rule so as to be able to detect contamination on each wipe sample of 2,000 disintegrations per minute.~~

~~(g) A licensee shall establish removable contamination trigger levels for the surveys required by Paragraph (e) of this Rule. A licensee shall require the individual performing the survey to promptly notify the Radiation Safety Officer if contamination levels exceed the trigger level.~~

~~(h)~~(d) A licensee shall retain a record of ~~each~~ the survey required by this Rule for three years. The record shall include:

(1) the date of the survey;
(2) a plan of each area surveyed;
(3) the trigger level established for each area;
(4) the detected dose rate at several points in each area ~~surveyed;~~surveyed expressed in millirem (or microsievert) per hour;
~~(5) the detected dose rate at several points in each area expressed in millirem (or microsievert) per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters;~~
~~(6)~~(5) the instrument used to make the ~~survey or analyze the samples;~~survey; and
~~(7)~~(6) the initials of the individual who performed the survey.

~~(i)~~(e) Any licensee authorized by the rules of this Chapter to manufacture, produce, acquire, receive, possess, use or transfer radioactive material for medical use shall have in its possession a calibrated portable radiation survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour (1 microsievert per hour) to 100 millirem per hour (.01 millisievert per hour), and a portable radiation survey instrument capable of measuring dose rates over the range of one millirem per hour (.01 millisievert per hour) to 1,000 millirem per hour (10 millisievert per hour). A licensee shall calibrate the survey instruments used to show compliance with this Section before first use, annually, and following repair. The licensee shall:

(1) calibrate all scales with readings up to 1,000 millirem (10 millisievert) per hour with a radiation source;
(2) calibrate two separated readings on each scale that must be calibrated; and
(3) conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

~~(j)~~(f) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent.

~~(k)~~(g) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

~~(l)~~(h) A licensee shall retain a record of each survey instrument calibration for three years. The record must include:

(1) a description of the calibration procedure; and
(2) the date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the identity of the individual who performed the calibration.

Authority G.S. 104E-7; 104E-10(b); 104E-12.

15A NCAC 11 .0361 MEDICAL USE OF UNSEALED RADIOACTIVE MATERIAL

~~(a) A licensee may use for diagnostic or therapeutic administration any unsealed radioactive material prepared for medical use that is either:~~

~~(1) obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements; or~~
~~(2) prepared by a pharmacist who is an authorized user, a physician who is an authorized user or an individual under the supervision of either.~~

(a) A licensee may use any unsealed radioactive material prepared for use for uptake, dilution, or excretion studies, imaging and localization studies and radiopharmaceutical therapy that is:

(1) Obtained from a manufacturer or preparer licensed under 10 CFR 32.72 or equivalent Agreement State requirements; or
(2) Prepared by:
(A) An authorized nuclear pharmacist;
(B) A physician who is an authorized user identified on a North Carolina Radioactive Materials License, an Agreement State Radioactive Materials License, or a license issued by the U.S. Nuclear Regulatory Commission or who meets the requirements in 15A NCAC 11 .0117(a)(2);

(C) An individual under the supervision, as specified in Rule .0318 of this Section, of the authorized nuclear pharmacist in Part (a)(2)(A) of this Rule or the physician who is an authorized user in Part (a)(2)(B) of this Rule.

(3) Obtained from and prepared by an NRC or Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the FDA; or

(4) Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the FDA.

(b) A licensee shall not administer to humans a radiopharmaceutical containing more than 0.15 microcurie (0.15 kilobecquerel) of molybdenum-99 per millicurie (megabecquerel) of technetium-99m.

(c) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in ~~each~~ the first eluate ~~or extract.~~after receipt of a generator to demonstrate compliance with Paragraph (b) of this Rule.

(d) A licensee that must measure molybdenum concentration shall retain a record of each measurement for three years. The record shall include for each measured elution ~~or extraction~~ of technetium-99m:

(1) the ~~measured activity of the technetium expressed in millicuries;~~ratio of the measures expressed as microcuries of molybdenum-99 per millicurie of technetium-99m (or kilobecquerels of molybdenum-99 per megabecquerel of technetium-99m);

~~(2) the measured activity of the molybdenum expressed in microcuries;~~

~~(3)~~(2) the time and date of the measurement; and

~~(4)~~(3) the initials of the individual who made the measurement.

~~(e) A licensee that administers radioactive aerosols or gases shall:~~

~~(1) do so in a room with a system that will keep airborne concentrations low enough so as not to exceed the limits prescribed by Rules .1604 and .1605 of this Chapter;~~

~~(2) before receiving, using or storing a radioactive gas, calculate the amount of time needed after a spill to reduce the concentration in the room low enough so as to not exceed the limits prescribed by Rules .1604 and .1605 of this Chapter;~~

~~(3) post the calculated time and safety measures to be instituted in the case of a spill at the area of use;~~

~~(4) store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container; and~~

~~(5) store multi dose containers in a fume hood or other enclosure vented directly to the atmosphere after drawing the first dosage from the container.~~

Authority G.S. 104E-7(a)(2); 104E-10(b); 104E-12.

15A NCAC 11 .0363 PROVISIONS FOR THE PROTECTION OF HUMAN RESEARCH SUBJECTS

(a) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on its license.

(b) If the research is conducted, funded, supported, or regulated by a Federal agency that has implemented the Federal Policy for the Protection of Human Research Subjects (Federal Policy), the licensee shall, before conducting research:

(1) Obtain review and approval of the research from an "Institutional Review Board" as defined and prescribed in the Federal Policy; and

(2) Obtain "informed consent" as defined and described in the Federal Policy, from the human research subject.

(c) If the research will not be conducted, funded, supported, or regulated by a Federal agency that has implemented the Federal Policy, the licensee shall, before conducting research, apply for and receive a specific amendment to its medical use license. The amendment request must include a written commitment that the licensee will, before conducting research:

(1) Obtain review and approval of the research from an "Institutional Review Board" as defined and described in the Federal Policy; and

(2) Obtain "informed consent," as described in the Federal Policy, from the human research subject.

(d) Nothing in this Rule relieves licensees from complying with the other requirements in this Chapter or with any other applicable Rules and Laws in the State of North Carolina.

Authority G.S. 104E-7; 104E-10(b); 104E-12.

15A NCAC 11 .0364 MEDICAL EVENTS

(a) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of radioactive material or radiation from radioactive material results in:

(1) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 Sievert (Sv)) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin; and

(A) The total dose delivered differs from the prescribed dose by 20 percent or more;

(B) The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or

(C) The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.

(2) A dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from any of the following:

(A) An administration of a wrong radioactive drug containing radioactive material;

(B) An administration of a radioactive drug containing radioactive material by the wrong route of administration;

(C) An administration of a dose or dosage to a wrong individual or human research subject;

(D) An administration of a dose or dosage delivered by the wrong mode of treatment; or

(E) A leaking sealed source.

(3) A dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rem (0.5 Sv) to an organ or tissue and 50 percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(b) A licenses shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in an unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(c) The licensee shall notify by telephone the agency no later than the next calendar day after discovery of the medical event.

(d) The licensee shall submit a written report to the agency at the address listed in Rule .0111 of this Chapter within 15 days of the discovery of the medical event.

(1) The written report must include:

(A) The licensee's name;

(B) The name of the prescribing physician;

(C) A brief description of the event;

(D) Why the event occurred;

(E) The effect, if any, on the individual(s) who received the administration;

(F) What actions, if any, have been taken or are planned to prevent recurrence; and

(G) Certification that the licensee notified the individual (or the individual's responsible relative or guardian) and if not, why not.

(2) The report may not contain the individual's name or any other information that could lead to identification of the individual.

(e) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the license either that he or she will inform the individual that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the me dical event, because of any delay in notification. To meet the requirements of this Paragraph, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(f) Aside from the notification requirement, nothing in this Section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(g) A licensee shall:

(1) Annotate a copy of the report provided to the agency with the:

(A) Name of the individual who is the subject of the event; and

(B) Social security number or other identification number, if one has been assigned, of the individual who is the subject of the medical event; and

(2) Provide a coy of the annotated report to the referring physician if other than the licensee, no later than 15 days after the discovery of the event.

Authority G.S. 104E-7(a)(2); 104E-10(b); 104E-12.

15A NCAC 11 .0365 REPORT AND NOTIFICATION OF A DOSE TO AN EMBRYO/FETUS OR A NURSING CHILD

(a) A licensee shall report any dose to an embryo/fetus that is greater than 5 rem (50 mSv) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by that authorized user.

(b) A licensee shall report any dose to a nursing child that is a result of administration of radioactive material to a breast-feeding individual, that:

(1) Is greater than 5 rem (50 mSv) total effective dose equivalent; or

(2) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(c) The licensee shall notify by telephone the agency no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in Paragraphs (a) or (b) of this Rule.

(d) The licensee shall submit a written report to the agency at the address listed in Rule .0111 of this Chapter within 15 days after discovery of a dose to the embryo/fetus or nursing child that requires a report in Paragraphs (a) or (b) in this Rule.

(1) The written report must include:

(A) The licensee's name;

(B) The name of the prescribing physician;

(C) A brief description of the event;

(D) Why the event occurred;

(E) The effect, if any, on the embryo/fetus or the nursing child;

(F) What actions, if any, have been taken or are planned to prevent recurrence; and

(G) Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(2) The report must contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(e) The licensee shall provide notification of the event to the referring physician an also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting under Paragraphs (a) or (b) of this Rule, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(f) A licensee shall:

(1) Annotate a copy of the report provided to the agency with the:

(A) Name of the pregnant individual or the nursing child who is the subject of the event; and

(B) Social security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(2) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

Authority G.S. 104E-7; 104E-10(b); 104E-12.

SECTION .0700 - USE OF SEALED RADIOACTIVE SOURCES IN THE HEALING ARTS

15A NCAC 11 .0702 MANUAL BRACHYTHERAPY

(a) Accountability, storage and transit

(1) Each licensee shall provide accountability of sealed sources and shall keep a record of the issue and return of all sealed sources. A physical inventory shall be made at least ~~every six months~~quarterly and a written record of the inventory maintained.

(2) When not in use, sealed sources and applicators containing sealed sources shall be kept in a protective enclosure of such material and wall thickness as necessary to assure compliance with the provisions of Rules .1604, .1609 and .1611 of this Chapter.

(b) Testing sealed sources for leakage and contamination

(1) All sealed sources with a half-life greater than 30 days and in any form other than gas shall be tested for leakage and contamination prior to initial use and at intervals not to exceed six ~~months.~~months or at other intervals approved by the U.S. Nuclear Regulatory Commission or an Agreement State in the Sealed Source and Device Registry. If there is reason to suspect that a sealed source might have been damaged, or might be leaking, it shall be tested for leakage before further use.

(2) Leak tests shall be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample, or in the case of radium, the escape of radon at rate of 0.001 microcurie per 24 hours. Any test conducted pursuant to Subparagraph (b)(1) of this Rule which reveals the presence of 0.005 microcurie or more of removable contamination or, in the case of radium, the escape of radon at the rate of 0.001 microcurie or more per 24 hours shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the

source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with applicable provisions of Section .1600 of this Chapter. A report describing the sealed sources involved, the test results and the corrective action taken shall be submitted in writing to the agency at the address stated in Rule .0111 of this Chapter within five days after the test.

(3) Leak test results shall be recorded in units of microcuries and maintained for inspection by the agency.

(c) Radiation surveys

~~(1) The maximum radiation level at a distance of one meter from the patient in whom brachytherapy sources have been inserted shall be determined by measurement or calculation. This radiation level shall be entered on the patient's chart and other signs as required in Paragraph (d) of this Rule.~~

~~(2) The radiation surveying in Paragraph (c) of this Rule or a special survey shall be performed and shall include measurements necessary to comply with the following requirements:~~

~~(A) The therapeutic use of sealed sources shall not create radiation levels in areas occupied by patients not undergoing radiation therapy which would result in an accumulated dose in excess of 100 millirem if a patient were continuously present during the entire treatment period.~~

~~(B) The licensee shall maintain a record of this survey and the calculation which demonstrates compliance with Subparagraph (c)(1) of this Rule.~~

~~(C) The licensee shall select rooms for hospitalization of these sealed source therapy patients in a manner so as to minimize radiation exposure of other patients, hospital staff, visitors and the public, especially those who are under 18 years of age or who are pregnant.~~

~~(D) This Rule does not relieve the licensee of responsibility to monitor or limit occupational radiation exposure for the licensee's staff as provided in Section .1600 of this Chapter.~~

~~(3)~~(1) Immediately after implanting sources in an individual the licensee shall make a radiation survey of the individual and the area of use to confirm that no source has been misplaced. The licensee shall make a record of each survey.

~~(4)~~(2) Immediately after removing the last temporary implant source from an individual, the licensee shall make a radiation survey of the individual with a radiation detection survey instrument to confirm that all sources have been removed. The licensee may not release from confinement for medical care an individual treated by temporary implant until all sources have been removed.

(d) A licensee shall maintain accountability for all brachytherapy sources in storage or in use. After removing sources from an individual, a licensee shall return brachytherapy sources to the storage area. A licensee shall ensure that all sources taken from the storage area have been returned, and shall make a record of the source accountability and retain the record for three years.

(e) For temporary implants, the record shall include:

(1) the number and activity of sources removed from storage;

(2) the date and time the sources were removed from storage;

(3) the name of the individual who removed the sources from storage;

(4) the location of use;

~~(3)~~(5) the number and activity of sources returned to storage; ~~and~~

~~(4)~~(6) the date and time the sources were returned to ~~storage.~~storage; and

(7) the name of the individual who returned the sources to storage.

(f) For permanent implants, the record shall include:

(1) the number and activity of sources removed from storage;

(2) the date and time the sources were removed from storage;

(3) The name of the individual who removed the sources from storage;

~~(3)~~(4) the number and activity of sources ~~returned to storage;~~not implanted;

~~(4)~~(5) the date the sources were returned to storage; and

~~(5)~~(6) the ~~number and activity of sources permanently implanted in the individual.~~name of the individual who returned the sources to storage.

~~(g) Signs and records~~

~~(1) In addition to the requirements of Rule .1624 of this Chapter, the bed, cubicle, or room of the hospital brachytherapy patient shall be marked with a sign indicating the presence of brachytherapy sources. This sign shall incorporate the radiation symbol and specify the radionuclide, activity, date, and the individual(s) to contact for radiation safety instructions. The sign is not required provided the exception in Rule .1625 of this Chapter is satisfied.~~

~~(2) The following information shall be included in the patient's chart:~~

~~(A) the radionuclide administered, number of sources, activity in~~

millicuries and time and date of administration;

(B) the exposure rate at one meter, the time the determination was made, and by whom;

(C) the radiation symbol; and

(D) the precautionary instructions necessary to assure that the exposure of individuals does not exceed that permitted in Paragraph (c) of this Rule.

(g) For each patient or human research subject who is receiving brachytherapy and cannot be released under Rule .0358 of this Section, a licensee shall:

(1) Not quarter the patient or human research subject in the same room as an individual who is not receiving brachytherapy;

(2) Visibly post the patient's or human research subject's room with a "Radioactive Materials" sign; and

(3) Note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(h) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source;

(1) Dislodged from the patient; and

(2) Lodged within the patient following removal of the source applicators.

(i) A licensee shall notify the Radiation Safety Officer or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

Authority G.S. 104E-7; 104E-12(a).

15A NCAC 11 .0703 TELETHERAPY

(a) Any licensee authorized under Rule .0322 of this Chapter to use teletherapy units for treating humans shall cause full calibration measurements to be performed on each teletherapy unit.

(1) Such measurement shall be done at all of the following times:

(A) prior to the first use of the unit for treating humans;

(B) prior to treating humans whenever:

(i) spot-check measurements indicate that the output value differs by more than five percent from the value obtained at the last full calibration corrected mathematically for physical decay, or

(ii) following replacement of the radiation source or following reinstallation of the teletherapy unit in a new location, or

(iii) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(C) at intervals not exceeding one year.

(2) Full calibration measurements required by Subparagraph (a)(1) of this Rule shall include determination of:

(A) the exposure rate or dose rate to an accuracy within plus or minus three percent for the range of field sizes and for the range of distances (or for the axis distance) used in radiation therapy;

(B) the congruence between the radiation field and the field indicated by the light beam localizing device;

(C) the uniformity of the radiation field and its dependence upon the orientation of the useful beam;

(D) timer accuracy; and

(E) the accuracy of all distance measuring devices used for treating humans.

(3) Full calibration measurements shall be made in accordance with the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine (Physics in Medicine and Biology, Vol. 16, No. 3, 1971, pp. 379-396).

(4) The exposure rate or dose rate values determined in Part (a)(2)(A) of this Rule shall be corrected mathematically for physical decay for intervals not exceeding one month.

(5) Full calibration measurements required by Subparagraph (a)(1) of this Rule and physical decay corrections required by Subparagraph (a)(4) of this Rule shall be performed by an expert qualified by training and experience in accordance with Subparagraph (d)(1) of this Rule.

(b) Any licensee authorized under Rule .0322 of this Chapter to use teletherapy units for treating humans shall cause spot check measurements to be performed on each teletherapy unit at intervals not exceeding one month.

(1) Required spot check measurements shall include determination of:

(A) timer accuracy;

(B) the congruence between the radiation field and the field indicated by the light beam localizing device;

(C) the accuracy of all distance measuring devices used for treating humans;

(D) the exposure rate, dose rate, or a quantity related in a known manner to these rates for one typical set of operating conditions; and

(E) the difference between the measurement made in Part (b)(1)(D) of this Rule and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) Required spot check measurements shall be performed in accordance with procedures established by an expert qualified by training and experience in accordance with Paragraph (d) of this Rule.

(c) Any licensee responsible for the performance of full calibration or spot check measurements shall be required to calibrate the instruments used in making such determinations.

(1) Full calibration measurements required by Paragraph (a) of this Rule shall be performed using a dosimetry system that has been calibrated by the National Bureau of Standards or by a Regional Calibration Laboratory accredited by the American Association of Physicists in Medicine. The dosimetry system shall have been calibrated within the previous two years and after any servicing that may have affected system calibration.

(2) Spot check measurements required by Paragraph (b) of this Rule shall be performed using a dosimetry system that has been calibrated in accordance with Subparagraph (c)(1) of this Rule. Alternatively, a dosimetry system used solely for spot-check measurements may be calibrated by direct intercomparison with a system that has been calibrated in accordance with Subparagraph (c)(1) of this Rule. This alternative calibration method shall have been performed within the previous one year and after each servicing that may have affected system calibration. Dosimetry systems calibrated by this alternative method shall not be used for full calibration measurements.

(d) The licensee shall determine if a person is an expert qualified by training and experience to calibrate a teletherapy unit and establish procedures for and review the results of spot check measurements.

(1) The licensee shall determine that the expert is qualified by his:

(A) being certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, roentgen ray and gamma ray physics, or x-ray and radium physics; or

(B) having the following minimum training and experience:

(i) a master's or doctor's degree in physics, biophysics, radiological physics or health physics;

(ii) one year of full-time training in therapeutic radiological physics; and

(iii) one year of full-time experience in a radiotherapy facility including personal calibration and spot check of at least one teletherapy unit.

(2) The licensee who has his teletherapy units calibrated by persons who do not meet the criteria for minimum training and experience stated in Part (d)(1)(B) of this Rule may request a license amendment excepting them from these requirements.

(A) Such request shall include:

(i) the name of the proposed qualified expert;

(ii) a description of his training and experience including information similar to that specified in Part (d)(1)(B) of this Rule;

(iii) reports of at least one calibration and spot check program based on measurements personally made by the proposed expert within the last ten years; and

(iv) written endorsement of the technical qualifications of the proposed expert from personal knowledge by a physicist certified by the American Board of Radiology in one of the specialties listed in Part (d)(1)(A) of this Rule.

(e) The licensee shall maintain, for inspection by the agency, records of the measurements, tests, corrective actions, and instrument calibrations made under Paragraphs (a), (b), and (c) of this Rule, and records of the licensee's evaluation of the qualified expert's training and experience made under Paragraph (d) of this Rule for the following periods of time:

(1) Records of the full calibration measurements under Paragraph (a) of this Rule and the calibration of the instruments used to make these measurements under Paragraph (c) of this Rule shall be preserved for five years after completion of the calibration.

(2) Records of the spot check measurements and corrective actions under Paragraph (b) of this

Rule and the calibration of instruments used to make spot check measurements under Paragraph (e) of this Rule shall be preserved for two years after completion of the spot check measurements and corrective actions.

(3) Records of the licensee's evaluation of the qualified expert's training and experience under Paragraph (d) of this Rule shall be preserved for five years after the qualified expert's last performance of a full calibration on the licensee's teletherapy unit.

(f) Each teletherapy room shall be equipped with a radiation monitoring device which continuously monitors the teletherapy beam condition and is equipped with a back-up battery power supply for emergency operation.

(1) This device shall energize a visible signal to make the operator continuously aware of teletherapy beam conditions in order that appropriate emergency procedures may be instituted to prevent unnecessary radiation exposure.

(2) Operating procedures shall be modified to require daily operational testing of the installed radiation monitor.

(3) If a radiation monitor is inoperable for any reason, any person entering the teletherapy room shall use a properly operating portable radiation survey instrument or a personal dosimeter with an audible alarm to monitor for any malfunction of the source exposure mechanism which may have resulted in an exposed or partially exposed source.

(4) Survey instruments or dosimeters shall be tested daily before use.

(g) The licensee shall cause each teletherapy unit used to treat humans to be fully inspected and serviced during source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(h) Inspection and servicing of the teletherapy unit shall be performed by persons specifically authorized to perform such services by a specific license issued by the agency, the U.S. Nuclear Regulatory Commission or an agreement state.

(i) A licensee shall post safety instructions at the teletherapy unit console. To satisfy this requirement, these instructions shall inform the operator of:

(1) The procedures to be followed to ensure that only the individual for whom treatment is planned is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(2) The procedure to be followed, if:

(A) the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or if any other abnormal operation occurs; and

(B) the names and telephone numbers of the authorized users and radiation safety officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(j) A licensee shall provide instruction in the topics identified in Paragraph (i) of this Rule to all individuals who operate a teletherapy unit.

(k) A licensee shall retain for three years a record of individuals receiving instruction required by Paragraph (j) of this Rule, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

(l) A licensee shall control access to the teletherapy room by a door at each entrance.

(m) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(1) prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(2) turn the primary beam of radiation off immediately when an entrance door is opened; and

(3) prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(n) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(o) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(1) A radiation monitor must provide visual notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and must be observable by an individual entering the teletherapy room.

(2) A radiation monitor must be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup supply may be a battery system.

(3) A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

(4) A licensee shall maintain a record of the check required by Subparagraph (o)(3) of this Rule for three years. The record shall include:

(A) the date of the check;

(B) notation that the monitor indicates when its detector is and is not exposed; and

(C) the initials of the individual who performed the check.

(5) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal

~~dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in Subparagraph (o)(4) of this Rule.~~

~~(6) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.~~

Authority G.S. 104E-7(a)(2); 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540;

SECTION .1600 - STANDARDS FOR PROTECTION AGAINST RADIATION

15A NCAC 11 .1611 DOSE LIMITS FOR INDIVIDUAL MEMBERS OF THE PUBLIC

(a) Each licensee or registrant shall conduct operations so that:

(1) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from background radiation, from the licensee's disposal of radioactive material into sanitary sewerage in accordance with Rule .1630 of this Section, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter and from voluntary participation in medical research programs; and

(2) The dose in any unrestricted area from external sources of radiation, exclusive of the dose contribution from patients administered radioactive material and released in accordance with Rule .0358 of this Chapter, does not exceed 0.002 rem (0.02 mSv) in any one hour.

(b) If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

(c) A licensee, registrant, license applicant or registration applicant may apply to the agency for prior authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv). The licensee, registrant, license applicant or registration applicant shall include the following information in this application:

(1) demonstration of the need for and the expected duration of operations in excess of the limit in Paragraph (a) of this Rule;

(2) the licensee's program to assess and control dose within the 0.5 rem (5 mSv) annual limit; and

(3) the procedures to be followed to maintain the dose as low as is reasonably achievable.

(d) The agency may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective dose.

(e) Notwithstanding Subparagraph (a)(1) of this Rule, a licensee may permit visitors to an individual who cannot be released in accordance with Rule .0358 of this Section to receive a dose in excess of 0.1 rem (1 mSv) if:

(1) The radiation dose received does not exceed 0.5 rem (5 mSv); and

(2) The authorized user, as defined in Section .0300 of this Chapter had determined before the visit that it is appropriate.

Authority G.S. 104E-7(a)(2).

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Parks and Recreation Authority intends to amend the rule cited as 15A NCAC 12K .0109.*

Proposed Effective Date: *September 1, 2007*

Public Hearing:
Date: *June 1, 2007*
Time: *2:00 p.m.*
Location: *Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St.*

Reason for Proposed Action: *This Rule is proposed for amendment to create a policy and process for working with local governments that want to use PARTF – assisted park land or facilities for a purpose other than public recreation as required in 15A NCAC 12K .0109 (a) and/ or (c). The rule gives DENR the authority to determine whether to approve a local government's request as well as the terms for approving the request. In most cases, the local government will be required to replace PARTF – assisted land with land of equal current value and usefulness.*

Procedure by which a person can object to the agency on a proposed rule: *Comments and objections will be accepted through July 16, 2007. Letters must be legible and signed. Send comments and objections to Mr. Bayard Alcorn, Division of Parks and Recreation, MSC 1615, Raleigh, NC 27699-1615, or by email (bayard.alcorn@ncmail.net). Please include a phone number.*

Comments may be submitted to: *Mr. Bayard Alcorn, 1615 MSC, Raleigh, NC 27699-1615*

Comment period ends: *July 16, 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**

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12K .0109 SITE CONTROL AND DEDICATION

(a) Land acquired with PARTF assistance shall be dedicated in perpetuity for local park and recreation purposes for the use and benefit of the general public. The dedication shall be recorded in the public property records by the grantee.

(b) The site of a PARTF project for development shall be controlled (e.g. fee simple ownership or long-term lease) by the grantee by the closing date of the application submission period. Any lease agreement shall extend for a minimum of 25 ~~years.~~ years unless the property is the subject of a federal, state, or local leasing arrangement which provides acceptable assurance that 25 years of public recreational use will be maintained.

(c) Grantees shall assure that PARTF assisted development facilities are maintained and managed for public recreation use for a minimum period of 25 years after the completion date set forth in the grant agreement.

(d) PARTF-assisted land and facilities shall not be converted to uses that are other than public recreation without approval by DENR, which shall be based the following factors:

(1) A grant recipient shall notify DENR and request approval before any conversion occurs.

(2) It is the responsibility of the grant recipient to address issues of local concern prior to forwarding a conversion request to DENR.

(3) DENR shall deny the request if it determines that the grantee has reasonable alternatives available to avoid the conversion.

(4) All conversions will be mitigated with measures approved by DENR with advice from the Parks and Recreation Authority.

(5) The primary mitigation for a conversion is to have the grantee replace, at its own expense, land acquired with PARTF assistance with land of equal current fair market value and recreational usefulness. Facilities built with PARTF assistance shall be replaced with facilities of equal current replacement value, and recreational usefulness. Replacement areas will also be within the grantee's service area; provide or be part of a viable recreation area; and be to the maximum extent possible, consistent with all current application requirements for a new PARTF application.

(6) Approved replacement property and facilities shall be encumbered by the same obligations as specified in the project agreement and administrative rules for the converted property or facility.

(7) If DENR determines that the local government cannot reasonably replace the land and /or facilities, DENR has the discretion to mitigate the conversion by the grantee repaying PARTF with funds equal to the current value of the land and/or facilities.

(8) DENR shall include provisions on conversions in all grant agreements.

(e) A conversion is defined as the use of PARTF-assisted land or facilities for a purpose other than public recreation.

~~(d)~~(f) If PARTF-assisted facilities are built on public school property, the applicant(s) shall submit an agreement with the application describing that the facilities will be available to the general public during non-school hours. Projects on land owned by a school shall have sign(s) installed informing the public that the facilities are open to the general public. These signs shall also indicate the times when the facilities are reserved exclusively for school use.

~~(e)~~(g) Failure by the grantee(s) to comply with the provisions of this Section ~~and~~ or the project agreement ~~shall~~ may result, in addition to any other legal remedies, in the Authority on behalf of the Department declaring the grantee(s) ineligible for further participation in the PARTF until such time as compliance has been obtained.

Authority G.S. 113-44.15.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01E .0210, .0311, .1303 - .1306, .1401.*

Proposed Effective Date: *October 1, 2007*

Public Hearing:
Date: *May 30, 2007*
Time: *10:00 a.m.*
Location: *1221 West Jones Street, Office of State Personnel, Administration Building, 3rd floor*

Reason for Proposed Action: *(1) The Standardization Committee of the Beacon HR/Payroll System has recommended*

that the State standardize the definition of the 12-month period used for counting eligibility for Family and Medical Leave; therefore we are recommending that we use the 12-months forward provision. (2) The Standardization Committee of the Beacon System has recommended that we clarify the provisions contained in The Voluntary Shared Leave rules, Paragraph .1306 to state that donated leave may be used to substitute for advanced vacation or sick leave already granted to the recipient or to substitute for leave without pay and that the donated leave shall be applied to advanced leave before applying it to leave without pay and that unused leave shall only be returned to donors that are active employees. (3) Other minor revisions for clarification.

Procedure by which a person can object to the agency on a proposed rule: *A person may object to these proposed rules by one of the following methods: a written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331; an email to peggy.oliver@ncmail.net; a telephone call to Peggy Oliver at (919) 807-4832.*

Comments may be submitted to: *Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4832, fax (919) 715-9750, email peggy.oliver@ncmail.net*

Comment period ends: *July 16, 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**

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0200 - VACATION LEAVE

25 NCAC 01E .0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) Lump sum payment for vacation leave is made only at the time of separation. An employee shall be paid in a lump sum for accumulated leave not to exceed a maximum of 240 hours when separated from state service due to resignation, dismissal, reduction in force or death. An employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation. Employees separating from state service due to service retirement or early retirement may elect to exhaust vacation leave after the last day of work but prior to the effective date of retirement. All benefits accrue while leave is being exhausted. If leave is exhausted, the last day of leave is the date of separation. Any unused leave not exhausted must be paid in a lump sum not to exceed 240 hours. If no leave is exhausted, the last day of work is the date of separation.
(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check. ~~Deductions shall be in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes overdrawn.~~
(c) Payment for leave may be made on the regular payroll or on a supplemental payroll, reflecting the number of days of leave and the amount of payment. ~~Leave may be paid through the nearest tenth of an hour of unused leave.~~ This leave shall be charged to the budget subhead under which the employee's position was charged. A separate check must be issued for any part of any travel due.
(d) Retirement deduction shall be made from all leave payments.
(e) Receipt of lump sum leave payment and retirement benefit shall not be considered as dual compensation.
(f) In the case of a deceased employee, payment for unpaid salary, leave, and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made in accordance with the provisions of G.S. 28A-25-6.

Authority G.S. 28A-25-6(a),(c); 126-4.

SECTION .0300 - SICK LEAVE

25 NCAC 01E .0311 SEPARATION
(a) Sick leave is not allowable in terminal leave payments when an employee separates from state service.
(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check. ~~Deductions shall be made in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes overdrawn.~~

Authority G.S. 126-4.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

25 NCAC 01E .1303 ADMINISTRATION
(a) All departments and universities shall develop policies and procedures to implement this program. If an agency's policy includes employees exempt from the State Personnel Act who

are in leave earning and reporting positions, leave may be shared between subject and exempt employees.
(b) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave shall be donated on a one-to-one personal basis.
(c) This Section does not apply to local government employees but may apply to public school and community college employees as set forth in 25 NCAC 01E .1305.
~~This Section does not apply to local government, community colleges or public schools. When implemented by a department or university, this Section shall be administered by and within the parent department or university of the recipient employee subject to the availability of funds and under the conditions set out in 25 NCAC 1E .1304, .1305, .1306 and .1307.~~

Authority G.S. 126-4.

25 NCAC 01E .1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM

In order to participate in the Voluntary Shared Leave Program, an employee shall meet the following conditions:

(1) A donor or recipient ~~Employee~~ shall ~~be~~ have a full-time or part-time (half-time or more) ~~employee with a~~ permanent, probationary, trainee or time-limited appointment. (The limitation and leave balance for permanent part-time employees shall be prorated.)
(2) A recipient shall apply, or be nominated by a fellow employee to participate in the program.
(3) A recipient shall produce medical evidence to support the need for leave beyond the available accumulated leave, and
~~(3)~~(4) The parent department or university shall review the merits of the request and approve or disapprove it.

Authority G.S. 126-4.

25 NCAC 01E .1305 DONOR GUIDELINES

(a) ~~A~~An immediate family member donor of any State agency, public school system or community college may contribute vacation leave or bonus leave or sick leave to another ~~employee~~immediate family member in any State agency, public school or community college. ~~A member may contribute vacation or sick leave to an immediate family member in any agency, public school, or community college.~~ A non-family member donor may contribute vacation or bonus leave to another employee in any State agency. A non-family member donor may also share vacation or bonus leave with a coworker's immediate family who is an employee in a public school or a community college. The employee and coworker must be in the same agency. Immediate family is defined ~~as spouse, parents, children, brother, sister, grandparents, grandchildren, great grandparents and great grandchildren. Also, included are the step, half, and in-law relationships. For detailed definitions of immediate family see~~ in 25 NCAC 01E .0317 DEFINITIONS.
(b) The minimum amount of sick leave or vacation leave to be donated is four hours. An employee family member donating sick leave to a qualified family member under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.
(c) The maximum amount of vacation leave allowed to be donated by one individual is the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate. Bonus leave may be donated without regard to this limitation.
(d) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating may not receive remuneration for the leave donated.

Authority G.S. 126-4.

25 NCAC 01E .1306 LEAVE ACCOUNTING PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in the Voluntary Shared Leave program:

(1) The agency may establish a specific time period during which leave can be donated.
(2) All leave donated shall be credited to the recipient's sick leave ~~account.~~ account and is available for use on a current basis or may be retroactive for up to 60 calendar days to substitute for advanced vacation or sick leave already granted to the recipient or to substitute for leave without pay. Donated leave shall be applied to advanced leave before applying it to leave without pay.
(3) At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:
    (a) The recipient's vacation and sick leave account balance shall not exceed a combined total of 40 hours (prorated for part-time employees).
    (b) Any additional unused donated leave shall be returned to ~~the~~ active (working or on leave without pay) donor(s) on a pro rata basis and credited to the leave account from which it was donated. ~~Fraction(s) of one hour shall not be returned to an individual donor.~~
(4) If a recipient separates due to resignation, death, or retirement from state government, participation in the program ends. Donated

leave shall be returned to ~~the~~ active donor(s) on a pro rata basis.

Authority G.S. 126-4.

SECTION .1400 - FAMILY AND MEDICAL LEAVE

25 NCAC 01E .1401 PURPOSE AND SCOPE

The State of North Carolina shall follow all provision of the Family and Medical Leave Act of ~~1993.~~ 1993, with the stipulation that the method used to determine the 12-month period shall be the 12-month period measured forward from the date any employee's family and medical leave begins. The rules in this Section stipulate the additional provisions applicable to employees subject to G.S. 126.

Authority G.S. 126-4(5); P.L. 103-3.

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

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ALCOHOL BEVERAGE CONTROL COMMISSION				
Santos Ferman T/A Paraiso vs. ABC Commission	05 ABC 1828	Chess	05/31/06	
Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission	05 ABC 1989	Chess	06/07/06	
Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
ABC Commission v. T/A Minit Shop	06 ABC 0862	Morrison	10/17/06	
ABC Commission v. Millennium Productions, Inc	06 ABC 1012	Webster	03/22/07	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	06 ABC 1262	Gray	01/04/07	
ABC Commission v. Kenneth A. Jones, T/A Ken One Stop	06 ABC 1368	Gray	12/04/06	
ABC Commission v. Nashwan Daan Saleh, T/A Circle B 3, 802 Bragg Blvd Fayetteville, NC 28301	06 ABC 1730	Lassiter	02/19/07	
BOARD OF NURSING				
Kenneth C. Johnson v. Board of Nursing	06 BON 1621	Overby	02/16/07	
CRIME VICTIMS COMPENSATION				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR 109
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Torrey Charles v. Crime Victims Compensation Commission	06 CPS 0051	Chess	09/21/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
Teresa M. Marley v. Crime Victims Compensation Commission	03 CPS 0185	Elkins	01/19/07	
Dantevius L. Bland v. Crime Victioms Compensation Commission	06 CPS 0654	Elkins	11/15/06	
Sharron Smith v. Crime Control and Public Safety	06 CPS 0708	Gray	07/12/06	
Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission	06 CPS 0909	Lassiter	08/01/06	
Tamika L. Howard-Smith v. Crime Victims Compensation	06 CPS 1161	Elkins	09/06/06	
Danny Thoms v. Victim Compensation	06 CPS 1237	Overby	12/04/06	
James A. Hillman v. Crime Victims Compensation Commission	06 CPS 1339	Wade	12/08/06	
Jacqueline D. Dupree v. Crime Victims Compensation	06 CPS 1360	Overby	12/15/06	
Pervis R. Owens Sr v. OAH, Crime Victims Compensation Commission	06 CPS 1492	Morrison	09/28/06	
Brian Curlee v. Crime Victims Compensation Commission	06 CPS 1677	Wade	12/13/06	

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF AGRICULTURE				
Shacond Muse Bey v. Dept. of Agriculture	06 DAG 0985	Morrison	08/16/06	
Clara Church v. Dept. of Agriculture and Consumer Services	06 DAG 1422	Wade	12/11/06	
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