

NORTH CAROLINA REGISTER

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November 3, 2008

I. EXECUTIVE ORDERS	
Executive Order No. 147	725
II. IN ADDITION	
Summary of Notice of Intent to Remediate a Dry-Cleaning Facility	726
Resolutions Approving Waivers – Housing Finance Agency	727 – 728
Notice of Rulemaking – Building Code Council	729 – 732
Brownfields Property – 1927 Tryon Investors, LLC	733
III. PROPOSED RULES	
Agriculture and Consumer Services, Department of	
Pesticide Board	734 – 737
Health and Human Services, Department of	
Medical Care Commission	737 – 738
Mental Health/DD/SAS, Division of	738 – 740
Justice	
Criminal Justice Education and Training Standards Commission	740 – 755
Occupational Licensing Boards and Commissions	
Marriage and Family Therapy Licensure Board	755 – 760
Examiners for Engineers and Surveyors, Board of	760 – 779
State Personnel, Office of	
State Personnel Commission	779 – 780
IV. APPROVED RULES.....	781 – 875
Administrative Hearings, Office of	
Administrative Hearings	
Agriculture, Department of	
Agriculture, Board of	
Environment and Natural Resources, Department of	
Department	
Marine Fisheries	
Health and Human Services, Department of	
Medical Care Commission	
Public Health, Commission for	
Social Services Commission	
Insurance, Department of	
Department	
Labor, Department of	
Department	
Occupational Licensing Boards and Commission	
Massage and Bodywork Therapy, Board of	
V. RULES REVIEW COMMISSION	876 – 883
VI. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	884 – 890

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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(919) 431-3104 FAX

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Raleigh, North Carolina 27609
(919) 431-3000
(919) 431-3104 FAX

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Tammara Chalmers, Admin Assistant tammara.chalmers@ncmail.net (919) 431-3083

Fiscal Notes & Economic Analysis

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

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

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

Legislative Process Concerning Rule-making

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

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

County and Municipality Government Questions or Notification

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

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

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

contact: Anita Watkins awatkins@nclm.org

NORTH CAROLINA REGISTER
Publication Schedule for January 2008 – December 2008

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 31st legislative day of the session beginning:	270 th day from publication in the Register
22:13	01/02/08	12/06/07	01/17/08	03/03/08	03/20/08	05/01/08	05/13/08	09/28/08
22:14	01/15/08	12/19/07	01/30/08	03/17/08	03/20/08	05/01/08	05/13/08	10/11/08
22:15	02/01/08	01/10/08	02/16/08	04/01/08	04/21/08	06/01/08	01/2009	10/28/08
22:16	02/15/08	01/25/08	03/01/08	04/15/08	04/21/08	06/01/08	01/2009	11/11/08
22:17	03/03/08	02/11/08	03/18/08	05/02/08	05/20/08	07/01/08	01/2009	11/28/08
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23:09	11/03/08	10/13/08	11/18/08	01/02/09	01/20/09	03/01/09	05/2010	07/31/09
23:10	11/17/08	10/24/08	12/02/08	01/16/09	01/20/09	03/01/09	05/2010	08/14/09
23:11	12/01/08	11/05/08	12/16/08	01/30/09	02/20/09	04/01/09	05/2010	08/28/09
23:12	12/15/08	11/20/08	12/30/08	02/13/09	02/20/09	04/01/09	05/2010	09/11/09

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

State of North Carolina



MICHAEL F. EASLEY
GOVERNOR

EXECUTIVE ORDER NO. 147

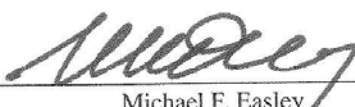
EXTENDING EXECUTIVE ORDER NO. 145 EMERGENCY RELIEF FOR DAMAGE CAUSED BY TROPICAL STORM HANNA AND OTHER RELATED STORM EVENTS AFFECTING THE ATLANTIC COAST REGION

WHEREAS, on September 4, 2008, Executive Order No. 145, which granted emergency relief for damage caused by Tropical Storm Hanna and other related storm events affecting the Atlantic Coast region, was issued and is hereby extended until November 3, 2008.

This executive order is effective immediately and shall remain in effect for thirty days or the duration of the emergency whichever is less.

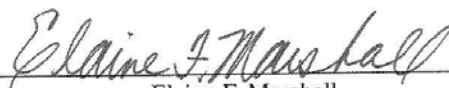
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this third day of October in the year of our Lord two thousand and eight, and of the Independence of the United States of America the two hundred and thirty-third.





Michael F. Easley
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

SUMMARY OF NOTICE OF INTENT TO REMEDIATE A DRY-CLEANING SOLVENT FACILITY OR ABANDONED SITE

Dry Clean Express
DSCA Site No. 63-0005

Pursuant to N.C.G.S. §143-215.104L, Derby Investment Company, LLC has filed with the North Carolina Department of Environment and Natural Resources (DENR) a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site (NOI). The purpose of this summary is to notify the public of the proposed remedy for the affected property and invite comment on the proposed remedy.

The Property consists of the following parcel in Southern Pines, Moore County, North Carolina identified by street address and by the following property tax parcel identification numbers:

1930 North Poplar Street
Parcel Number 857115720651

Dry-cleaning solvent contamination has been discovered in soil and groundwater on a portion of the Property. The proposed remedy includes land use restrictions to control current and future site risks at the property referenced above.

The NOI is available for review by the public at the address provided below. To arrange a review of the NOI or for additional information, contact Dianne Thomas at (919) 508-8483. Written public comments may be submitted to DENR no later than January 2, 2009. Written requests for a public meeting may be submitted to DENR no later than December 2, 2008. All such comments and requests should be addressed as follows:

Dianne Thomas, DSCA Program
Special Remediation Branch
Superfund Section
Division of Waste Management
North Carolina Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

**RESOLUTION APPROVING WAIVERS IN THE
HOME PROTECTION PILOT PROGRAM**

RESOLUTION 09-4

WHEREAS, the N.C. General Assembly did adopt House Bill 1414 in the 2004 Session and it contained a special provision directing the N.C. Housing Finance Agency (the "Agency") to design and implement a Home Protection Pilot Program (the "Program"); and

WHEREAS, the General Assembly did adopt House Bill 2436 in the 2008 Session that removed the pilot status from the Home Protection Program and incorporated its authorization in the N.C. General Statutes; and

WHEREAS, the staff of the Agency has conducted extensive research into the appropriate design of the Program, in order to better assist home owners through a partnership with local counseling agencies, and staff has produced Program procedures and guidelines that were adopted by the Board of Directors through Resolution 05-16 in November, 2004; and

WHEREAS, staff has performed a quality control audit of all closed Program loans and identified those cases where staff provided exceptions to the loan amount or duration of loan assistance in order to increase the likelihood of a successful outcome for the homeowner;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Board of Directors approves a waiver of the guidelines for either the loan amount or the loan duration, or both, under the Home Protection Pilot Program (now the Home Protection Program), for those homeowners listed on Exhibit 1.

Section 2. The Board of Directors approves the use of deferred payment (nonamortizing) loans for all homeowners receiving assistance under the Home Protection Pilot Program (now the Home Protection Program).

Section 3. The Board of Directors authorizes the Executive Director to approve individual waivers of the guidelines only where it is essential to the effectiveness of the Home Protection Program and the Executive Director is required to report any such waivers at the next regular meeting of the Board of Directors after the waiver is provided.

Section 4. This Resolution was adopted September 25, 2008.

NORTH CAROLINA HOUSING FINANCE AGENCY

**RESOLUTION AUTHORIZING REVISED LOAN GUIDELINES FOR THE
HOME PROTECTION PROGRAM**

RESOLUTION 09-5

WHEREAS, the N.C. General Assembly did adopt House Bill 1414 in the 2004 Session and it contained a special provision directing the N.C. Housing Finance Agency (the “Agency”) to design and implement a Home Protection Pilot Program; and

WHEREAS, the General Assembly did adopt House Bill 2436 in the 2008 Session that removed the pilot status from the Home Protection Program (the “Program”) and incorporated its authorization in the N.C. General Statutes; and

WHEREAS, the purpose of the Program is to help homeowners who are in danger of losing their homes due to a job loss and through no fault of their own; and

WHEREAS, the staff of the Agency has conducted extensive research into the appropriate design of the Program, in order to better assist homeowners through a partnership with local counseling agencies and staff has produced Program procedures and guidelines; and

WHEREAS, the staff recommends revisions to the Program guidelines, so that the Program can provide assistance that will increase the likelihood that homeowners who lose their jobs will avoid losing their homes;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The Board of Directors authorizes the use of a maximum loan amount of \$24,000 for long term assistance and a maximum loan duration of 24 months for long term assistance for eligible borrowers in the Home Protection Program.

Section 2. The Board of Directors authorizes the Executive Director to publish any other necessary procedures that are required to fully operate the Program.

Section 3. This Resolution supersedes Resolution 05-16.

Section 4. This Resolution was adopted September 25, 2008.

NORTH CAROLINA HOUSING FINANCE AGENCY

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: *North Carolina Building, Electrical, Plumbing and Residential Codes.*

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

Reason for Proposed Action: *To incorporate changes in the NC State 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: *December 8, 2008, 1:00PM, Wake County Commons, 4011 Cary Drive, Raleigh, NC 27610*

Comment Procedures: *Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on January 2, 2009.*

Statement of Subject Matter:

1. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

R202 SUNROOM ADDITION. A one-story structure ~~attached~~ added to an existing dwelling with a glazing area in excess of 40 percent of the gross area of the structure's exterior walls and roof.

2. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

R311.2.2 Under stair protection. ~~Deleted.~~ Enclosed accessible space under stairs shall have walls, under stair surface and any soffits protected on the enclosed side with ½-inch (12.7mm) gypsum board.

3. Request by Jeff Griffin, Mecklenburg County Government, to amend the 2009 NC Residential Code, Section R311.5.8. The proposed amendment is as follows:

R311.5.8 Special stairways. Circular stairways, spiral stairways, winders, bulkhead enclosure and bowed head stairways shall comply with all requirements of section R311.5 except as specified below.

R311.5.8.3 Bowed tread stairways. Bowed tread stairways are permitted provided they are uniform in bowed tread depth along entire width of tread with not more than 3/8" variance from greatest to smallest tread in the stairway flight. At no point shall the tread be less than a minimum of 9 inches with a nosing as listed in section R311.5.3.2 and R311.5.3.3 respectfully.

R311.5.8.3.1 Standard stairway application. The bottom 3 treads in a standard straight run stairway application as listed under section R311.5.3.2 are permitted to bow provided at no point along the width of the tread they are less than 9" as measured under section R311.5.3.2 and each bowed tread is uniformed with other bowed treads with no more than 3/8" variance from greatest to least. Nosing is required as listed in section R311.5.3.

R311.5.8.3.2 Bowed tread circular stairways. Bowed treads in a circular stairway are permitted provided they are uniformed as per winder treads as listed in section R311.5.3.2 measured at a point 12" from the side where the treads are narrower. At this walk line bowed treads must be uniformed with other circular stairway treads with the greatest tread not to exceed the smallest by more than 3/8". Nosing is required as listed in section R311.5.3.

Figures R311.5.8.3, R311.5.8.3.1, and R311.5.8.3.2, are also to be added to commentary to explain code section application.

4. Request by John Hitch, AIA to amend the 2009 NC Building Code as follows:

903.2.1.2 Group A-2. An automatic sprinkler system shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet (464.5 m2);
2. The fire area has an occupant load of ~~400~~ 300 or more, except 100 for nightclubs; or
3. The fire area is located on a floor other than the level of exit discharge.

SECTION 202 DEFINITIONS

NIGHTCLUB. See Section 902.1.

SECTION 902 DEFINITIONS

NIGHTCLUB. An establishment meeting all of the following:

1. Has a posted capacity or occupant load that exceeds one occupant per 15 square feet net;
2. Provides live or recorded entertainment by performing artists; and
3. Serves alcoholic beverages.

5. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

R404.5 Retaining walls. Retaining walls that are not laterally supported at the top and that retain in excess of 24 inches (610 mm) of unbalanced fill shall be designed to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning. ~~Delete.~~

6. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

406.1 Concrete and masonry foundation dampproofing.

Foundation walls where the outside grade is higher than the inside grade, shall be dampproofed from the top of the footing to the finished grade. ~~Masonry walls shall have not less than 3/8 inch (9.5 mm) Portland cement parging applied to the exterior of the wall.~~ The foundation walls shall be dampproofed with a bituminous coating, 3 pounds per square yard (1.63 kg/m²) of acrylic modified cement, or 1/8-inch (3.2 mm) coat of surface-bonding mortar complying with ASTM C 887 or any material permitted for waterproofing in Section R406.2. Concrete walls shall be dampproofed by applying any one of the above listed dampproofing materials or any one of the waterproofing materials listed in Section R406.2 to the exterior of the wall.

7. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

N1102.2.10 Thermally isolated sunroom addition insulation. The minimum ceiling insulation *R*-values shall be R-19 in zones 1 through 4 and R-24 in zones 5 through 8. The minimum wall *R*-value shall be R-13 in all zones. New wall(s) separating the sunroom from conditioned space shall meet the building thermal envelope requirements.

8. Request by David Smith, on behalf of the Residential Ad-Hoc Committee, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

N1102.3.5 Thermally isolated sunroom addition *U*-factor. For zones 4 through 8 the maximum fenestration *U*-factor shall be 0.50 and the maximum skylight *U*-factor shall be 0.75. New windows and doors separating the sunroom from conditioned space shall meet the building thermal envelope requirements. Conditioned sunroom additions shall maintain thermal isolation; shall not be used as kitchens or sleeping rooms; and shall be served by a separate heating or cooling system, or be thermostatically controlled as a separate zone of the existing system.

9. Request by Wendy Purser, Hampstead Pool, Spa & Patio, Inc., to amend the 2009 NC Residential Code, Appendix G. The proposed amendment is as follows:

(1) Delete and substitute as follows:

AG106.1 General. Suction outlets shall be designed and installed in accordance with ANSI/APSP-7, to produce circulation throughout the pool or spa. Single outlet systems, such as automatic vacuum cleaner systems, or multiple suction outlets whether isolated by valves or otherwise shall be protected against user entrapment.

(2) Delete without substitution:

AG106.2 Suction fittings. Pool and spa suction outlets shall have a cover that conforms to ANSI/ASME A112.19.8M, or an 18 inch x 23 inch (457mm by 584mm) drain grate or larger, or an approved channel drain system.

Exception: Surface skimmers

~~**AG106.3 Atmospheric vacuum relief system required.** Pool and spa single or multiple outlet circulation systems shall be equipped with atmospheric vacuum relief should grate covers located therein become missing or broken. This vacuum relief system shall include at least one approved or engineered method of the type specified herein, as follows:~~

- ~~1. Safety vacuum release system conforming to ASME A112.19.17; or~~
- ~~2. An approved gravity drainage system.~~

~~**AG106.4 Dual drain separation.** Single or multiple pump circulation systems shall be provided with a minimum of two (2) suction outlets of the approved type. A minimum horizontal or vertical distance of three (3) feet (914 mm) shall separate the outlets. These suction outlets shall be piped so that water is drawn through them simultaneously through a vacuum relief protected line to the pump or pumps.~~

~~**AG106.5 Pool cleaner fittings.** Where provided, vacuum or pressure cleaner fitting(s) shall be located in an accessible position(s) at least (6) inches (152 mm) and not more than (12) inches (305 mm) below the minimum operational water level or as an attachment to the skimmer(s).~~

(3) Add standard to Section AG 108 as follows:

ANSI/APSP-7-06 Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins

(4) Update standard in Section AG 108 as follows:

ASME/ANSI A112.19.17-07 Suction Fittings for Use in Swimming Pools, Wading Pools ...

ANSI/ASME A112.19.8M-1987 2007 Suction Fittings for Use in Swimming Pools, Wading Pools ...

ANSI/NSPI APSP-4-99 07 Standard for Above-ground/On-ground Residential Swimming Pools

ANSI/NSPI-5-99 03 Standard for Residential In-ground Swimming Pools

10. Request by Wendy Purser, Hampstead Pool, Spa & Patio, Inc., to amend the 2009 NC Residential Code, Appendix G. The proposed amendment is as follows:

(1) Add new definition to Section AG102:

UNBLOCKABLE DRAIN. – A drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(2) Delete and modify as follows:

AG106.1 General. Suction outlets shall be designed and installed in accordance with one of the following: ANSI/APSP-7, to produce circulation throughout the pool or spa. Single outlet systems, such as automatic vacuum cleaner systems, or multiple suction outlets, whether isolated by valves or otherwise, shall be protected against user entrapment.

1. ANSI/APSP-7, or
2. All of the provisions of Section AG 106.2 through Section AG 106.5.

(3) Add new section:

AG106.2 Drain Configuration. Pools and spas shall be designed and installed with one of the following:

1. More than one suction outlet (drain), with a minimum horizontal or vertical distance of 3 ft (914 mm) between outlets. Maximum water velocity in suction branch piping shall be limited to 3 feet per second or a maximum of 6 feet per second (fps) (1.829 mps) if one of a pair of suction outlets is blocked
2. One or more unblockable drains, or
3. No main drain

(4) Modify as follows

AG106.23 Suction fittings. Pool and spa suction outlets shall have a cover that conforms to ANSI/ASME A112.19.8M ~~or an 18 inch x 23 inch (457 mm by 584 mm) drain grate or larger, or an approved channel drain system.~~

Exception: Surface skimmers

AG106.3.1 All suction outlet covers/grates shall have a permanently marked flow rating tested to prevent hair entrapment.

AG106.3.2 The marked flow rating provided on the suction outlet cover shall exceed the flow rate of the circulation system it is protecting.

AG106.34 Atmospheric vacuum relief system required. All pools and spas that have a single drain other than an unblockable drain shall be equipped with one or more of the following:

1. Safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been listed and labeled to conform to ANSI/ASME A112.19.17; or ASTM F 2387, or
2. An approved gravity drainage system that utilizes a collector tank, or
3. A suction-limiting vent system with a tamper resistant atmospheric opening, or
4. An automatic pump shut-off system, or
5. A drain disablement system.

~~Pool and spa single or multiple outlet circulation systems shall be equipped with atmospheric vacuum relief should grate covers located therein become missing or broken. This vacuum relief system shall include at least one approved or engineered method of the type specified herein, as follows:~~

- ~~1. Safety vacuum release system conforming to ASME A112.19.17; or~~
- ~~2. An approved gravity drainage system~~

AG106.4 Dual drain separation. ~~Single or multiple pump circulation systems shall be provided with a minimum of two suction outlets of the approved type. A minimum horizontal or vertical distance of 3 feet (914 mm) shall separate the outlets. These suction outlets shall be piped so that water is drawn through them simultaneously through a vacuum relief protected line to the pump or pumps.~~

AG106.5 Pool cleaner fittings. Where provided vacuum or pressure cleaner fitting(s) shall be designed to protect against limb entrapment. Vacuum cleaner fitting(s) shall be located in an accessible position(s) at least 6 inches (152 mm) and not greater than 12 inches (305 mm) below the minimum operational water level.

Exception: Vacuum cleaner fitting(s) when used as an attachment to the skimmer(s).

(5) Add standards to Section AG 108 as follows:

ANSI/APSP-7-06 Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins
ASTM F2387 – 04 Standard Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas and Hot Tubs

(6) Update standard in Section AG 108 as follows:

ASME/ANSI A112.19.17-07 Suction Fittings for Use in Swimming Pools, Wading Pools ...
ANSI/ASME A112.19.8M-1987 2007 Suction Fittings for Use in Swimming Pools, Wading Pools ...
~~ANSI/NSPI APSP-4-99 07~~ Standard for Above-ground/On-ground Residential Swimming Pools
~~ANSI/NSPI-5-99 03~~ Standard for Residential In-ground Swimming Pools

11. Request by Eric Doran, Hatteras Pools, to amend the 2009 NC Residential Code. The proposed amendment is as follows:

AG106.3 Atmospheric vacuum relief system required. All pool and spa single or multiple outlet circulation systems shall be equipped with atmospheric vacuum relief should grate covers located therein become missing or broken. Such vacuum relief systems shall include at least one approved or engineered method of the type specified herein, as follows:

1. Safety vacuum release system conforming to ASME A112.19.17, or
2. An approved gravity drainage system.

Exception: Surface Skimmers

12. Request by Danny Hair, City of Raleigh, to amend the 2008 NC Electrical Code. The proposed amendment is as follows:
(Add an exception to section 338.10(A)(4)(a) of the 2008 NC Electrical Code)

(4) Installation Methods for Branch Circuits and Feeders.

(a) Interior Installations. In addition to the provisions of this article, Type SE service-entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334.

Exception: Type SE service-entrance cable not installed within framing member with thermal insulation or areas that may be insulated in the future, shall not be required to comply with the 60 degree C ampacity limitation in section 334.80.

13. Request by New Hanover County Code Enforcement, to amend the 2008 NC Electrical Code. The proposed amendment is as follows:

338.10 (B)(4)(a)

Interior installations. In addition to the provisions of this article, Type SE service-entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334, excluding 334.80.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
1927 Tryon Investors, LLC**

Pursuant to N.C.G.S. § 130A-310.34, 1927 Tryon Investors, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Charlotte, Mecklenburg County, North Carolina. The Property, which is the former site of Hughes Plumbing Supply, Ltd, consists of 1.7 acres and is located at 1927 South Tryon Street. Environmental contamination exists on the Property in groundwater. 1927 Tryon Investors, LLC has committed itself to redevelopment plans for the Property that includes retail and office use, with ground level use restricted to parking. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and 1927 Tryon Investors, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Allison Aiken at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if 1927 Tryon Investors, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the Property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on November 4, 2008. All such comments and requests should be addressed as follows:

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

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 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Pesticide Board intends to adopt the rules cited as 02 NCAC 09L .0810, .1914, amend the rule cited as 02 NCAC 09L .1901, and repeal the rules cited as 02 NCAC 09L .0801 - .0809.

Proposed Effective Date: March 1, 2009

Public Hearing:

Date: January 13, 2009

Time: 1:00 p.m.

Location: Martin Building, NC State Fairgrounds, 1025 Blue Ridge Road, Raleigh, NC 27607

Reason for Proposed Action: These rules are necessary to bring North Carolina's rule on Bulk Distribution of Pesticides (02 NCAC 09L .0800) and Pesticide Storage (02 NCAC 09L 1900) into compliance with the US EPA's final rules titled "Pesticide Management and Disposal; Standards for Pesticide Containers and Containment", which become effective August, 2009 and establish standards for pesticide containers and containment structures in order to protect the environment from spills and leaks at refilling and dispensing operations. By the effective date of the federal rules, each state must demonstrate that it has rules in effect which are at least as stringent as the federal rules; or are identical to the federal rules; or incorporate the federal rules by reference.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.

Comments may be submitted to: James W. Burnette, 1090 Mail Service Center, Raleigh, NC 27699-1090, phone (919) 733-3556, fax (919) 733-9796, email james.burnette@ncagr.gov

Comment period ends: January 13, 2009

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 09 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

**SECTION .0800 - BULK DISTRIBUTION OF
PESTICIDES**

02 NCAC 09L .0801 PROPRIETORSHIP

~~The purchaser shall take title to any bulk pesticide formulation after the purchaser or his authorized agent accepts said bulk pesticide shipment at the designated container or storage tank site.~~

Authority G.S. 143-441; 143-459; 143-461(1).

**02 NCAC 09L .0802 NOTIFICATION PRIOR TO
DELIVERY**

~~The pesticide section of the food and drug protection division of the North Carolina Department of Agriculture shall receive notification from the formulator or manufacturer at least 24 hours prior to delivery of any bulk pesticide. This notification shall include:~~

- ~~(1) the names and addresses of the pesticide formulator or manufacturer and purchaser;~~
- ~~(2) the brand name and EPA registration number of the pesticide;~~
- ~~(3) the exact location or valid and current decal number of the bulk storage tank to be filled with said bulk pesticide formulation;~~
- ~~(4) the date and time of scheduled delivery to the bulk storage tank location.~~

Authority G.S. 143-459.

02 NCAC 09L .0803 STORAGE TANK SPECIFICATIONS

- (a) ~~Only containers or storage tanks which are unadulterated, leak proof, and capable of being sealed shall be filled with pesticides.~~
- (b) ~~All containers or storage tanks shall have a drain plug or drain basin designed in such a manner as to facilitate complete drainage of tanks.~~
- (c) ~~All containers or storage tanks of 1000 gallons or less shall have a filler or access port at least 10 inches in diameter and tanks greater than 1000 gallons at least 15 inches in diameter. These minimum sizes are required to facilitate proper cleanup or decontamination of drained tanks.~~
- (d) ~~Outlets and filler and access ports shall be locked at all times when not in use. Keys to the outlet, filler and access ports shall be in the possession of the purchaser and authorized employee only.~~
- (e) ~~All new containers or storage tanks shall be stainless steel, aluminum, mild steel or glass reinforced plastic. The minimum specifications for each are as follows:~~

Aluminum

Size Tank	Shell	Heads Dished & Flanged
500-1500	.156"	.156"
1500-6000	.188"	.188"

Stainless Steel Type 304

Size Tank	Shell	Heads Dished & Flanged
500-1500	13 ga	13 ga
1500-6000	12 ga	12 ga

Mild Steel

Size Tank	Shell	Heads Dished & Flanged
500-1500	10 ga	10 ga
1500-6000	7 ga	7 ga

~~In lieu of dished and flanged heads, reinforced flat end tank may be used when designed according to ASME specifications (Section VIII for unfired pressure vessels).~~

Glass Reinforced Plastic

Size Tank	Shell	Heads
500	3/16"	3/16"
600-1000	9/32"	9/32"

- (f) ~~Pesticides designated by the manufacturer or formulator as corrosive to aluminum, stainless steel, mild steel or glass reinforced plastic shall not be stored in a bulk container fabricated with said material.~~

Authority G.S. 143-441.

02 NCAC 09L .0804 LABELING REQUIREMENTS

- (a) ~~All containers and storage tanks of pesticides shall be properly labeled and shall comply with all other provisions of the North Carolina Pesticide Law of 1971 and the regulations established thereunder.~~
- (b) ~~All containers and storage tanks (excluding spray applicator tanks) must be labeled as registered. A copy of the label or labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve by the vendor at the time of delivery.~~
- (c) ~~In addition, the appropriate signal words as shown on the label shall be shown on all four sides of the containers and storage tanks or those sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.~~
- (d) ~~All entrances to premises on which bulk pesticides are stored shall be posted at a reasonable distance from the containers and storage tanks with a durable sign (minimum size 8" x 10") warning of hazardous pesticides in the area.~~

Authority G.S. 143-460(19),(20),(23).

02 NCAC 09L .0805 RECORD REQUIREMENTS

~~The purchaser of bulk pesticides shall post within reasonable vicinity of the containers and storage tanks a record showing, by date, current volumes of pesticide in containers and storage tanks.~~

History Note: Authority G.S. 143-466(a).

02 NCAC 09L .0806 LOCATION REQUIREMENTS

~~Bulk containers and storage tanks shall be located on sites least likely to endanger man and his environment. In cases of exceptional hazards, grading sufficient to retain spillage and/or fencing to prevent undue human exposure may be required. The food and drug protection division, North Carolina Department of Agriculture, shall make this determination. The food and drug protection division shall be notified in writing, containing specifics, of plans for relocation of a container at least 10 days prior to relocation.~~

Authority G.S. 143-441; 143-466(a).

02 NCAC 09L .0807 SAFETY REQUIREMENTS

~~General safety and cleanliness shall be a practice within the area of the containers and storage tanks. Adequate transfer systems, valves, pumps, fittings, hoses, etc., including the maintenance thereof, shall be in effect at all times.~~

Authority G.S. 143-441.

02 NCAC 09L .0808 NOTIFICATION OF STORAGE TANK REQUIREMENTS

~~The North Carolina Department of Agriculture, food and drug protection division, shall be annually notified in writing of the~~

~~exact location of each container or storage tank off the premises of the formulator at least 15 days prior to the beginning of filling operations. An inspector of the North Carolina Department of Agriculture will by appointment with the owner inspect each container or storage tank within the aforementioned 15 day period. Any container or storage tank utilized for housing bulk pesticides prior to inspection and approval constitutes a violation of the North Carolina Pesticide Law of 1971.~~

Authority G.S. 143-441; 143-466.

02 NCAC 09L .0809 COMPLIANCE REQUIREMENTS

~~The owner of the container or storage tank shall be responsible for complying with all provisions of this article not otherwise specified.~~

Authority G.S. 143-434 through 143-470.

02 NCAC 09L .0810 ADOPTION BY REFERENCE

The North Carolina Pesticide Board hereby adopts by reference, including subsequent amendments, Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticide Management and Disposal Subpart E – Standards for Pesticide Containment Structures." Copies of this material may be obtained at no cost from the U.S. Government Printing Office website, www.gpoaccess.gov/cfr/index.html.

Authority G.S. 143-441; 143-461.

SECTION .1900 - PESTICIDE STORAGE

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460. The rules contained in this Section shall be deemed to be minimum for storage.

- (1) Storage. The act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and triple-rinsed (or equivalent);
 - (b) pesticides which meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11);
- (2) Commercial Storage. Storage of a pesticide by any person from the time of manufacture, prior to possession by the end user;

- (3) Storage Facility. Any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility;
- (4) Large Storage Facility. Any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time;
- (5) Storage Area. That portion of a storage facility actually used to store pesticides;
- (6) Contingency Plan. "Contingency Plan" shall be a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies. A contingency plan shall be deemed adequate by the North Carolina Pesticide Board if in the opinion of the Board such plan presents reasonable assurances that the facility will be able to contain or otherwise prevent the release of pesticides, to minimize unreasonable adverse effects on public health or the environment.
- (7) Bulk Storage. Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart unless any of the following conditions exists:
 - (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed (whether or not the container has been rinsed or washed).
 - (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
 - (c) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
 - (d) The container is dedicated to non-pesticide use, and is labeled accordingly.

Authority G.S. 143-437; 143-441; 143-461; 143-466.

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

(a) Outlets, filler and access ports shall be locked at all times when not in use. Keys to the outlet, filler and access ports shall be in the possession of the purchaser and authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility utilizing security precautions that prevent unauthorized access to the bulk pesticide storage area.

(b) All bulk pesticide storage tanks must display the appropriate signal word as shown on the label on all sides exposed to view. The words shall be either stenciled directly on the containers or storage tanks or placed on a sign of durable construction which is firmly attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are readily visible.

(c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"

(d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

Authority G.S. 143-441; 143-461.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Care Commission intends to amend the rule cited as 10A NCAC 13B .3093.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: December 17, 2008

Time: 10:00 a.m.

Location: Room 113 Council Building, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: *The proposed amendment will enable hospitals to share medical information with other providers of medical services in a manner that complies with HIPAA regulations and state law while continuing to ensure that only authorized persons have access to protected medical information and that a written authorization is present in the record in those situations where such written authorization is required.*

Procedure by which a person can object to the agency on a proposed rule: *An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.*

Comments may be submitted to: Nadine Pfeiffer, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, NC 27699-2701, fax (919) 733-2757, email DHSR.RulesCoordinator@ncmail.net

Comment period ends: January 2, 2009

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 13 – NC MEDICAL CARE COMMISSION

SECTION .3000 - GENERAL INFORMATION

10A NCAC 13B .3903 PRESERVATION OF MEDICAL RECORDS

(a) The manager of medical records service shall maintain medical records, whether original, computer media, or microfilm, for a minimum of 11 years following the discharge of an adult patient.

(b) The manager of medical records shall maintain medical records of a patient who is a minor until the patient's 30th birthday.

(c) If a hospital discontinues operation, its management shall make known to the Division where its records are stored. Records are to be stored in a business offering retrieval services for at least 11 years after the closure date.

(d) Prior to destruction, public notice shall be made to permit former patients or their representatives to claim their own records. Public notice shall be in at least two forms: written notice to the former patient or their representative and display of an advertisement in a newspaper of general circulation in the area of the facility.

(e) The manager of medical records may authorize the microfilming of medical records. Microfilming may be done on or off the premises. If done off the premises, the facility shall provide for the confidentiality and safekeeping of the records. The original of microfilmed medical records shall not be destroyed until the medical records department has had an opportunity to review the processed film for content.

(f) Nothing in this Section shall be construed to prohibit the use of automation in the medical records service, provided that all of the provisions in this Rule are met and the information is readily available for use in patient care.

(g) All medical records are confidential. Only authorized personnel shall have access to the records. The Where the written authorization of the a patient is required for the release or disclosure of health information, the written authorization of the patient or authorized representative shall be maintained in the

original record as authority for the release of medical information outside the facility, or disclosure.

(h) Medical records are the property of the hospital, and they shall not be removed from the facility jurisdiction except through a court order. Copies shall be made available for authorized purposes such as insurance claims and physician review.

Authority G.S. 90-21.20B; 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services – DMH/DD/SAS intends to repeal the rules cited as 10A NCAC 27G .0701-.0707.

Proposed Effective Date: April 1, 2009

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Reason for Proposed Action: These rules no longer apply to the MD/DD/SA Service system, as most LME's have divested themselves of service provision, and are dedicated to the management of local MH/DD/SA service system issues. Also, the use of the term "accreditation" in this context is confusing, since accreditation in current MH/DD/SA Reform is a status conferred on a LME or a MH/DD/SA service provider by a national accreditation agency, whereas this term primarily applied to assuring compliance with current rules and regulations.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018.

Comments may be submitted to: W. Denise Baker, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email denise.w.baker@ncmail.net

Comment period ends: January 2, 2009

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 27 – MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0700 - ACCREDITATION OF AREA PROGRAMS AND SERVICES

10A NCAC 27G .0701 GENERAL

(a) For purposes of this Section, "service" means those services described in Sections 1000 through 6900 of these Rules, and offered by an area program, either directly or through a contract provider, as a required or optional service to clients.

(b) Area programs shall be accredited by DMH/DD/SAS to provide specific services according to the rules in this Section. No area program shall provide a service, either directly or through a contract provider, unless that specific service is accredited, except by reciprocity with another area program pursuant to Rule .0606 of this Section.

(c) An area program offering an accredited service may modify the means by which it delivers the service, including adding or changing service providers. DMH/DD/SAS may require an area program to notify it of changes in contract provider status. Changes in providers may constitute a change in circumstances warranting a reexamination of an accredited service pursuant to Rule .0603(e) of this Section.

(d) Area programs may receive interim accreditation for new services in accordance with Rule .0605 of this Section. Area programs shall maintain accreditation of services through the Accreditation Review process described in Rules .0602 and .0603 of this Section.

(e) DMH/DD/SAS funding of services provided by area programs shall be contingent upon accreditation.

(f) DMH/DD/SAS shall not accredit contract providers. Area programs retain their statutory obligations to assure that contract providers comply with State law and these Rules, and to monitor the performance of contract providers as required by G.S. 122C.

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0702 ACCREDITATION REVIEW

(a) The Area Authority shall assure that all area operated and contracted services of an area program comply with applicable Federal requirements, General Statutes, and rules of the Commission, the Secretary and DMH/DD/SAS.

~~(b) An area program shall be reviewed under the auspices of DMH/DD/SAS periodically, and not less than once every three years, except when its accreditation period has been extended as provided in Rule .0603(f) of this Section.~~

~~(c) The Accreditation Review shall examine each area program service for:~~

- ~~(1) compliance with applicable rules;~~
- ~~(2) client outcomes;~~
- ~~(3) achieved levels of client satisfaction; and~~
- ~~(4) operational and programmatic performance meeting applicable standards of practice.~~

~~(d) For purposes of the accreditation process, "applicable standards of practice" means a level of competence established with reference to the prevailing and accepted methods, and the degree of knowledge, skill and care exercised by other practitioners in the same discipline.~~

~~(e) Upon completion of the Accreditation Review, DMH/DD/SAS shall provide the area authority with an oral summary and written report of results.~~

~~(f) At each regularly scheduled public meeting of the Commission, DMH/DD/SAS shall report the results of all Accreditation Reviews completed since the last Commission meeting.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0703 ACCREDITATION OF THE AREA PROGRAM

~~(a) Upon completion of an Accreditation Review, DMH/DD/SAS shall accredit the area program for a period of between one and three years. The length of the accreditation period shall be determined by DMH/DD/SAS based on the results of the review and an evaluation of the area program's current status, planned changes, and anticipated future needs.~~

~~(b) DMH/DD/SAS may accredit an area program to provide a specific service for a shorter period of time than the area program's overall accreditation.~~

~~(c) An area program or service accreditation of one year shall be accompanied by the development of corrective action plans for services or operations specified by DMH/DD/SAS. These plans shall be developed by the area program, which shall submit them to DMH/DD/SAS for approval. These plans shall be developed and implementation begun within 90 days following the accreditation review.~~

~~(d) As a condition of accreditation for more than one year, DMH/DD/SAS may require an area program to develop and submit plans for corrective action and service enhancement. The Division Director may specify the scope and time frame for submission of the plans based upon the needs determined by the Accreditation Review.~~

~~(e) DMH/DD/SAS may conduct Accreditation Reviews at any time during an accreditation period in the event of significant changes in the membership of the area board, a change in area director, complaints by consumers, consumer organizations or advocacy groups, failure to submit acceptable corrective action or service enhancement plans, failure to implement required plans, or other occurrences that suggest a change in circumstances warranting a reexamination of the area program,~~

~~its operations, or one or more of the services it provides. This review may be a full Accreditation Review of the area program, or it may be limited to selected services provided by the area program.~~

~~(f) In a case where the Division Director determines that the results of an Accreditation Review demonstrate such superior program performance that accreditation for a period longer than three years is justified, the Division Director may recommend to the Commission that an area program's accreditation be extended for an additional period not to exceed two years, and the Commission may approve such an extension.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0704 DENIAL OR REVOCATION OF ACCREDITATION

~~(a) DMH/DD/SAS may deny or revoke accreditation for an area program service:~~

- ~~(1) upon confirmation that a service subject to licensure is not licensed;~~
- ~~(2) upon receipt of evidence of a condition that DMH/DD/SAS determines is a threat to the health, safety or welfare of an individual served;~~
- ~~(3) upon an area program's failure to complete corrective action or service enhancement in accordance with a plan approved by DMH/DD/SAS;~~
- ~~(4) upon determination that:~~
 - ~~(A) the services rendered are not provided at the applicable standards of practice in the appropriate discipline;~~
 - ~~(B) the area program has received notice of the deficiencies and a specified time period for remedial action; and~~
 - ~~(C) the area program has failed or refused to take appropriate remedial action to bring the service to the required level of competence; or~~
- ~~(5) Upon determination of a pattern of behaviors that over time show a failure to maintain applicable standards of practice or show repeated threats to or disregard for the health, safety and welfare of clients.~~

~~(b) Upon denial or revocation of accreditation for a service, DMH/DD/SAS shall take appropriate steps to withhold funds for the service pending re-accreditation as set forth in the DMH/DD/SAS accounting rules 10A NCAC 27A .0100 and .0200.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0705 INTERIM ACCREDITATION FOR NEW SERVICES

~~(a) An area program desiring to offer a new service may receive interim accreditation and start up or interim funding according to the following procedures:~~

- (1) ~~The area program shall notify DMH/DD/SAS in advance of the new service and its anticipated date of commencement, and shall provide such additional information related to compliance with the accreditation standards set forth in these Rules as DMH/DD/SAS may request.~~
- (2) ~~In its notification, the area program shall offer assurances that the service shall comply with applicable standards for accreditation.~~

(b) ~~Upon receipt of notification, DMH/DD/SAS shall deem the new service to have received interim accreditation effective as of the anticipated date of commencement. Unless revoked pursuant to Rule .0604 of this Section, interim accreditation shall remain in effect until completion of an on-site review of the new service by DMH/DD/SAS.~~

(c) ~~After the on-site review, DMH/DD/SAS may accredit the new service pursuant to Rule .0603 of this Section for a specified period of time, but not beyond the expiration of the area program accreditation, or it may deny accreditation pursuant to Rule .0604 of this Section.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0706 RECIPROCITY

(a) ~~By agreement between area programs, one area program may place clients with another area program's accredited service to provide that service without obtaining its own accreditation to provide that service.~~

(b) ~~Nothing herein shall be deemed to relieve any area program of its responsibility to monitor contract service providers pursuant to G.S. 122C-141 and 122C-142.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

10A NCAC 27G .0707 PURCHASE OF SERVICE AND CAPITATION CONTRACTS

(a) ~~In the case of services provided pursuant to purchase of service or capitation contracts with individuals or groups of individuals licensed under other provisions of state law and who are not facilities requiring licensing under these Rules or G.S. 122C, area programs may exempt the contract providers from complying with the requirements of Section .0200 of these Rules, except for Rules .0203, .0204, .0207, and .0208 of this Subchapter.~~

(b) ~~For purposes of this Rule, "capitation contract" means a contract in which the provider is paid a specified flat rate per enrollee to meet clients' service needs within the parameters of the contract.~~

(c) ~~For purposes of this Rule, "purchase of service contract" means a contract in which the provider is paid an agreed-upon rate for a specific service as the service is rendered.~~

Authority G.S. 122C-112; 122C-141(b); 122C-142(a); 122C-191(d).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09A .0107, .0204; 09B .0111, .0202, .0205, .0304, .0502; 09C .0306, .0310; 09E .0102, .0105; 09G .0102, .0205-.0206, .0504.

Proposed Effective Date: February 1, 2009

Public Hearing:

Date: November 20, 2008

Time: 1:00 p.m.

Location: Department of Correction, Office of Staff Development and Training, 2211 Schieffelin Road, Apex, NC

Reason for Proposed Action:

12 NCAC 09A .0107 – Changes the time in which an applicant for certification, or certified officer, may request a contested case hearing from the date of receipt of a notice of proposed action by the Commission from 60 days to 30 days, in accordance with G.S. 17C-11(b).

12 NCAC 09A .0204 – Updated to include the following as a basis for suspension, revocation, or denial of law enforcement certification: Refusals to submit to in-service drug screens through an officer's certifying agency; denial, suspension, or revocation of certification by other state or federal agencies whose function is the same or similar to CJ Standards, Sheriffs' Standards or the NC Company/Campus Police Program; convictions under the Lautenberg Amendment which would permanently prohibit possession of firearms or ammunition.

12 NCAC 09B .0111 – Updated to include convictions under the Lautenberg Amendment as a valid reason to prohibit certification of law enforcement officers under minimum standards.

12 NCAC 09B .0202 – Removed the first reference to the number of hours in General Instructor school as that requirement is spelled out later in the rule. Added requirement that school directors must notify all Basic Law Enforcement Training instructors that they must comply with the instructions in the Course Management Guide. Added requirements that any instructor teaching in any criminal justice class must be currently certified as an instructor by the Commission. Removed the following statement as it is in internal policy and not a rule issue: "The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency."

12 NCAC 09B .0205 – Reduced the hours of the First Responder block of instruction from 40 to 32, increased the hours of the Patrol Techniques block of instruction from 20 to 26, and increased the hours of the Juvenile Laws & Procedures block of instruction from 8 to 10. Total hours for the Basic Law Enforcement Training course remain 618.

12 NCAC 09B .0304 – Revised one of the requirements to become a First Responder Specialized Instructor. Currently, First Responder instructors are required to have a current

Emergency Medical Technician certification. This has been changed to a current or previous EMT certification.

12 NCAC 09B .0502 – Added a statement that school directors must comply with the current Course Management Guide and with the current Basic Law Enforcement Training Instructor Notebook.

12 NCAC 09C .0306 – Clarified that an officer must have General Certification with the Criminal Justice Commission or the Sheriffs' Standards Commission in order to be eligible for a lateral transfer to another agency.

12 NCAC 09C .0310 – Added a requirement that positive results form a drug screen, or an officer's refusal to take a drug screen, must be reported in writing to the Standards Division within thirty days of the positive result or the refusal.

12 NCAC 09E .0102, .0105 – The Commission has changed the required topics for annual In-Service training for law enforcement officers. The following topics have been removed: Career Survival: Truth or Consequences; Juvenile Minority Sensitivity Training: Effects of Juvenile Bullying; and Response to Critical Incidents. The following topics have been added: Career Survival: Training and Standards Issues; Juvenile Minority Sensitivity Training: Juvenile Law – In the Real World; Domestic Violence; and Drug Diversion for Patrol Officers.

12 NCAC 09G .0102 – Minor wording changes to the list misdemeanors. Added, as disqualifier to certification, any convictions under the Lautenberg Act, since those convictions permanently prohibit a person from possessing a firearm or ammunition.

12 NCAC 09G .0205 – Clarified the requirement that the physical examination required of an applicant for a correction officer probation/parole officer, or probation/parole – intermediate position with the Department of Correction must be conducted within one year of the date of hire.

12 NCAC 09G .0206 – Deleted the requirement that an applicant not have any felony convictions within the ten year period prior to hire and replaced with the requirement that an applicant, or current employee, can not have been convicted of an offense which would prohibit the possession of firearms and ammunition. Added statement that a refusal to take, or positive result from, an in-service drug screen can be used as lack of good moral character.

12 NCAC 09G .0504 – Added statement that a refusal to take, or a positive result from, an in-service drug screen can be used as grounds to suspend, revoke, or deny certification. Added statement that if certification had been denied, suspended, or revoked by the Criminal Justice Commission, Sheriffs' Commission, or a similar North Carolina, out-of-state, or federal approving, certifying, or licensing agency whose function is the same or similar to the Criminal Justice Commission, that can be used as a basis for denial, suspension, or revocation under Criminal Justice Standards.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton Street, Raleigh, NC 27602.

Comments may be submitted to: Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton Street, Raleigh, NC 27602, phone (919)716-6470, fax (919)716-6752, email tmarrella@ncdoj.gov.

Comment period ends: January 2, 2009

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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0107 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;

- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby adopted by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such adoptions by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

(d) Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code. ~~Code and that 26 NCAC 3 .0001(2); .0002(a)(1); and .0003(b) shall not apply.~~

(e) An applicant for certification or a certified officer shall have ~~60~~ 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40.

SECTION .0200 - ENFORCEMENT OF RULES

12 NCAC 09A .0204 **SUSPENSION; REVOCATION; OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of:

- (1) a felony offense; or
- (2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification;
- (3) has committed or been convicted of:
 - (A) a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor; or

- (B) four or more criminal offenses or unlawful acts defined in 12 NCAC 09A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;

(4) has been discharged by a criminal justice agency for commission or conviction of:

- (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
- (B) any other offense involving moral turpitude;

(5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;

(6) has knowingly made a material misrepresentation of any information required for certification or accreditation;

(7) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;

(8) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission;

(9) has failed to make either of the notifications as required by 12 NCAC 09B .0101(8);

(10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;

(11) fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 09E;

(12) has refused to submit to an applicant or lateral transferee drug screen as required by these ~~Rules; Rules, or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the agency through which the officer is certified;~~

(13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09C .0310, where the positive result cannot be explained to the Commission's satisfaction;

(14) has been denied certification or had ~~such justice officer~~ certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards ~~Commission; Commission, the North Carolina Criminal Justice Education and Training Standards Commission; the North Carolina~~

Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency; or

- (15) has performed activities or duties for which certification by the Commission is required without having first obtained the appropriate ~~certification~~ certification; or

- (16) has been convicted of any offense proscribed by 18 USC 922(g)(8) that would prohibit possession of a firearm or ammunition.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, revoked, or denied.

Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

12 NCAC 09B .0111 MINIMUM STANDARDS FOR LAW ENFORCEMENT OFFICERS

In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

- (1) not have committed or been convicted of:
 - (a) a felony; or
 - (b) a crime for which the punishment could have been imprisonment for more than two years; or
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment; or
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment;
 - (f) an offense that, proscribed by 18 USC 922(g)(8), would prohibit the possession of a firearm and/or ammunition;
- (2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency; and
- (3) satisfactorily complete the employing agency's in-service firearms training program as

prescribed in 12 NCAC 9E .0105 - .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the department-approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency.

Note: Although not presently required by these Rules, the Commission recommends that, on the date of employment or within 24 months thereafter, every candidate for employment as a law enforcement officer have completed no less than six semester units or nine quarter units of educational credit at an accredited institution of higher education.

Authority G.S. 17C-6; 17C-10.

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter. ~~The "Criminal Justice Instructor Training Course" shall be presented with 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;~~
- (2) Select and schedule instructors who are currently certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Notify each instructor that they must comply with the Basic Law Enforcement Course Management Guide and provide them access to the most current version of the Course Management Guide;
- (4)(5) Review each instructor's lesson plans and other instructional materials for conformance to Commission standards and to minimize repetition and duplication of subject matter;
- (5)(6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (6)(7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;

- (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
- (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

- ~~(7)~~(8) If appropriate, recommend housing and dining facilities for trainees;
- ~~(8)~~(9) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
- ~~(9)~~(10) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated; and
- ~~(10)~~(11) Report the completion of each presentation of a Commission-certified criminal justice training course to the Commission.

(b) In addition to Paragraph (a) of this Rule, in planning developing, coordinating and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

- (1) Deliver training in accordance with the most current version of the Basic Law Enforcement Training Course Management Guide as published by the North Carolina Justice Academy;
- ~~(1)~~(2) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed; and
- ~~(2)~~(3) Schedule only those instructors currently certified by the Commission to teach those high liability areas as specified in 12 NCAC 09B .0304(a) as either the lead instructor or in any other capacity; and
- ~~(3)~~(4) With the exception of the First Responder, Physical Fitness, Electrical and Hazardous Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor currently certified by the Commission for each six trainees while actively engaged in a practical performance exercise; and
- ~~(4)~~(5) Schedule one specialized certified instructor currently certified by the Commission for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;" and
- ~~(5)~~(6) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the

Basic Law Enforcement Training Course presentation; and

- ~~(6)~~(7) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C .0211 along with the following attachments:

- (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments.
- (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course.

~~The Director of the Standards Division shall review the submitted Pre Delivery Report together with all attachments and notify the School Director of any apparent deficiency.~~

- ~~(7)~~(8) Monitor, or designate a certified an instructor currently certified by the Commission to monitor, the presentations of all instructors once during each three year certification period in each topic taught by the instructor and prepare written evaluations on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Design model, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluation of the instructor. For probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the

Commission. Any designated certified instructor currently certified by the Commission who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated.

~~(8)~~(9) Administer or designate a staff person to administer appropriate tests as determined necessary at various intervals during course delivery:

- (A) to determine and record the level of trainee comprehension and retention of instructional subject-matter;
- (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
- (C) to determine subject or topic areas of deficiency for the application of 12 NCAC 09B .0405(a)(3); and

~~(9)~~(10) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.

~~(10)~~(11) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which shall include:

- (A) a "Student Course Completion" form for each individual enrolled on the day of orientation.
- (B) a "Certification and Test Score Release" form.

(c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-certified "Criminal Justice Instructor Training Course" the School Director shall:

- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Schedule at least one evaluator for each six trainees:
 - (A) no evaluator shall be assigned more than six trainees during a course delivery.
 - (B) each evaluator, as well as the instructors, must have successfully completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems

Design model, an international model with applications in education, military training, and private enterprise; and

(C) each instructor and evaluator must document successful participation in a program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

(3) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)] with the following attachments:

- (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments;
- (B) the names and social security numbers of all instructors and evaluators; and
- (C) a copy of any rules, regulations, and requirements for the school.

~~The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.~~

(4) Not more than 10 days after course completion the School Director shall submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:

- (A) class enrollment roster;
- (B) a course schedule with designation of instructors and evaluators utilized in delivery;
- (C) scores recorded for each trainee on both the 80 minute skill presentation and the final written examination; and
- (D) designation of trainees who successfully completed the course in its entirety and whom the School Director finds to be competent to instruct.

(d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-certified radar, radar and time-distance, time-distance, or lidar speed measurement operator training course or re-certification course, the School Director shall:

- (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are currently certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:

- (A) provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
- (B) require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument; and
- (C) require each instructor to sign each individual form and submit the original to the School Director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation:
 - (A) the request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained in each type of approved speed-measurement-instrument; and
 - (B) the Director of the Standards Division shall review the request and notify the School Director of the accepted delivery period unless a conflict exists with previously scheduled programs.
- (3) during the delivery of the training course, make available to the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee; and
- (4) upon completing delivery of the Commission-certified course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

Authority G.S. 17C-6.

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

- (a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.
- (b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 618 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- (1) **LEGAL UNIT**
 - (A) Motor Vehicle Laws 20 Hours
 - (B) Preparing for Court and Testifying in Court 12 Hours
 - (C) Elements of Criminal Law 24 Hours
 - (D) Juvenile Laws and Procedures ~~8~~¹⁰ Hours
 - (E) Arrest, Search and Seizure/Constitutional Law 28 Hours
 - (F) ABC Laws and Procedures 4 Hours
 - UNIT TOTAL 96 Hours**
- (2) **PATROL DUTIES UNIT**
 - (A) Techniques of Traffic Law Enforcement 24 Hours
 - (B) Explosives and Hazardous Materials Emergencies 12 Hours
 - (C) Traffic Crash Investigation 20 Hours
 - (D) In-Custody Transportation 8 Hours
 - (E) Crowd Management 12 Hours
 - (F) Patrol Techniques ~~20~~²⁶ Hours
 - (G) Law Enforcement Communication and Information Systems 8 Hours
 - (H) Anti-Terrorism 4 Hours
 - (I) Rapid Deployment 8 Hours
 - UNIT TOTAL 116 Hours**
- (3) **LAW ENFORCEMENT COMMUNICATION UNIT**
 - (A) Dealing with Victims and the Public 10 Hours
 - (B) Domestic Violence Response 12 Hours
 - (C) Ethics for Professional Law Enforcement 4 Hours
 - (D) Individuals with Mental Illness and Mental Retardation 8 Hours
 - (E) Crime Prevention Techniques 6 Hours
 - (F) Communication Skills for Law Enforcement Officers 8 Hours
 - UNIT TOTAL 48 Hours**
- (4) **INVESTIGATION UNIT**
 - (A) Fingerprinting and Photographing Arrestee 6 Hours
 - (B) Field Note-taking and Report Writing 12 Hours
 - (C) Criminal Investigation 34 Hours
 - (D) Interviews: Field and In-Custody 16 Hours
 - (E) Controlled Substances 12 Hours
 - UNIT TOTAL 80 Hours**
- (5) **PRACTICAL APPLICATION UNIT**
 - (A) First Responder ~~40~~³² Hours
 - (B) Firearms 48 Hours

(C)	Law Enforcement Driver Training	40 Hours
(D)	Physical Fitness	8 Hours
	(i) Fitness Assessment and Testing	12 Hours
	(ii) 1 hour - 3 days a week	34 Hours
(E)	Subject Control Arrest Techniques	40 Hours
	UNIT TOTAL	222 Hours
(6)	SHERIFF-SPECIFIC UNIT	
	(A) Civil Process	24 Hours
	(B) Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C) Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	20 Hours
	TOTAL COURSE HOURS	618 Hours

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy shall be used by School Directors in planning, implementing and delivering basic training courses. Each School Director shall be issued a copy of the guide at the time of certification at no cost to the certified school. The public may obtain copies of this guide from the Justice Academy.

Authority G.S. 17C-6; 17C-10.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0304 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific

motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Subject Control Arrest Techniques
 - (2) First Responder
 - (3) Firearms
 - (4) Law Enforcement Driver Training
 - (5) Physical Fitness
 - (6) Restraint, Control and Defense Techniques (DJJDP)
 - (7) Medical Emergencies (DJJDP)
Explosive and Hazardous Materials Emergencies
- (b) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing, through an organization whose curriculum meets the national standards set forth by the International Guidelines Conference on Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.
- (c) To qualify for Specialized Instructor Certification in the Subject Control Arrest Techniques topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (d) To qualify for Specialized Instructor Certification in the First Responder topical area, an applicant must satisfy one of the following two options:
- (1) The first option is:
 - (A) hold current CPR instructor certification through an organization whose curriculum meets the national standard; and
 - (B) ~~hold current~~ current, or have held, basic Emergency Medical Technician certification; and
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate; and
 - (D) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
 - (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) hold current CPR instructor certification through an organization

- whose curriculum meets the national standard; and
- (C) hold ~~current~~ current, or have held, basic EMT certification; and
 - (D) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (e) To qualify for Specialized Instructor Certification in the Firearms topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (f) To qualify for Specialized Instructor Certification in the Law Enforcement Driver Training topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (g) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant shall become certified through one of the following two methods:
- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (C) obtain the recommendation of a Commission-certified School Director.
 - (2) The second method is:
 - (A) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (B) obtain the recommendation of a Commission-certified School director or in-service training coordinator; and
 - (C) meet one of the following qualifications:
 - (i) hold a current and valid North Carolina Teacher's Certificate and hold a
- minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
- (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.
- (h) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Restraint, Control and Defense Techniques topical area, an applicant must meet the following requirements:
- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
 - (3) obtain the recommendation of a Commission-certified school director.
- (i) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Medical Emergencies topical area, an applicant must meet the following requirements:
- (1) have successfully completed a Commission-certified basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, within the 12 month period preceding application; and
 - (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements; and
 - (3) obtain the recommendation of a Commission-certified school director.
- (j) To qualify for Specialized Instructor Certification in the Explosive and Hazardous Materials Emergencies topical area, an applicant must satisfy one of the following two options:
- (1) The first option is:
 - (A) hold current instructor certification as a First Responder Awareness Level Hazardous Materials instructor; and
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
 - (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
 - (2) The second option is:

- (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09B .0303 of this Section; and
- (B) have successfully completed the Awareness/Operations Level Hazardous Materials Course developed by the North Carolina Department of Insurance, Office of the State Fire Marshal; and
- (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.

Authority G.S. 17C-6.

SECTION .0500 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOL DIRECTORS

12 NCAC 09B .0502 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application the certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0501(b)(2) and (3) of this Section.

(b) To retain certification as a school director, the school director shall:

- (1) Attend an annual school directors conference conducted by commission staff; and
- (2) ~~Maintain an updated copy~~ and comply with the current version of the "Basic Law Enforcement Training Course Management Guide"; and
- (3) ~~Maintain two updated copies~~ and ensure compliance with the current version of the "Basic Law Enforcement Training Instructor Notebook" assigned to each accredited school; and
- (4) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0202 of this Subchapter.

Authority G.S. 17C-6.

SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0600 - EQUIPMENT AND PROCEDURES

12 NCAC 09C .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS

(a) A law enforcement officer with general certification from either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards

Commission may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Criminal Justice Standards Division or the Sheriffs' Standards Division.
- (2) submit an up-to-date fingerprint check in the same manner as prescribed for non-certified new applicants. No certification will be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized.
- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year.
- (4) notify the Commission, by submitting a Report of Appointment, that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within one year prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 09B .0104 within one year prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file;
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 09B .0101(5); and
- (5) submit a copy of the Commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapon(s) remain the same as those previously used to qualify. Such in-service training compliance must have occurred within the 12 month period preceding transfer; or
- (6) satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements are not required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09C .0310 AGENCY REPORTING OF DRUG SCREENING RESULTS

(a) Each agency shall report in writing to the Criminal Justice Standards Division all refusals and all positive results of required drug screening obtained from applicants and lateral transfers unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

(b) Each agency, if it conducts a drug screen for in-service officers, shall report in writing positive results or refusals to submit to an in-service drug screening to the Criminal Justice Standards Division within 30 days of the positive result or refusal unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician, to the extent the drug screen conducted conforms to the specifications of 12 NCAC 09B .0101(5)(a), (b), (c), (d), and (f).

(c) For reporting purposes, a result will be considered "positive" only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in Section 12 NCAC 09B .0101(5)(d) of these Rules.

(d) All written reports required to be submitted to the Criminal Justice Standards Division by this Rule shall contain, at a minimum, the individual's name, social security number, date of birth and either the date the test was administered or the date of the refusal.

Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (4);
- (2) Legal Update (4);
- (3) Career Survival: ~~Truth or Consequences (2);~~ Training and Standards Issues (2);
- (4) Juvenile Minority ~~Sensitivity;~~ Sensitivity Training; Effects of Juvenile Bullying (2); Juvenile Law – In the Real World (2);
- (5) ~~Response to Critical Incidents (4); and~~ Domestic Violence (2);
- (6) Drug Diversion for Patrol Officers (2); and
- ~~(6)(7)~~ Department Topics of Choice (8).

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;
 - (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm; and
 - (iii) malfunctions;
 - (c) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture; and
 - (iii) nomenclature; and
 - (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602;

- (2) Legal Update (4);
- (3) Career Survival: ~~Truth or Consequences (2);~~ Training and Standards Issues (2);
- (4) Juvenile Minority ~~Sensitivity;~~ Sensitivity Training; Effects of Juvenile Bullying (2); Juvenile Law – In the Real World (2);
- (5) ~~Response to Critical Incidents (4); and~~ Domestic Violence (2);
- (6) Drug Diversion for Patrol Officers (2); and
- ~~(6)(7)~~ Department Topics of Choice (8).

The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99

Salemburg, North Carolina 28385

Authority G.S. 17C-6; 17C-10.

**SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS
EMPLOYMENT, TRAINING, AND CERTIFICATION**

**SECTION .0100 - SCOPE, APPLICABILITY, AND
DEFINITIONS**

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means and includes, for purposes of this Subchapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Correction, Division of Prisons, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means any or all of the three classes of officers employed by the North Carolina Department of Correction: correctional officer; probation/parole officer; and probation/parole officer-intermediate.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Correction.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (8) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

- (9) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as follows:
 - (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
 - (b) 14-27.7 Intercourse and sexual offenses with certain victims (If defendant is school personnel other than a teacher, school administrator, student teacher or coach)
 - (c) 14-32.1(f) Assault on handicapped persons
 - (d) 14-32.2(b)(4) Patient abuse and neglect, punishments
 - (e) 14-32.3(e) Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of less than one thousand dollars (\$1000) (August 1, 2001-December 1, 2005. Repealed December 1, 2005)
 - (f) 14-33(b)(9) Assault, battery against sports official
 - (g) 14-33(c) Assault, battery with circumstances
 - (h) 14-34 Assault by pointing a gun
 - (i) 14-34.6(a) Assault on Emergency Personnel
 - (j) 14-54 Breaking or Entering into buildings generally (14-54(b))
 - (k) 14-72 Larceny of property; receiving stolen goods etc.; ~~less than~~ not more than one thousand dollars (\$1000.00) (14-72(a))
 - (l) 14-72.1 Concealment of merchandise (14-72.1(e); 3rd or subsequent offense)
 - (m) 14-76 Larceny, mutilation, or destruction of public records/papers
 - (n) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
 - (o) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))
 - (p) 14-114(a) Fraudulent disposal of personal property on which there is a security interest
 - (q) 14-118 Blackmailing
 - (r) 14-118.2 Obtaining academic credit by fraudulent means (14-118.2(b))
 - (s) 14-122.1 Falsifying documents issued by a school (14-122.1(c))
 - (t) 14-127 Willful and wanton injury to real property

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| <p>(u) 14-160 Willful and wanton injury to personal property greater than two hundred dollars (\$200.00) (14-160(b))</p> <p>(v) 14-190.5Preparation of obscene photographs</p> <p>(w) 14-190.9Indecent Exposure</p> <p>(x) 14-190.14 Displaying material harmful to minors (14-190.14(b))</p> <p>(y) 14-190.15 Disseminating harmful material to minors (14-190.15(d))</p> <p>(z) 14-202.2Indecent liberties between children</p> <p>(aa) 14-202.4Taking indecent liberties with a student</p> <p>(bb) 14-204 Prostitution (14-207;14-208)</p> <p>(cc) 14-223 Resisting officers</p> <p>(dd) 14-225 False, etc., reports to law enforcement agencies or officers</p> <p>(ee) 14-230 Willfully failing to discharge duties</p> <p>(ff) 14-231 Failing to make reports and discharge other duties</p> <p>(gg) 14-232 Swearing falsely to official records</p> <p>(hh) 14-239 Allowing prisoners to escape punishment</p> <p>(ii) 14-255 Escape of working prisoners from custody</p> <p>(jj) 14-256 Prison breach and escape</p> <p>(kk) 14-258.1(b) Furnishing certain contraband to inmates</p> <p>(ll) 14-259 Harboring or aiding certain persons</p> <p>(mm) CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)</p> <p>(nn) 14-269.2Weapons on campus or other educational property (14-269.2(d), (e) & (f))</p> <p>(oo) 14-269.3(a) Weapons where alcoholic beverages are sold and consumed</p> <p>(pp) 14-269.4Weapons on state property and in courthouses</p> <p>(qq) 14-269.6Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))</p> <p>(rr) 14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1) & (e))</p> <p>(ss) 14-277.2(a) Weapons at parades, etc., prohibited</p> | <p>(tt) 14-277.3Stalking (14-277.3(b))</p> <p>(uu) CH 14 Art. 36A 14-288.2(b) Riot (14-288.2(b))</p> <p>(vv) CH 14 Art. 36A 14-288.2(d) Inciting to riot (14-288.2(d))</p> <p>(ww) CH 14 Art. 36A 14-288.6(a) Looting; trespassing during emergency (14-288.6(a))</p> <p>(xx) CH 14 Art. 36A 14-288.7(c) Transporting weapon or substance during emergency (14-288.7(e))</p> <p>(yy) CH 14 Art. 36A 14-288.9(c) Assault on emergency personnel; punishments (14-288.9(e))</p> <p>(zz) 14-315(a) Selling or giving weapons to minors</p> <p>(aaa) 14-315.1Storage of firearms to protect minors</p> <p>(bbb) 14-316.1Contributing to delinquency</p> <p>(ccc) 14-318.2Child abuse</p> <p>(ddd) 14-360 Cruelty to animals</p> <p>(eee) 14-361 Instigating or promoting cruelty to animals</p> <p>(fff) 14-401.14 Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b))</p> <p>(ggg) 14-454(a) or (b) Accessing computers</p> <p>(hhh) 14-458 Computer trespass (Damage less than two thousand five hundred dollars (\$2500.00))</p> <p>(iii) 15A-266.11 Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b))</p> <p>(jjj) 15A-287 Interception and disclosure of wire etc. communications</p> <p>(kkk) 15B-7(b) Filing false or fraudulent application for compensation award</p> <p>(lll) 18B-902(c) False statements in application for ABC permit (18B-102(b))</p> <p>(mmm) 20-37.8(a) & (c) Fraudulent use of a fictitious name for a special identification card (20-37.8(b))</p> <p>(nnn) 20-102.1False report of theft or conversion of a motor vehicle</p> <p>(ooo) 20-111(5) Fictitious name or address in application for registration</p> <p>(ppp) 20-130.1Use of red or blue lights on vehicles prohibited (20-130.1(e))</p> <p>(qqq) 20-137.2Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))</p> <p>(rrr) 20-138.1Driving while impaired (punishment level 1 (20-179(g))or 2 (20-179(h))</p> |
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| <p>(sss) 20-138.2 Impaired driving in commercial vehicle (20-138.2(e))</p> <p>(ttt) 20-141.5(a) Speeding to elude arrest</p> <p>(uuu) 20-166(b) Duty to stop in event of accident or collision</p> <p>(vvv) 20-166(c) Duty to stop in event of accident or collision</p> <p>(www) 20-166(c1) Duty to stop in event of accident or collision</p> <p>(xxx) 50B-4.1 Knowingly violating valid protective order</p> <p>(yyy) 58-33-105 False statement in applications for insurance</p> <p>(zzz) 58-81-5 Careless or negligent setting of fires</p> <p>(aaaa) 62A-12 Misuse of 911 system</p> <p>(bbbb) 90-95(d)(2) Possession of schedule II, III, IV</p> <p>(cccc) 90-95(d)(3) Possession of Schedule V</p> <p>(dddd) 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor)</p> <p>(eeee) 90-95(e)(4) Conviction of 2 or more violations of Art. 5</p> <p>(ffff) 90-95(e)(7) Conviction of 2 or more violations of Art. 5</p> <p>(gggg) 90-113.22 Possession of drug paraphernalia (90-113.22(b))</p> <p>(hhhh) 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c))</p> <p>(iiii) 97-88.2(a) Misrepresentation to get worker's compensation payment</p> <p>(jjjj) 108A-39(a) Fraudulent misrepresentation of public assistance</p> <p>(kkkk) 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments</p> <p>(llll) 108A-64(a) Medical assistance recipient fraud; less than four hundred dollars (\$400.00) (108-64(c)(2))</p> <p>(mmmm) 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b))</p> <p>(nnnn) 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c))</p> <p>(oooo) 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement</p> | <p>(pppp) 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement</p> <p>(qqqq) 113-290.1(a)(4) Criminally negligent hunting; death results</p> <p>(rrrr) 113-290.1(d) Criminally negligent hunting; person convicted/suspended license</p> <p>(ssss) 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c))</p> <p>(tttt) 148-45(d) Aiding escape or attempted escape from prison</p> <p>(uuuu) 162-55 Injury to prisoner by jailer</p> <p>(vvvv) Common-Law misdemeanors:</p> <p style="padding-left: 20px;">(i) Going Armed to the Terror of the People</p> <p style="padding-left: 20px;">(ii) Common-Law Mayhem</p> <p style="padding-left: 20px;">(iii) False Imprisonment</p> <p style="padding-left: 20px;">(iv) Common-Law Robbery</p> <p style="padding-left: 20px;">(v) Common-Law Forgery</p> <p style="padding-left: 20px;">(vi) Common-Law Uttering of Forged paper</p> <p style="padding-left: 20px;">(vii) Forcible Trespass</p> <p style="padding-left: 20px;">(viii) Unlawful Assembly</p> <p style="padding-left: 20px;">Common-Law Obstruction of Justice</p> <p>(wwww) Those offenses occurring in other jurisdictions which are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule.</p> <p>(xxxx) <u>Any offense proscribed by 18 USC 922(g)(8) [Lautenberg Amendment] that would prohibit possessing a firearm or ammunition.</u></p> <p>(10) "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are utilized to develop new training course curricula.</p> <p>(11) "Probation/Parole Officer" means an employee of the North Carolina Department of Correction, Division of Community Corrections, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Community Corrections.</p> <p>(12) "Probation/Parole Officer-Intermediate" means an employee of the North Carolina Department of Correction, Division of Community Corrections, other than a regular probation/parole officer who is trained in corrections techniques, and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Community Corrections, whose duties include supervising, investigating, reporting, and</p> |
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surveillance of serious offenders in an intensive probation, parole, or post release supervision program operated by the Division of Community Corrections.

- (13) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when an accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited course.
- (14) "School" means an institution, college, university, academy, or agency which offers penal or corrections training for correctional officers, probation/parole officers, or probation/parole officers-intermediate. "School" includes the corrections training course curricula, instructors, and facilities.
- (15) "School Director" means the person designated by the Secretary of the North Carolina Department of Correction to administer the "School."
- (16) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (17) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. 20 classroom hours of Commission-approved corrections training equals one State Corrections training point.

Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

**SECTION .0200 - MINIMUM STANDARDS FOR
CERTIFICATION OF CORRECTIONAL OFFICERS,
PROBATION/PAROLE OFFICERS, AND
PROBATION/PAROLE OFFICERS-SURVEILLANCE**

**12 NCAC 09G .0205 PHYSICAL AND MENTAL
STANDARDS**

- (a) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been examined and certified within one year prior to employment with the North Carolina Department of Correction by a licensed physician, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill properly the officer's particular responsibilities as stated in the essential job functions.
- (b) Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall have been administered within one year prior to employment with the North Carolina Department of Correction a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina to determine the officer's

mental and emotional suitability to fulfill properly the officer's particular responsibilities as stated in the essential job functions.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09G .0206 MORAL CHARACTER

Every person employed as a correctional officer, probation/parole officer, or probation/parole officer-intermediate by the North Carolina Department of Correction shall demonstrate good moral character as evidenced by, but not limited to:

- ~~(1) not having been convicted of a felony for 10 years or the completion of any corrections supervision imposed by the courts whichever is later;~~
- ~~(2)~~(1) not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(9) for three years or the completion of any corrections supervision imposed by the courts whichever is later;
- (2) not having been convicted of an offense that, under 18 USC 922(g)(8), would prohibit the possession of a firearm and/or ammunition;
- (3) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the Department of Correction which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
- (4) submitting to a background investigation consisting of:
 - (a) verification of age;
 - (b) verification of education;
 - (c) criminal history check of local, state, and national files;
- (5) being truthful in providing all required information as prescribed by the application process.

Authority G.S. 17C-6; 17C-10.

SECTION .0500 - ENFORCEMENT OF RULES

**12 NCAC 09G .0504 SUSPENSION: REVOCATION:
OR DENIAL OF CERTIFICATION**

- (a) The Commission shall revoke the certification of a correctional officer, probation/parole officer, or probation/parole officer-intermediate when the Commission finds that the officer has committed or been convicted of a felony offense.
- (b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer

when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Correction for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) commission or conviction of any other offense involving moral turpitude;
- (5) has been discharged by the North Carolina Department of Correction because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the Department of Correction;

- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction; or
- (13) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Company/Campus Police Program, the North Carolina Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state or federal approving, certifying or licensing agency whose function is the same or similar to the aforementioned agencies if such certification was denied, suspended or revoked based on grounds that would constitute a violation of Subchapter 09G.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

Authority G.S. 17C-6; 17C-10.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 31 - MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marriage and Family Therapy Licensure Board intends to amend the rules cited as 21 NCAC 31 .0201-.0202, .0303, .0501-.0503, .0506, .0609, .0701, .0801 and repeal the rules cited as 21 NCAC 31 .0302-.0303, .0901.

Proposed Effective Date: July 1, 2009

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Send a letter requesting a public hearing and indicating the amendment(s) for which a hearing is requested. Letter should include contact information comprised, but not limited to: name, address, phone number, email (if applicable). Send letter to Wanda Nicholson, NC Marriage & Family Therapy Licensure Board, PO Box 37669, Raleigh, NC 27627 or Fax to: 919-772-6007.*

Reason for Proposed Action: *To clarify required educational credentials and associated procedures for verifying credentials; to clarify when examination may be taken and what passing the exam means for Associate Designation and/or licensure; to clarify number of times examination can be taken; to clarify graduate degree coursework; to clarify requirements for an approved supervisor; to clarify coursework required for those*

graduate level applicants who are not graduates of accredited MFT programs; to clarify what does and does not constitute supervised clinical experience; to clarify how to locate a current copy of the approved code of ethics; to increase the number of hours of annually required continuing education credits from 12 to 20 for licensees seeking license renewal; to include ethics training and approved supervision in the continuing education requirements; to clarify the number of hours allowable for distance learning coursework for continuing education - maximum of 5 out of 20 hours or 25%; to require successful completion of the National MFT Exam prior to receiving the Associate Designation in order to assist in assessing competency to practice MFT; to clarify that MFTA designation is equivalent to provisional licensure; to clarify need for written reciprocity process if necessary.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to the proposed rules changes to Wanda Nicholson, NC Marriage & Family Therapy Licensure Board, PO Box 37669, Raleigh, NC 27627 or Fax (919)772-6007.

Comments may be submitted to: Wanda Nicholson, PO Box 37669, Raleigh, NC 27627, phone (919)772-6600, fax (919)772-6007, email ncmftlb@nc.rr.com.

Comment period ends: January 2, 2009

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

SECTION .0200 - APPLICATION FOR LICENSING

21 NCAC 31 .0201 CREDENTIALS REQUIRED

The credentials required for each applicant consist of:

An applicant for licensure as a marriage and family therapist shall submit the following to the Board.

- (1) ~~notarized~~ Notarized application form and application fee;

- (2) ~~official graduate college transcripts sent directly to the Board by the training institution(s);~~
(3) ~~written evidence, transcript, or other document(s) evidencing satisfactory completion of a course of study in marriage and family therapy from an appropriate non-degree granting agency, institution or program when applicable;~~
(2) Official graduate college transcripts sent directly to the Board by the training institution(s) evidencing completion of a master's or doctoral degree in marriage and family therapy from an academically accredited educational institution, or
(a) Official transcript evidencing completion of a master's or doctoral degree in an allied mental health field with course of study encompassing coursework as defined by the Board in 21 NCAC 31 .0501.
(b) Additional documentation (course catalog and syllabi) of qualifying coursework is required if degree is not from a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited program.
(4)(3) ~~approved Supervisors' Reports verifying clinical experience and supervision; and Reports from American Association of Marriage and Family Therapy (AAMFT) Approved Supervisors using Board forms verifying clinical experience, supervision, and endorsement for licensure; and~~
(5)(4) ~~evidence of good moral character, which must include three endorsements for licensure from professionals in the community. Evidence of good moral character, which shall include three endorsements for licensure, using Board forms, from other licensed or certified mental health professionals familiar with the applicant.~~

An application will automatically be placed in an inactive file if all necessary materials are not received within one year from the date of the application. All application materials shall be received within one year from the date of the application or the file shall be closed.

Authority G.S. 90-270.51(b); 90-270.52; 90-270.54(1)(2).

21 NCAC 31 .0202 REVIEW PROCEDURE

(a) Copies of all materials pertaining to an applicant ~~are~~ shall be mailed to ~~each Board member~~ the Board office for receipt one month prior to the scheduled meeting during which the application will be reviewed. Applications shall be reviewed by the Board at scheduled meetings or special meetings called for such purpose by the Board Chair.

(b) If the credentials and application are approved, the applicant shall be so informed and is then given information regarding the examination National Marriage and Family Therapy Examination.

(c) If the credentials or application are deemed unacceptable by the Board, the applicant shall be informed with an explanation of the areas which are considered deficient. Applicants may remedy deficiencies within one year from the date of notification without having to reapply. After one year of application inactivity, the file shall be closed and a new application and fee is required.

(d) If during the review process, questions arise from any source which may pertain to the applicant's qualifications for licensing, the Board may seek to resolve the questions by communication with the person who made the comments or any other person(s), or may refer the matter to counsel or to a member or employee of the Board for investigation.

(e) If an application is denied, the grounds for denial shall be given to the ~~applicants.~~ applicant in writing. The applicant may request reconsideration of the application and present additional written material in support thereof which shall be reviewed at the next scheduled Board meeting. The Board ~~shall not be~~ is not required to reconsider its decision to deny an application, nor ~~shall it be~~ is it required to review any materials submitted in support of a request for reconsideration.

Authority G.S. 90-270.51(b).

SECTION .0300 - EXAMINATION

21 NCAC 31 .0301 WRITTEN EXAMINATION

(a) ~~The Board shall employ a standardized national examination in Marriage and Family Therapy as approved by the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB).~~ Licensure as a North Carolina Marriage and Family Therapist requires passing the National Marriage and Family Therapy Examination.

(b) The examination shall be given at least biannually.

(c) The passing score on the examination shall be determined by ~~testing agency and the Board.~~ Board in collaboration with the testing agency.

(d) The qualifying examination may be taken when the Board approves the application.

Authority G.S. 90-270.51(b); 90-270.55(a)(b)(c).

21 NCAC 31 .0302 REPORTING OF SCORES

~~The Board shall inform the applicant of their examination score. A passing score qualifies the applicant for licensure. Those who have not passed the examination are referred to Rule .0303 of this Section.~~

Authority G.S. 90-270.51(b).

21 NCAC 31 .0303 REEXAMINATION

~~An applicant who has failed the written examination shall not be admitted to a subsequent examination for a period of at least six months. The applicant for re-examination shall not submit a new application form, but shall update any information in the~~

~~application that is no longer accurate and pay another examination fee.~~

Authority G.S. 90-270.51(b); 90-270.55(e).

SECTION .0400 - RENEWAL

21 NCAC 31 .0401 LICENSURE RENEWAL FORM

(a) ~~The Licensure Renewal Form shall include year of renewal, fee, the licensee's current home and business address and telephone numbers.~~

(b) ~~Licenses not renewed by July 1 are expired.~~

(c) ~~Copies of continuing education certificates shall be attached to the renewal form.~~

Licenses shall attach copies of continuing education certificates to the renewal form.

Authority G.S. 90-270.51(b); 90-270.58.

SECTION .0500 – DEFINITIONS

21 NCAC 31 .0501 APPROPRIATE COURSE OF STUDY

The "appropriate course of study" in an allied mental health field in G.S. 90-270.54(1)a is a graduate degree that includes specific marriage and family therapy content including course work in general family studies, marriage and family therapy, personality theory, psychopathology, and a clinical practicum in marriage and family therapy. theoretical foundation of marriage and family therapy, assessment and diagnosis, practice of marriage and family therapy, human development and family relations, professional identity and ethics, clinical research, and supervised clinical practicum or internship.

Authority G.S. 90-270.47(1)a-d; 90-270.51(b); 90-270.54(1)a.

21 NCAC 31 .0502 APPROVED ONGOING SUPERVISION

(a) ~~Approved ongoing~~ On-going supervision as contained in G.S. 90-270.54(a)(1)b means face-to-face conversation with a ~~person who:~~ supervisor consistent with

(1) ~~is a licensed marriage and family therapist and has completed or is completing:~~

(A) ~~36 hours of ongoing supervision of supervision while supervising at least two marriage and family therapy supervisees;~~

(B) ~~a three semester hour course or equivalent in marriage and family therapy supervision;~~

(C) ~~a philosophy of supervision statement;~~

(D) ~~a report of the supervision process with one marriage and family therapy supervisee; or~~

(2) ~~holds the equivalent as determined by the Board.~~

the standards set forth by the American Association of Marriage and Family Therapy, which are incorporated by the Board by

reference. These incorporated standards include subsequent amendments and editions. A copy of these standards may be obtained at no charge by writing the American Association of Marriage and Family Therapy at 112 Alfred Street, Alexandria, VA 22314-3061 or at their website, www.aamft.org.

(b) ~~Approved ongoing~~ On-going supervision shall be obtained usually in periods of approximately one hour each and shall focus on the raw data from the supervisee's continuing clinical practice, which shall be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings.

(c) None of the following shall be deemed to constitute acceptable approved constitutes ongoing supervision:

- (1) peer supervision, i.e., supervision by a person of equivalent, rather than superior, qualifications, status and experience;
- (2) supervision by current or former family members or any other persons where the nature of the personal relationship prevents or makes difficult the establishment of a professional relationship;
- (3) administrative supervision - ~~for example,~~ clinical practice performed under administrative rather than clinical supervision by an institutional director or executive;
- (4) a primarily didactic process wherein techniques or procedures are taught in a ~~group setting,~~ classroom, workshop or seminar;
- (5) consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for ~~current~~ clinical practice in ~~an appropriate~~ a clinical situation.

(d) Applicants for licensure must have accumulated 200 hours of approved ongoing supervision concurrent with the completion of the 1,500 hours of clinical experience required by ~~G.S. 90-270.54(a)(1)b.~~ G.S. 90-270.54(a)(1)b and must remain under supervision at least monthly until licensed.

(e) Graduates of marriage and family therapy programs who have completed 200 hours of approved ongoing supervision within their degree shall complete a minimum of 25 hours of approved ongoing supervision concurrently with the completion of the remaining 1,000 hours of post-degree clinical experience required by G.S. 90-270.54(a)(1)b. Graduates of marriage and family therapy programs may apply up to 500 hours of direct clinical experience toward the 1500 required as long as those hours were obtained under the direct supervision of an AAMFT Approved Supervisor or AAMFT Supervisor Candidate.

(f) Supervision Reports shall be submitted on supervision report forms provided by the Board. Supervision report forms are contained within the licensure application packet which may be obtained at no charge by writing the Board at their current address of Post Office Box 37669, Raleigh, North Carolina 27627 or subsequently published address or downloaded from www.ncimft.org.

Authority G.S. 90-270.51(b); 90-270.54(1)b.

21 NCAC 31 .0503 EQUIVALENCY

An appropriate course of study for an "equivalent" degree under G.S. 90-270.47(1)e is defined by the Board to consist of ~~as a~~ 45-semester hour graduate program. ~~Twenty-seven~~ 33 semester hours shall consist of the following content and clinical training:

- (1) ~~General Family Studies (six semester hours).~~ This category is viewed by the Board as being a broad and inclusive one which may include courses in marriage, family relations, child development, family sociology, or other such related topics in which the marriage and family content is clearly evident.
- (2) ~~Marriage and Family Therapy Theory (six semester hours).~~ This category shall include specific and extensive content in systems theory as well as other theoretical approaches to marriage and family therapy. In addition, the Board shall consider course work in this category which exceeds six semester hours to be applicable toward meeting the requirements for Item (1) of this Rule.
- (3) ~~Individual Studies. Theories of personality (three semester hours), and psychopathology or abnormal behavior (three semester hours).~~
- (4) ~~Clinical Practicum in Marriage and Family Therapy (nine semester hours or 20 hours per week for 12 months).~~
- (1) Theoretical Foundation of Marriage and Family Therapy (six semester hours)
- (2) Assessment and Diagnosis (three semester hours)
- (3) Practice of Marriage and Family Therapy (six semester hours)
- (4) Human Development and Family Relations (three semester hours)
- (5) Professional Identity and Ethics (three semester hours)
- (6) Research in Marriage and Family Therapy (three semester hours)
- (7) Supervised Clinical Practicum or Internship (nine semester hours)

The remaining ~~48~~ 12 semester hours shall consist of ~~one~~ course work appropriate to the disciplinary specialty in which the degree is granted.

Authority G.S. 90-270.47(1)e; 90-270.51(b); 90-270.54(1)a.

21 NCAC 31 .0504 ALTERNATIVE TO CLINICAL PRACTICUM

In lieu of the clinical practicum requirements under Rule.0501 or Rule .0503 of this Section, the Board shall accept evidence of a supervised clinical practicum defined as at least 120 clinical hours with at least 24 hours of supervision obtained subsequent to the granting of a degree in an otherwise appropriate course of study providing the supervision meets the requirements of "on-going supervision" under Rule .0502 of this Section.

Authority G.S. 90-270.51(b).

21 NCAC 31 .0506 SUPERVISED CLINICAL EXPERIENCE

~~(a) "Supervised Clinical Experience" means hours of actual face to face marriage and family therapy contact with individuals, couples, and families~~

~~(b) Group therapy with the exception of couple and family groups, case staffing, community and other collateral contact, agency meetings, and paperwork do not meet the requirements for supervised clinical experience and cannot be counted toward the 1500 hours of clinical experience required for licensure.~~

(a) As used in this Chapter, direct client contact is defined as face-to-face (therapist and client) therapy with individuals, couples, families, or groups from a systemic perspective. Direct client contact must:

- (1) Relate to client treatment plans;
- (2) Be goal directed; and
- (3) Assist client to affect change in cognition, affect and behavior.

(b) Assessments may be counted up to 150 hours of direct client contact.

(c) Client psycho-education may be counted up to 50 hours direct client contact.

(d) The following are not direct client contact and may not be counted:

- (1) Observing therapy without active participation at some point during or immediately following the session.
- (2) Record keeping.
- (3) Administrative activities.
- (4) Supervision, or
- (5) Client contact while not receiving supervision.

Authority G.S. 90-270.51(b); 90-270.54(1)b.

SECTION .0600 - CODE OF ETHICAL PRINCIPLES

21 NCAC 31 .0609 ETHICAL PRINCIPLES

(a) The Board adopts the code of ethical principles of the American Association for Marriage and Family Therapy (AAMFT) published as the AAMFT CODE OF ETHICAL PRINCIPLES FOR MARRIAGE AND FAMILY THERAPISTS of August 1991, or its successor publication, by reference including subsequent amendments and editions. The current code is published on the AAMFT's website (www.aamft.org).

(b) Each applicant, associate, or licensee is responsible for being familiar with and following this code of ~~ethics~~ ethical principles.

(c) A copy of ~~this the~~ code of ethics may also be obtained by writing the American Association for Marriage and Family Therapy, 1133 15th Street, NW, Suite 300, Washington, D.C. 20006. 112 Alfred Street, Alexandria, VA 22314-3061.

Authority G.S. 90-270.51(b); 90-270.60(5).

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 31 .0701 REQUIREMENTS FOR CONTINUING EDUCATION

(a) Licensed Marriage and Family Therapists shall submit each year with the license renewal forms evidence of ~~42~~ 20 hours of continuing education credits in marriage and family therapy continuing education obtained subsequent to the prior license renewal. Evidence of completion shall consist of a certificate of attendance and completion signed by the ~~responsible officer of a continuing education provider.~~ provider and shall include date(s) of attendance, number of hours, name of attendee, and name of course.

~~(b) The Board shall not preapprove continuing education programs.~~

~~(e)(b)~~ Only continuing education units that by title and content ~~clearly~~ deal with marriage and family therapy practice and therapeutic issues, ethics, and supervision of marriage and family therapy shall be ~~accepted~~ approved by the Board.

(c) On-going supervision by an AAMFT Approved Supervisor or AAMFT Supervisor Candidate may be utilized for up to 12 hours of continuing education. Written documentation of the supervisor's status shall be provided to the Board via a copy of the AAMFT supervisor or supervisor candidate verification form.

(d) Three hours of ethics training in the provision of professional mental health services is required (as part of the required 20 hours of continuing education) for each renewal period.

(e) The maximum number of hours granted for presenting courses is five.

~~(d)(f)~~ Continuing Education credit shall not be accepted for the following:

- (1) Regular work activities, administrative staff meetings, case staffing/reporting;
- (2) Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches;
- (3) Independent unstructured or self-structured learning;
- (4) Training specifically related to policies and procedures of an agency;
- (5) Non-therapy content programs such as finance or business management.

~~(e)(g)~~ If a person submits documentation for continuing education that is not ~~clearly~~ identifiable as dealing with marriage and family therapy, the Board shall request a written description of the continuing education and how it applies to professional practice in marriage and family therapy. If the Board determines that the training is not appropriate, the individual shall be given 90 days from the date of notification to replace the hours not allowed. Those hours shall be considered replacement hours and cannot be counted during the next renewal period.

~~(f)(h)~~ If evidence of ~~satisfactory~~ completion of marriage and family continuing education is not presented to the Board within 90 days from the date of notification, the license shall expire automatically.

Authority G.S. 90-270.51(b); 90-270-58C.

SECTION .0800 - ASSOCIATE STATUS

21 NCAC 31 .0801 MARRIAGE AND FAMILY THERAPY ASSOCIATE

(a) The designation Marriage and Family Therapy Associate (MFTA) shall be granted by the Board to persons preparing for the practice of marriage and family therapy who:

- (1) have completed a master's or doctoral marriage and family therapy degree or Board approved equivalent in an allied mental health field;
- ~~(2) show evidence of intent to accrue the required clinical contact hours for licensing under approved supervision;~~
- ~~(3)(2)~~ have filed a Marriage and Family Therapy Associate application form with the Board, which ~~shall include~~ includes evidence of an appropriate coursework course of study as defined in Rule .0503 of this Chapter and the agreement of at least one ~~Approved Supervisor to provide supervision~~ supervisor for supervision that meets the standards in Rule .0502(a) of this Chapter.

(b) Upon approval by the ~~Board~~ Board, a certificate designating the applicant as a Marriage and Family Therapy Associate ~~will~~ shall be issued and be valid for three years from the date of issue.

(c) Upon written petition to the Board and with demonstration of special circumstances and steady progress toward licensure the Board may grant a one year extension of the Associate (MFTA) designation. Special circumstances are defined as events beyond the control or fault of the MFTA including major illness of self, partner or child, or death of partner or child.

(d) Persons holding the Associate (MFTA) designation may ~~in no way not~~ identify themselves as or imply that they are fully licensed marriage and family ~~therapists~~ therapists (LMFTs).

(e) Only clinical and approved supervision hours acquired from the postmarked date of application to the Board shall be counted toward full licensure requirements.

Authority G.S. 90-270.48(b)(1); 90-270.51(b).

SECTION .0900 - RECIPROCITY

21 NCAC 31 .0901 RECIPROCAL LICENSE

~~A reciprocal license shall be granted under G.S. 90-270.56 when there is a written agreement between the North Carolina Board and the Board regulating Marriage and Family Therapy in the State in which the applicant holds a valid license~~

Authority G.S. 90-270.51(b); 90-270.56.

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Examiners for Engineers and Surveyors intends to amend the rules cited as 21 NCAC 56 .0501 - .0503, .0505,

.0602 - .0603, .0606, .0701, .0802, .0804, .1102 - .1103, .1106, .1301, .1413, .1602 - .1604, .1606 - .1608, .1702 - .1703, .1705 - .1707, .1712 - .1713.

Proposed Effective Date: *March 1, 2009*

Public Hearing:

Date: *December 12, 2008*

Time: *9:00 a.m.*

Location: *4601 Six Forks Road, Suite 310, Raleigh, NC 27609*

Reason for Proposed Action: *Update and clarify names of organizations in 21 NCAC 56 .0501 and .0502; add standard for reasonable exam accommodation in .0503 and .0603; clarify that a two hour exam is required for surveying comity in .0602; update exam name in .0603; increase renewal fee in .0505, .0606 and .0804; clarify language and define timely in .0701; clarify language in .0802; clarify seal size in .1102; require firm license number on documents and clarify language in .1103, .1106 and .1301; delete time requirement for service of decision in .1413; revise Standards of Practice for Land Surveying to: require map or report in .1602, clarify language in .1603 and .1604, add certification statement in .1604, clarify cost of required standard for topographic and planimetric mapping in .1606, revise definition of Global Positioning System and required certification in .1607, allow choice of accuracy standard for LIS/GIS surveys in .1608; delete deemed acceptability of sponsor courses in .1702; add internet courses, clarify language and define active participation in .1703; define credit for correspondence type courses in .1705; revise to require log and records and delete reference to national records database in .1706 and .1712; clarify exemption in .1707; clarify requirement for residents of other jurisdictions in .1709; and sponsor fee and revised requirements in .1713.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule amendments may be submitted, in writing, to David S. Tuttle, Board Counsel, NC Board of Examiners for Engineers and Surveyors, 4601 Six Forks Road, Suite 310, Raleigh, NC 27609. Objections may also be submitted during the public hearing. Objections shall include the specific rule citation(s), the nature of the objection(s), and the complete name(s) and contact information for the individual submitting the objection(s). Objections must be received by the end of the comment period at 5:00 p.m. on January 2, 2009*

Comments may be submitted to: *David S. Tuttle, Board Counsel, NC Board of Examiners for Engineers and Surveyors, 4601 Six Forks Road, Suite 310, Raleigh, NC 27609, phone (919) 791-2000 ext 111, email dstuttle@ncbels.org*

Comment period ends: *January 2, 2009*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S.*

150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

SECTION .0500 - PROFESSIONAL ENGINEER

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The education of an applicant shall be considered in determining eligibility for licensing as a Professional Engineer. The following terms used by the Board for the specific educational requirements to be eligible to be licensed as a Professional Engineer are defined by the Board as follows:

- (1) Engineering Curriculum of Four or More Years Approved by the Board is defined as a program that has been accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available for inspection at the office of the North Carolina Board of Examiners for Engineers and Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy.
- (2) Engineering or Related Science Curriculum of Four or More Years Other than Ones Approved by the Board is defined as a curriculum, although not accredited by ABET, of technical courses which contains engineering or scientific principles.
- (3) Equivalent Education Satisfactory to the Board:
 - (A) A graduate degree in Engineering from an institution in which the same discipline undergraduate engineering program has been accredited by ABET (EAC) ~~shall be is~~ considered equivalent to an engineering curriculum of four or more years approved by the Board.
 - (B) A bachelor's degree in Engineering ~~Technology-Technology, whether or not accredited by the Technology~~

Accreditation Commission (TAC) of ABET, shall be is considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.

- (C) An associate degree in an engineering related curriculum with an additional two years of progressive engineering experience ~~shall be is~~ considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (D) A high school diploma with an additional four years of progressive engineering experience ~~shall be is~~ considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (E) Foreign degrees ~~shall be are~~ considered only after receipt of an ~~evaluation equivalency report from the Foreign Engineering Education Evaluation Program (FEEEP) Center for Professional Engineering Education Services, an affiliate of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to one of the education categories in (a)(1)-(3) Subparagraphs (a)(1) through (3) of this subsection .0501 Rule.~~

(b) Experience:

- (1) General. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.
- (2) Required Experience. In evaluating the work experience required, the Board may consider the total experience record and the progressive nature of the record. (Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, a written explanation shall be submitted showing why the experience should be considered acceptable and the Board may approve if satisfied of the grade and character of the progressive experience.)
- (3) Definition. The terms "progressive engineering experience" or "progressive experience on engineering projects" mean that

during the period of time in which an applicant has made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant must show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character which indicates to the ~~board~~ Board that the applicant ~~may be~~ is competent to practice engineering.

- (4) Specific Credit for Experience. In evaluating progressive engineering experience, the Board may give credit for experience in the following areas of work:
- (A) Graduate schooling or research in an approved engineering program resulting in award of an advanced engineering degree, one year for each such degree - maximum two years;
 - (B) Progressive land surveying - maximum two years; and
 - (C) Teaching of engineering subjects at the university level in an approved engineering program offering a four year or more degree approved by the Board - maximum two years.

The Board, however, shall not accept combinations, restricted only to the categories noted above, as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, or government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an approved engineering program offering a four year or more degree approved by the Board, may request waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to fruition, and which is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate that the work meets the Board's requirement.

- (5) Other Experience is Considered if it is:
- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program which must be shown on the transcript, with a maximum credit of one year; or ~~it is~~
 - (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of

Examiners for Engineering and Surveying (NCEES).

Authority G.S. 89C-10; 89C-13.

21 NCAC 56 .0502 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made ~~at to~~ the Board ~~address-office~~ or obtained from the website.

(c) Applicable Forms:

- (1) Engineering Intern Form. This form requires the applicant to set forth personal history, educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:

- (A) Students graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered.
- (B) Graduates with less than two years since graduation.

- (2) Professional Engineer Form:

- (A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for licensure by using the Professional Engineer form. The submission of this form shall signify that the applicant seeks licensure, and shall result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth personal and educational background, engineering experience and character references. A passport-type photographic quality portrait that is adequate for current ~~clear~~ identification purposes is required.

- (B) Persons who have previously completed the fundamentals examination by use of the Engineering Intern Form shall submit the Professional Engineer Form to request licensure when qualified to take the final eight-hour examination.

- (3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form

must supplement the initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

(4) Reference Forms:

- (A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. Persons applying to take the examination for principles and ~~practices~~ practice of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be Professional Engineers.
- (B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed shall submit to the Board their evaluations of the applicant on forms supplied them by the applicant.
- (C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's engineering experience, character and reputation.
- (D) The ~~Board shall provide the~~ reference forms ~~shall be received by to~~ the applicant with the application. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

- (1) Engineering Intern Form. The examination fee for applicants applying for examination on the fundamentals of engineering using the engineering intern form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the application fee of one hundred dollars (\$100.00) and the examination fee for the principles and practice of

engineering examination are payable with the applicant's subsequent application for licensure as a Professional Engineer using the Professional Engineer form.

- (2) Professional Engineer Form. The application fee of one hundred dollars (\$100.00) and ~~appropriate~~ examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form are payable with the filing of the application.
- (3) Comity. The licensure fee of one hundred dollars (\$100.00) is payable with the filing of the application.
- (4) Examination. The examination fee for any applicant is payable with the filing of the application in accordance with G.S. 89C-14.

(e) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required references and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(f) Model Law Engineer. The term "Model Law Engineer" refers to a person who meets the requirements of section .0500 by meeting the requirements of NCEES and has a current NCEES record on file and is designated as a "Model Law Engineer." A "Model Law Engineer" application ~~is~~ shall be administratively approved by the Executive Director based upon the designation, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(g) Personal interview. During the application process, the applicant may be interviewed by the Board members. ~~The purpose of the interview is to augment the evidence submitted in an application with regard to education and experience.~~

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0503 EXAMINATIONS

- (a) Fundamentals of Engineering. This eight-hour written examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of engineering.
- (b) Principles and Practice of Engineering. This eight-hour written examination is designed to test the applicant's proficiency and knowledge of engineering principles and practices.
- (c) Examination Aids. Examinees may utilize examination aids as specified by the exam preparer.
- (d) Preparation of Examination. The examinations in the fundamentals of engineering and in the principles and practice of engineering are national examinations ~~promulgated~~ provided by

the National Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a member.

(e) Examination Sequence. Before the applicant is permitted to be examined on the principles and practice of engineering, the applicant must pass the examination on the fundamentals of engineering, unless the applicant can evidence 20 years of progressive engineering experience and receives a waiver from the fundamentals of engineering exam by the Board. In no event is an applicant allowed to take both examinations at the same time or at the same scheduled examination date.

(f) Examination Filing Deadline. The applicant who wishes to take an examination must have the completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to August 1 for Fall examinations and January 2 for Spring examinations.

(g) Seating Notice. After approval of an application to take either the examination on the fundamentals of engineering or principles and practice, the applicant shall be sent a seating ~~notice by the Board.~~ notice. This notice shall inform the applicant of the date, time and location of the examination and the seat number assigned.

(h) Unexcused Absences. After a seating notice has been issued for a scheduled examination by the Board, and the applicant fails to appear, that applicant's record ~~will~~ shall reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee is forfeited.

(i) Re-Examination. A person who has failed an examination may apply to take the examination again at the next regularly scheduled examination period by making written request and submitting the required exam fee. A person having a combined record of three failures or unexcused absences ~~shall~~ is only be eligible after submitting a new application with appropriate application fee, and shall be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

(j) Special Accommodation. An applicant ~~with a diagnosed disability~~ may make a written request, before the application deadline, for special accommodation for the exam. Reasonable ~~accommodation~~ accommodation will ~~shall~~ be granted. granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

(k) Exam Results. Exam results shall be supplied in writing as pass or fail. No results will be given in any other manner.

(l) Review of Failed Exams. An applicant who fails to make a passing score on an exam ~~may request in writing within 30 days of receiving the result to have an opportunity to review the exam. The review shall be done in the Board office under supervision of staff and is limited on one hour~~ will receive an exam analysis.

Authority G.S. 89C-10; 89C-13; 89C-14; 89C-15.

21 NCAC 56 .0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Licensure. An annual renewal fee of ~~five~~ sixty dollars ~~(\$50.00)~~ (\$60.00) for certificates of licensure for Professional Engineers shall be payable to the Board. ~~A late fee shall be applied in accordance with G.S. 89C-17.~~ The Board shall send to each licensed Professional Engineer a form which requires the licensee to provide the Board with both the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Engineering Intern Certificate. The Engineering Intern certificate does not expire and, therefore, does not have to be renewed.

Authority G.S. 89C-10; 89C-17.

SECTION .0600 - PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Professional Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made ~~at~~ to the Board address office or obtained from the website.

(c) Application Form. All persons applying to be licensed as a Professional Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth personal background, plus educational background, land surveying experience, and references. A passport-type photographic quality portrait that shall be adequate for current clear identification purposes shall be required also.

(d) Supplemental Form. Persons who initially applied for licensure as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of ~~land~~ surveying, must supplement their initial applications upon ultimately applying for the second examination. The applicant must supplement the initial application by using the supplemental form, which requires the listing of land surveying experience from the date of the initial application to the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

(1) Persons applying to take the examination for the fundamentals of ~~land~~ surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.

(2) Persons applying for the fundamentals of ~~land~~ surveying examination must submit three references, one of which must be a Professional Land Surveyor. Persons applying for the principles and practice examination

must submit five references, two of which must be Professional Land Surveyors.

- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals shall submit to the Board their evaluations of the applicant on reference forms supplied them by the applicant.
- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, knowledge of the applicant and information concerning the applicant's land surveying experience, character and reputation.
- (5) The reference forms shall be received by the applicant along with the application for licensure. The reference forms shall then be distributed by the applicant to the persons listed on the application as references. The applicant shall see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

- (1) Regular. The application fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon examination, experience, character and exhibit are payable with the filing of the application.
- (2) Comity. The licensure fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for licensure based upon comity are payable with the filing of the application.
- (3) Examination. The examination fee for any applicant shall be payable with the filing of the application in accordance with G.S. 89C-14.

(g) The Board shall accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of licensure in another state. For comity licensure the NCEES record shall be accepted in lieu of completing the experience, education and references sections of the application. A comity application, with or without a NCEES record, shall be administratively approved by the Executive Director based upon evidence of current licensure in another jurisdiction based on comparable qualifications, required ~~references~~ references, and having passed the two-hour North Carolina portion of the exam and no record of disciplinary action, without waiting for the next regular meeting of the Board at which time the action shall be reported to the Board for final approval.

(h) Personal Interview. During the application process, the applicant may be interviewed by Board members. ~~The purpose of the interview shall be to augment the evidence submitted in an application with regard to education and experience.~~

Authority G.S. 89C-10; 89C-13; 89C-14.

21 NCAC 56 .0603 EXAMINATIONS

(a) Fundamentals of ~~Land~~-Surveying. This eight-hour written examination is designed primarily to test the applicant's proficiency and knowledge of the fundamentals of ~~land~~ surveying. Reference to Fundamentals of Surveying is the revised name of the national exam that is the Fundamentals of Land Surveying in G.S. 89C.

(b) Principles and Practice of ~~Land~~-Surveying. This eight-hour written examination is designed to test the applicant's proficiency and knowledge of land surveying practices and procedures generally and specifically within North Carolina.

(c) Examination Aids. Examinees may utilize examination aids as specified by the national exam preparer.

(d) Preparation of Examination. The examination in the fundamentals of ~~land~~-surveying and six hours of the examination in the principles and practice of ~~land~~-surveying are national examinations ~~promulgated~~ provided by the National Council of Examiners for Engineering and Surveying (NCEES) of which the Board is a ~~member~~. member or other examinations as adopted by the Board. The two-hour North Carolina portion of the principles and practice of ~~land~~-surveying examination is ~~prepared and graded~~ provided by the Board.

(e) Examination Filing Deadline. The applicant who wishes to take an examination must have the completed application (which includes all necessary references, transcripts, and verifications) in the Board office prior to August 1 for Fall examinations and January 2 for Spring examinations.

(f) Seating Notice. After approval of an application the applicant ~~will~~ shall ~~receive~~ be sent a seating notice. This notice ~~will~~ shall inform the applicant of the date, time and location of the examination and the seat number assigned.

(g) Unexcused Absences. After a seating notice for a scheduled examination has been ~~issued by the Board~~ issued, and the applicant fails to appear, the applicant's record ~~will~~ shall reflect "unexcused absence" unless the absence was for official jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee is forfeited.

(h) Re-Examination. A person who has failed an examination is ~~allowed to~~ may apply to take the examination again at the next regularly scheduled examination period. A person having a combined record of three failures or unexcused absences ~~shall~~ is only ~~be~~ eligible after submitting a new application with appropriate application fee, and shall be considered by the Board for re-examination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's chances for passing the exam.

(i) Special Accommodation. An applicant ~~with a diagnosed disability~~ may make a written request, before the application deadline, for special accommodation for the exam. Reasonable ~~accommodation~~ accommodation ~~will~~ shall be ~~granted~~ granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

(j) Exam Results. Exam results shall be supplied in writing as pass or fail. No results ~~will~~ shall be given in any other manner.

(k) Review of Failed Exams. An applicant who fails to make a passing score on ~~an~~ the two-hour North Carolina portion of the exam may request in writing within thirty (30) days of receiving the result to have an opportunity to review ~~the~~ that portion of the exam. The review shall be done in the Board Office under supervision of staff and is limited to one hour.

Authority G.S. 89C-10; 89C-15.

21 NCAC 56 .0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Land Surveyor Licensure. An annual renewal fee of ~~fifty sixty~~ dollars ~~(\$50.00)(\$60.00)~~ for certificates of licensure for Professional Land Surveyors ~~shall be is~~ payable to the Board. ~~A late fee shall be applied in accordance with G.S. 89C-17. The Board will send shall provide~~ each Professional Land Surveyor a form which requires the licensee to provide to the Board the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Surveyor Intern Certificate. The surveyor intern certificate does not expire and, therefore, does not have to be renewed.

Authority G.S. 89C-17.

SECTION .0700 – RULES OF PROFESSIONAL CONDUCT

21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the ~~following~~ Rules of professional conduct in this Rule are promulgated in accordance with G.S. 89C-20 and ~~shall be are~~ binding upon every person holding a certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of Chapter 89C of the General Statutes are charged with having knowledge of the ~~existence of the rules of professional conduct, Board Rules, including the Rules of professional conduct, and shall be are~~ deemed to be familiar with their ~~several~~ provisions and to understand them.

(b) The licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at all times recognize the primary obligation to protect the public in the performance of the professional duties. If the licensee's engineering or land surveying judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the licensee shall inform the employer, the client, ~~the contractor~~ contractor, other affected parties and ~~the any~~ appropriate regulatory agency of the possible consequences of the situation.

(c) The licensee shall perform services only in areas of the licensee's competence and:

- (1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved.
- (2) May accept an assignment or project requiring education or experience outside of the licensee's own field of competence, but only to the extent that the services are restricted to those portions or disciplines of the project in which the licensee is qualified. All other portions or disciplines of such project shall be performed by associates, consultants, or employees who are licensed and competent in those portions or disciplines.
- (3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing with subject matter for which the licensee lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. Direct supervisory control may be accomplished face to face or by other means of communication. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided that individual is qualified or licensed to provide such service and provided the licensee reviews the work. The licensee may affix the seal and signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible.

(d) The licensee shall issue public statements only in an objective and truthful manner and:

- (1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony.
- (2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony.

- (3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the existence of any pecuniary interest the licensee may have in the ~~instant~~ matters.
- (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer or land surveyor, nor indiscriminately criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes statements without valid basis or cause or that are not objective and truthful or that fail to include all relevant and pertinent information. If the licensee believes that another engineer or land surveyor is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Board of ~~Examiners~~. Examiners in the form of a complaint.
- (e) The licensee shall avoid conflicts of interest and:
 - (1) Shall promptly inform the employer or ~~client~~ client, and any reviewing ~~agency~~ agency, of any business association, interests, or circumstances which could influence judgment or the quality of services.
 - (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are ~~fully~~ disclosed to, and agreed to, in writing, by all interested parties.
 - (3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the client or employer in connection with work for which the licensee is responsible.
 - (5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by the licensee or the licensee's organization in private engineering and land surveying practices.
 - (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the licensee's organization serves as a member.
- (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The licensee shall solicit or accept work only on the basis of qualifications and:
 - (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
 - (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered.
 - (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.)
 - (4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall only report educational qualifications when a degree or certificate was awarded, unless it is ~~clearly~~ stated that no degree or certificate was awarded. The licensee shall not misrepresent degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.
- (g) The Licensee shall perform services in an ethical and lawful manner and:
 - (1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a business venture by any person or firm which the licensee knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is not properly licensed.
 - (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of ~~any of these provisions~~ the Board Rules (Title 21 NCAC Chapter 56) or of the North Carolina Engineering and Land Surveying Act, ~~Act (G.S. 89C)~~, shall present such information to the Board in writing in the form of a complaint and shall cooperate with

the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board. Timely is defined as within the time specified in the correspondence, or if no time is specified, within 30 days of receipt. Certified mail is timely claimed if prior to being returned by the Post Office to the Board office.

(h) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, or surrendered as a result of disciplinary action by another jurisdiction ~~shall be~~ is subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

Authority G.S. 89C-17; 89C-20.

SECTION .0800 - FIRM REGISTRATION

21 NCAC 56 .0802 PROCEDURE

(a) Professional Corporations and Limited Liability Companies:

- (1) Request. A request for an application for licensure as a professional corporation or professional limited liability company engaged in the practice of engineering or land surveying may be made at the Board ~~address, office or obtained from the website.~~
- (2) Applicable Form. All professional corporations and professional limited liability companies complying with the statutory requirements of G.S. 89C, G.S. 55B and G.S. 57C which desire to practice engineering or land surveying shall apply by using a form prepared by the Board. This form ~~shall require~~ requires the applicant, by and through an officer, director and shareholder of the professional corporation or limited liability company who is currently licensed with the North Carolina Board of Examiners for Engineers and Surveyors in the field(s) of professional services to be offered, to certify that it and the stockholders of the corporation or members of the limited liability company have complied with the provisions of the applicable provisions of the General Statutes and requires that the officers, directors, shareholders, members and professional employees be listed on that application.
- (3) Certificate of Licensure:
 - (A) Upon receiving the application with application fee of one hundred dollars (\$100.00), the Board, after determining that the firm has complied with the statutory

requirements, ~~will then~~ shall issue a certificate of compliance.

- (B) The ~~firm, then, firm~~ must forward the certificate of compliance to the Secretary of State along with its articles of incorporation or articles of organization.
- (C) Upon approval by the Secretary of State, the firm ~~then~~ must forward to the Board a certified copy of its articles of incorporation or articles of organization.
- (D) Upon receipt of the certified copy of the articles of the firm, if all statutory requirements have been met, the Board ~~will~~ shall approve the application and issue the firm a certificate of licensure.

(b) Business Firms and Chapter 87 Corporations:

- (1) Request. A request for an application for licensure as a business firm or Chapter 87 corporation [as defined in G.S. 55B-15(a)(2)] engaged in the practice of engineering or land surveying may be made at the Board ~~address, office or obtained from the website.~~ A sole proprietorship owned and operated by the individual licensee in the licensee's name as reflected in the Board's records is exempt from firm licensure.
- (2) Applicable Form. All business firms or Chapter 87 corporations that desire to practice engineering or land surveying shall apply by using a form prepared by the Board. The form ~~shall require~~ requires the applicant, through a principal officer, partner or owner, to certify that the business firm ~~shall will~~ be operated in compliance with the laws of the State of North Carolina and the ~~rules~~ Rules of the North Carolina Board of Examiners for Engineers and Surveyors.
- (3) Certificate of Licensure. Upon receiving the application with application fee of one hundred dollars (\$100.00), the Board, after determining that the firm has complied with the statutory requirements, shall ~~then~~ issue a certificate of licensure.

Authority G.S. 55B-4; 55B-10; 57C-2.01; 89C-10; 89C-24.

21 NCAC 56 .0804 ANNUAL RENEWAL

- (a) Renewal. The certificate of licensure for a business entity, including a professional corporation, limited liability company, Chapter 87 corporation, or business firm shall be renewed annually.
- (b) Expiration. The certificate of licensure ~~shall expire~~ expires on the last day of June following its issuance by the Board and ~~shall become~~ becomes invalid on that date unless renewed.
- (c) Written Application. Upon written application on a renewal form prescribed by the Board accompanied by the prescribed fee

of ~~five~~ sixty dollars (~~\$50.00~~)(\$60.00) the Board shall renew the certificate of licensure providing that the firm has complied with all Rules of the Board and applicable General Statutes of North Carolina. The form shall be mailed to all licensees in good standing no later than June 1st. ~~A late fee shall be applied in accordance with G.S. 89C-17.~~ The licensed entity shall give notice to the Board of a change of business address within 30 days of the change.

(d) ~~Failure of~~ If a firm fails to renew its certificate of licensure within one year of the expiration ~~date~~ date, ~~shall require~~ the firm ~~to~~ shall submit a new application for a new certificate of licensure in accordance with all requirements of ~~these Rules and of all applicable statutes.~~ 21 NCAC 56 .0802.

Authority G.S. 55B-11; 57C-2-01; 89C-10; 89C-14; 89C-17; 89C-24.

SECTION .1100 - SEAL

21 NCAC 56 .1102 DESIGN

The standard design of the seal shall be two concentric circles in which North Carolina and the name of the licensee are placed within the outermost circle and in which the license number of the licensee and either "Professional Engineer" or "Professional Land Surveyor," is placed within the innermost circle. The size shall be ~~approximately 1 3/4~~ 1 1/2 to 1 3/4 inches in diameter.

Authority G.S. 89C-10; 89C-16.

21 NCAC 56 .1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification of Final Drawings. Drawings or maps not conforming to paragraph (c) of this ~~subsection~~ Rule shall conform to the following:

- (1) Certification is required on reproducibles or original drawings;
- (2) The seal may be a rubber stamp, embossed seal, computer-generated seal, or other facsimile that becomes a permanent addition to a plan sheet or map;
- (3) The licensee's written signature must be placed over, or ~~near,~~ adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) All sheets of engineering and surveying drawings must be ~~sealed;~~ certified;
- (6) The ~~name and name,~~ address and license number of the licensee's firm shall be included on each sheet of engineering drawings. For surveys, the ~~licensee's name and name,~~ address and licensee number of the licensee's firm shall be included on the first sheet of the survey or title sheet; and
- (7) Any revision on a drawing after a licensee's certification is affixed shall be ~~noted~~ described and dated and if not done under the

responsible charge of the same licensee shall be separately certified.

(b) Certification of Specifications and Reports. All specifications, reports, or other documents, including letter reports and calculations, not conforming to paragraph (c) of this ~~subsection~~ Rule shall conform to the following:

- (1) Certification is required on original specifications, reports, or other documents, including letter reports and calculations;
- (2) The seal may be a rubber stamp, or other facsimile;
- (3) The licensee's written signature must be placed over, or ~~near,~~ adjacent to, the seal on the original document. A facsimile signature is not acceptable;
- (4) The date of signing must be annotated on the original document;
- (5) The title sheet of engineering specifications or other reports must be ~~sealed~~ certified and bear the ~~name name, and~~ address and license number of the licensee's firm. The title sheet of any survey report or written description of property shall include the ~~name name, and~~ address and license number of the ~~Professional Land Surveyor;~~ licensee's firm; and
- (6) Any revision in the document after a licensee's certification is affixed shall be ~~noted~~ described and dated and if not done under the responsible charge of the same licensee shall be separately certified.

(c) Exceptions to Required Certification. The ~~seal~~ certification of a licensee on a map, drawing, plan, specification, plat, document, or report shall signify that it is the final work of the licensee unless the work is stamped or ~~clearly~~ marked substantially as follows so as to put the public on notice not to use as a final product, in which case certification is optional:

- (1) "Preliminary - Do not use for construction";
- (2) "Progress Drawings - Do not use for construction";
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales";
- (4) "Final Drawing - Not released for construction";
- (5) "Final Drawing - For Review Purposes Only";
- (6) "Not a Certified Document - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document shall not be considered a certified document";
- (7) "Not a Certified Document as to the Original Document but Only as to the Revisions - This document originally issued and sealed by (name of licensee), (license number), on (date of sealing). This document is only certified as to the revisions".

(d) Electronically ~~transmitted~~ Transmitted ~~documents.~~ Documents. Documents, including drawings, specifications and reports, that are transmitted electronically ~~to a client or a governmental agency~~ beyond the direct control of the licensee

shall have the computer-generated seal removed from the original file, unless signed with a digital signature as defined in paragraph (e). After removal of the seal the electronic media shall have the following inserted in lieu of the signature and date: ~~This~~ "This document originally issued and sealed by (name of sealer), (license number), on (Date of sealing). This medium shall not be considered a certified document. document." Hardcopy documents containing the original seal, signature and date of the licensee may be duplicated by photocopy or electronic scanning processes and distributed either in hardcopy or electronic medium. The scanned digital files of ~~properly~~ certified documents are not subject to the requirements of this paragraph. The electronic transmission ~~beyond the direct control of the licensee~~ of CAD, vector or other files subject to easy editing are subject to the requirements of this paragraph. Easy editing is based on the file consisting of separate elements that can be individually modified or deleted. Documents that are excepted from certification by a statement meeting the requirements of Subparagraphs (c)(1) through (c)(5) of this Rule are not subject to the requirements of this Paragraph. (e) Documents to be electronically transmitted ~~beyond the direct control of the licensee~~ that are signed using a digital signature, shall contain the authentication procedure in a secure mode and a list of the hardware, software and parameters used to prepare the document(s). Secure mode means that the authentication procedure has protective measures to prevent alteration or overriding of the authentication procedure. The term "digital signature" shall be an electronic authentication process that is attached to or logically associated with an electronic document. The digital signature shall be:

- (1) Unique to the licensee using it;
- (2) Capable of verification;
- (3) Under the sole control of the licensee; and
- (4) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(f) A digital signature process may be submitted to the Board ~~for approval that it meets the criteria set forth in Subparagraphs (e)(1) through (4) of this Rule. The licensee shall confirm that if another process is used, that it meets the criteria.~~

Authority G.S. 89C-10; 89C-16.

21 NCAC 56 .1106 CERTIFICATION OF STANDARD DESIGN PLANS

Standard design plans that were initially prepared and ~~sealed~~ certified by an individual who is a licensed engineer in the state of origin of such plans (including North Carolina) may then be reviewed by a North Carolina Professional Engineer for code conformance, design adequacy, and site adaptation for the specific application within North Carolina. The reviewing Professional Engineer who is licensed in North Carolina assumes responsibility for such standard designs. Standard plans, which bear the seal of ~~an individual~~ the original design engineer who is a licensed engineer in another state, or North Carolina, shall be sealed by the reviewing North Carolina Professional Engineer who is assuming responsibility. In addition to the seal, a statement shall be included as follows: "These plans have been properly examined by the undersigned.

I have determined that they comply with existing local North Carolina codes, and have been properly site adapted for use in this area."

Authority G.S. 89C-10; 89C-16.

SECTION .1300 – BOARD DISCIPLINARY PROCEDURES

21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE

(a) General. ~~Alleged improper practice that may violate the Board Rules 21 NCAC 56 or G.S. 89C by a licensee shall be is~~ subject to Board investigation and disciplinary action by the Board if necessary.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor or firm holding a certificate of authorization is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or firm by setting forth in writing those charges and swearing to their authenticity, along with providing corroborative evidence. The charges shall be filed ~~at~~ with the Board's office in Raleigh, North Carolina.

(c) Preliminary Review:

(1) Upon receipt of a properly filed charge, ~~an investigation shall be initiated. a case shall be opened.~~

~~(2) A written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.~~

~~(3)(2) In the discretion of the executive director, a A field investigation may be performed. performed if determined necessary by the Executive Director.~~

~~(3) If the executive director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.~~

(4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:

- (A) one member of the Board who is licensed in the respective profession,
- (B) the legal counsel of the Board, and
- (C) the executive director of the Board.

(5) Upon review of the available evidence, the review committee shall present to the Board a written recommendation that:

- (A) the charge be dismissed as unfounded or trivial;
- (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board Rules or the statutes at any time in the future;
- (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
- (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a current board member is a complainant, witness or respondent in a case. The consultant shall be a currently licensed professional engineer or professional land surveyor, depending on the nature of the case, and selected from a list provided by the executive director of former Board members or other licensed professionals who are knowledgeable with the Board's ~~processes and have expressed an interest in serving as a consultant~~ processes. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. Notice of the decision by the Board on recommendations of the review committee shall be given to the party against whom the charges have been brought and the party submitting the charge. Though it is not forbidden to do so, the Board is not required to notify the parties of the reasons of the Board in making its determination.

(f) Settlement Conference. When the Board issues a citation for hearing or notice of a contemplated action, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken nor shall any witnesses be cross-examined:

- (1) The Board's settlement committee shall be made up of the following individuals:

- (A) the member of the Board who served on the review committee or the replacement if ~~no longer a member of the Board, not available~~,
- (B) one public member from the Board,
- (C) the legal counsel of the Board, and
- (D) the executive director of the Board.

(2) Upon review of the available evidence, the settlement committee shall present to the Board a written recommendation that:

- (A) the charge be dismissed as unfounded or trivial;
- (B) when the charge is admitted as true, the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
- (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
- (D) whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.

Authority G.S. 89C-10; 89C-21; 89C-22.

SECTION .1400 - CONTESTED CASES

21 NCAC 56 .1413 DECISION OF BOARD

(a) Manner and Time of Rendering Decision. After a hearing has been completed the Board shall proceed to consider the case and as soon as practicable shall render their decision. The decision must be rendered within 90 days after the hearing.

(b) Service of Written Decision. ~~Within five working days after the decision is rendered the~~ The Board shall serve upon each party a written copy of the decision, either personally or by certified mail. If the decision is sent by certified mail it shall be deemed to have been served on the date borne on the return receipt.

(c) Final Decision. The final decision of the Board shall be in the manner and form prescribed by G.S. 150B-42(a).

(d) Official Record. The official record ~~will~~ shall be prepared in all contested cases in accordance with the requirements of G.S. 150B-42(b).

Authority G.S. 89C-10; 89C-21; 89C-22; 150B-42.

**SECTION .1600 – STANDARDS OF PRACTICE FOR
LAND SURVEYING IN NORTH CAROLINA**

21 NCAC 56 .1602 SURVEYING PROCEDURES

(a) A Professional Land Surveyor shall spend the necessary time and effort to make adequate investigation to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed. Points may be placed on the line from nearby closed or verified traverses and the necessary investigations made from these points. If these investigations are not made, then the surveyor shall not certify to an actual survey of that line and the plat must contain the appropriate qualifications in accordance with the rules in this Section.

(b) Any and all visible or determined encroachments or easements on the property being surveyed shall be accurately located and ~~clearly~~ indicated.

(c) With respect to investigation of property boundaries and recorded easements, the surveyor ~~shall, at a minimum, shall~~ examine the most recent deeds and recorded plats adjacent to the subject property as well as all deeds and plats recorded after the date of the deed or plat upon which the survey is being based (the survey reference deed or plat).

(d) Except as provided in Paragraph (e) of the Rule, metal stakes or materials of comparable permanence shall be placed at all corners.

(e) Where a corner falls in a right-of-way, in a tree, in a stream, or on a fence post, boulder, stone, or similar object, one or more monuments or metal stakes shall be placed in the boundary ~~line~~ so that the inaccessible point may be located accurately on the ground and the map.

(f) The results of a survey ~~when shall be~~ reported to the user of that survey as a map or report of survey and, whether in written or graphic form, shall be prepared in a clear and factual manner. All reference sources shall be identified. Artificial monuments called for in such reports shall be described as found or set. When no monument is found or set for points described in Paragraph ~~(d)~~(e) of this Rule, that fact shall be noted.

(g) Where the results of a survey are reported in the form of a plat or a written description, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2000 feet of the subject property, right-of-way, easement or other surveyed entity. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Office of State Planning, the coordinates of both the referenced corner or point and the monument(s) shall be shown in X (easting) and Y (northing) coordinates on the plat or in the written description or document. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983 or as 'NAD 27' indicating North American Datum of 1927. The tie lines to the monuments must be sufficient to establish true north or grid north bearings for the plat or description if the monuments exist in pairs. Control monuments within a previously recorded subdivision may be used in lieu of grid control. In the interest of bearing consistency with previously recorded plats, existing bearing control may be used where practical. In the absence of Grid

Control, other natural or artificial monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(h) Area is to be computed by double meridian distance or equally accurate method and shown on the face of the plat, written description or other document. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation shall be clearly stated.

Authority G.S. 89C-10; 89C-20.

**21 NCAC 56 .1603 CLASSIFICATION OF
BOUNDARY SURVEYS**

General. Boundary surveys are defined as surveys made to establish or to retrace a boundary line on the ground, or to obtain data for constructing a map or plat showing a boundary line. For the purpose of this Rule, the term refers to all surveys, including "loan" or "physical" surveys, which involve the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, the following four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before ~~adjustments~~ adjustments or a statement of positional accuracy. ~~Positional or partial accuracy may be used in addition to Ratio of Precision when a network of multiple traverse loops is used in the field and the network has been adjusted by the least squares method.~~

- (1) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use of local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000). When using positional accuracy standards for Class AA control and boundary surveys, neither axis of the ~~95%~~ 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.05 feet or 0.015 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (2) Urban Land Surveys (Class A). Urban surveys include lands which normally lie within a town or city. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of

perimeter of the parcel of land (1:10,000). When using positional accuracy standards for Class A control and boundary surveys, neither axis of the ~~95%~~95 percent confidence level error ellipse for any control point or property corner shall exceed 0.10 feet or 0.030 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

- (3) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500). When using positional accuracy standards for Class B control and boundary surveys, neither axis of the ~~95%~~95 percent confidence level error ellipse for any control point or property corner shall exceed 0.12 feet or 0.037 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.
- (4) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000). When using positional accuracy standards for Class C control and boundary surveys, neither axis of the ~~95%~~95 percent confidence level error ellipse for any control point or property corner shall exceed 0.15 feet or 0.046 meters measured relative to the position(s) of the horizontal control points used and referenced on the survey.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

- (a) The size of a map shall be such that all details ~~can be shown clearly.~~ are legible on a copy.
- (b) Any lines that are not actually surveyed must be ~~clearly~~ indicated on the map and a statement included revealing the source of information from which the line is derived.
- ~~(c) Any revision on a map after a surveyor's seal is affixed shall be noted and dated.~~
- ~~(d)~~(c) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system referenced datum used.

~~(e)~~(d) All plats (maps), unless ~~clearly~~ marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, signed and dated by the Professional Land Surveyor and shall contain the following:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if determined) shall be ~~clearly~~ indicated.
- (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
- (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargements of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used, the combined grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.
- (4) Where a boundary is formed by a curved line, the following data must be given: actual survey data, or as a series of subchords with bearings and distances around the curve. If standard curve data is used, the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and information as required in the referenced statute shall be shown on the plat. All other corners that are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract that are marked by monument or natural object shall be shown.
- (7) The surveyor shall show one of the following where they could be determined:
 - (A) The names of adjacent land owners; or

- (B) The lot, block, parcel and subdivision designations; or
- (C) Other legal reference where applicable.
- (8) All visible and apparent rights-of-way, easements, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Tie lines as required and defined in Rule .1602(g) of this Section shall be ~~clearly and~~ accurately shown on the face of the plat, whether or not the plat is to be recorded.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted. In addition each map shall contain a scale of the drawing listed in words or figures; a bargraph; ~~the name, address, license number, and seal of the surveyor;~~ the title source; and a legend depicting nomenclature or symbols not otherwise labeled.
- (12) Each map shall contain a certificate signed by the Professional Land Surveyor in substantially the following form:
"I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page _____ or other reference source _____); that the boundaries not surveyed are indicated as drawn from information in Book _____, page _____ or other reference source _____; that the ratio of precision or positional accuracy is _____; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56 .1600)."
This _____ day of _____,
2____.
Seal _____ Professional Land Surveyor

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1606 SPECIFICATIONS FOR TOPOGRAPHIC AND PLANIMETRIC MAPPING, INCLUDING GROUND, AIRBORNE, AND SPACEBORNE SURVEYS

(a) General.

- (1) Topographic surveys are defined as surveys that have as their major purpose the determination of the configuration (relief) of the earth (ground) and the location of natural or artificial objects thereon.

- (2) Planimetric mapping is defined as producing a map that presents the horizontal positions only for the features represented; distinguished from a topographic map by the omission of relief in measurable form.
- (3) Airborne and spaceborne surveys are defined as the use of photogrammetry, LIDAR, IFSAR, or other similar measurement technologies for obtaining reliable information about physical objects and the environment, including terrain surface, through the process of recording, measuring, and interpreting images and patterns of electromagnetic radiant energy and other phenomena. This Rule establishes minimum allowable photogrammetric production procedures and standards for photogrammetric mapping and digital data production.
- (b) Production procedures for topographic and planimetric mapping surveys shall be in accordance with the standards established by ~~Chapter Part~~ 3 of the Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standard and applicable extensions and revisions. These standards are incorporated by reference including subsequent amendments and editions. The material is available from the Board office at ~~the~~ cost of ~~five dollars (\$5.00) per copy~~ reproduction as a public record or from the ~~FGDC~~ FGDC at www.fgdc.gov at no cost. Reporting accuracy shall be in accordance with Part 1 of the FGDC geospatial standards.
- (c) Topographic or planimetric maps, orthophotos, ~~and/or~~ and related electronic data, unless ~~clearly~~-marked as "Preliminary Map," shall meet contractually specified FGDC Standards for horizontal and vertical accuracies (in the absence of specified standards, the National Map Accuracy Standards apply) and shall be ~~sealed, signed and dated~~ certified by the licensee.
- (d) When the resulting product is a digital (electronic) data set, or a map or document consists of more than one sheet or otherwise cannot be ~~signed and sealed, certified,~~ a project report shall be ~~certified, signed and sealed, certified.~~ Such ~~The~~ report shall be ~~clearly~~-marked "Preliminary" if applicable.
- (e) Ground control for topographic and planimetric mapping projects shall be in North Carolina State Plane Coordinate System grid coordinates and distances when the project is tied to Grid. A minimum of one permanent project vertical control point shall be shown.
- (f) The project map or report shall contain the applicable following information:
 - (1) Date of original data acquisition.
 - (2) Altitude of sensor and sensor focal length, as applicable.
 - (3) Date of document or data set compilation.
 - (4) If hard copy product is produced, the maps shall contain a north arrow, map legend, final document scale, including bargraph, and contour interval, as applicable.
 - (5) Coordinate system for horizontal and vertical denoting SI or English units (i.e., NAD83, assumed, or other coordinate system).

- (6) A list or note showing the control points used for the project. The minimum data shown for each point shall include: physical attributes (~~i.e.e.g.~~ iron rod, railroad spike, etc), spike), latitude and longitude (or X and Y Grid coordinates), and elevation, as applicable.
- (7) If other data is included, the source and accuracy of those items must be clearly indicated.
- (8) A statement of accuracy complying with contractually specified FGDC standards consistent with Paragraph (c) of this Rule.
- (9) For topographic maps or data sets, contours in areas obscured by man-made or natural features shall be uniquely identified or enclosed by a polygon clearly identifying the obscured area. The accuracies of the contours or of features in this obscured area shall be noted "No reliance is to be placed on the accuracy of these contours."
- (10) A vicinity map depicting the project location shall appear on the first sheet of all hard copy maps or in the report accompanying digital files.
- ~~(11) Company name, address and phone number.~~
- ~~(12)~~(11) The name of the client for whom the project was conducted.

(g) Nothing in this Section shall be construed to negate or replace the relative accuracy standards found in Rules .1601 through .1608.

(h) A certificate, substantially in the following form, shall be affixed to all maps or reports:

" I, _____, certify that this project was completed under my direct and responsible charge from an actual (insert as appropriate: ground or ~~airborne~~, ~~airborne~~) ~~photogrammetric~~ survey made under my supervision; that this photogrammetric survey was performed to meet Federal Geographic Data Committee Standards as applicable; that the imagery and/or original data was obtained on _____(date)_____; that the ~~photogrammetric~~ survey was completed on _____(date)_____; that contours shown as [broken lines] may not meet the stated standard; and all coordinates are based on _____."

(i) Documents transmitted electronically shall have the computer-generated seal removed from the original file and a copy of the project report shall be ~~signed, sealed~~certified and sent to the client. The electronic data shall have the following inserted in lieu of the signature and date:

"This document originally issued and sealed by (name of sealer), (license number), on (date of sealing). This electronic media shall not be considered a certified document. See the project report for certificate and seal."

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEMS SURVEYS

(a) General. ~~Global Positioning System (GPS) surveys are defined as any survey performed by using the GPS~~

~~3-dimensional measurement system based on observations of the radio signals of the Department of Defense's NAVSTAR (Navigation Satellite Timing and Ranging) GPS System. Global Positioning Systems (GPS) are defined as the navigation and positioning systems that comprise the Global Navigation Satellite System (GNSS), which includes NAVSTAR, GLONASS, GALILEO, COMPASS, and any other satellite-based navigation and positioning systems. All GPS boundary and geodetic control surveys, aerial photography control surveys, and GIS/LIS collection surveys of features included in surveys as defined in G.S. 89C-3(7) performed in North Carolina shall be performed by a Professional Land Surveyor licensed in North Carolina.~~

~~(b) Geodetic control surveys for inclusion of the data in the National Spatial Data Network (Blue Book) shall be performed in accordance with specifications established by the Federal Geographic Data Committee (FGDC) and the National Geodetic Survey. These specifications are incorporated by reference including subsequent amendments and editions. The material is available for inspection at the office of the North Carolina Geodetic Survey, 121 W. Jones Street (Elks Building), Raleigh, North Carolina 27603, www.ncgs.state.nc.us. Copies may be obtained at the office of the North Carolina Geodetic Survey. Copies may be obtained at a cost of two dollars (\$2.00). GPS surveys performed to other Federal Standards shall conform to the appropriate Federal standard procedures for the specific project.~~

~~(b) The Professional Land Surveyor in responsible charge of the GPS survey shall certify, sign and seal~~certify all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be ~~signed and sealed~~.certified. The certificate and/or metadata notes shall contain the following information:

- (1) Class of GPS ~~survey~~. survey as defined in the Standards of Practice (or list the sections).
- (2) Type of GPS field ~~procedure~~procedure, such as, but not limited to (~~Static~~, Static, Kinematic, ~~Pseudo-Kinematic~~)Pseudo-Kinematic, Real-time Kinematic, Real-time Kinematic networks, and Online Position User Service.
- (3) ~~Type of adjustment used~~. Positional accuracy.
- (4) Dates of survey.
- (5) ~~Type and model of GPS receivers used.~~
- ~~(6)~~(5) What datum and epoch coordinates or geographic positions are based on.
- (6) Designation of fixed-control stations and their positional data.
- (7) Geiod model used.
- (8) Combined grid factor(s).

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my ~~supervision~~, supervision and the following information was used to perform the survey: that this GPS survey was performed to _____ FGCC specifications and that I used _____ GPS field procedures and coordinates were obtained by _____ adjustment. That this survey was performed on _____ using (type)

~~(number) of receivers and all coordinates are based on _____."~~

- ~~(1) Class of survey: _____~~
- ~~(2) Positional accuracy: _____~~
- ~~(3) Type of GPS field procedure: _____~~
- ~~(4) Dates of survey: _____~~
- ~~(5) Datum/Epoch: _____~~
- ~~(6) Published/Fixed-control use: _____~~
- ~~(7) Geoid model: _____~~
- ~~(8) Combined grid factor(s): _____~~
- ~~(9) Units: _____~~

~~Prepared documents shall include coordinates (see paragraph f. below for the list of data to show) of all monuments and a map showing all non-trivial vectors measured. The map shall also contain the following information:~~

- ~~(1) Scale (bar or numerical).~~
- ~~(2) Legend.~~
- ~~(3) Loop closures before any adjustment.~~
- ~~(4) Certification.~~
- ~~(5) Company name, license number, address and phone number.~~

~~(c) GPS surveys performed to provide local control networks for use as a network base shall be performed using static or rapid static methods. These surveys shall be performed in such a manner that a 95% 95 percent confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.~~

~~(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using static or rapid static techniques, or kinematic or real time kinematic techniques. These surveys shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 as applicable.~~

~~(e) All plats, maps, and reports published based upon this type of GPS survey shall contain a statement worded substantially as follows: "The NC Grid coordinates shown on this [plat or report] were derived by [static or rapid static or kinematic or real time kinematic] differential GPS observations using [number of receivers] [brand name] [model number] receivers. The vectors were adjusted using the fixed station(s) shown using [software brand and program name] software producing a weighted least squares adjustment of the [WGS 84 or NAD 83 or other system] positions. The median vector error is computed to be [x.x] ppm. A loop of [miles or kilometers or feet or meters] using the unadjusted vectors passing through the fixed and derived control stations yields a loop precision of [1:xxx or xx.x ppm]."~~

~~(f)(e) A list or note showing the fixedFixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, horizontal position (northing and easting) or latitude, longitude, elevation (ellipsoid or orthometric), and geoid heightdatum and epoch.epoch. (93, 96, 99, etc.), and the coordinate reference system. State plane coordinates may be added if desired.~~

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1608 CLASSIFICATION/LAND INFORMATION SYSTEM/GEOGRAPHIC INFORMATION SYSTEM SURVEYS

(a) General: Land Information System/Geographic Information System (LIS/GIS) surveys are defined as the measurement of existing surface and subsurface features for the purpose of determining their accurate geospatial location for inclusion in an LIS/GIS database. All LIS/GIS surveys as they relate to property lines, rights-of-way, easements, subdivisions of land, the position for any survey monument or reference point, the determination of the configuration or contour of the earth's surface or the position of fixed objects thereon, and geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry, shall be performed by a Land Surveyor who is a licensee of this Board. For the purpose of specifying minimum allowable surveying standards, ~~three~~four general classifications of LIS/GIS surveys are ~~established~~established, any of which may be specified by the client. In the absence of a specified standard, the surveyor shall conform the survey to the requirements for a Class B survey. The four general classifications are:

- ~~(1) Urban and Suburban LIS/GIS surveys (Class A) Urban and suburban LIS/GIS surveys include the location of features within lands which lie in or adjoining a town or city. Class A LIS/GIS surveys. For Class A LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 0.5 meter (1.64 feet). (1.64 feet);~~
- ~~(2) Class B LIS/GIS surveys. For Class B LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 1.0 meter (3.28 feet);~~
- ~~(2)(3) Rural LIS/GIS surveys (Class B) Class C LIS/GIS surveys. Rural LIS/GIS surveys include the location of features within lands which lie outside of suburban areas. For Class BC LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 2 meters (6.56 feet). (6.56 feet); and~~
- ~~(3)(4) Regional LIS/GIS surveys (Class C) Class D LIS/GIS surveys. Regional LIS/GIS surveys include the location of features within lands which lie in multi-county areas. For Class CD LIS/GIS surveys in North Carolina, the relative accuracy shall be equal to or less than 5 meters (16.40 feet).~~

(b) Nothing in this Rule ~~shall be construed to negate or replace~~negates or replaces the relative accuracy standards found in Rules .1601 through .1607 of this Chapter.

(c) The Professional Land Surveyor in responsible charge of the LIS/GIS boundary or geodetic control survey shall certify to all of the following in either written or digital form:

- (1) Class of LIS/GIS ~~survey, survey.~~ Method used to evaluate the accuracy shall be described as either statistical testing or least squares adjustment results, comparison with values of higher accuracy, and repeat measurements. The reporting standard in the horizontal component is the radius of a circle of uncertainty, such that the true or theoretical location of the point falls within that circle 95 percent of the time. For vertical accuracy requirements, see .1606.
- (2) Method of measurement (i.e. global positioning system, theodolite and electronic distance meter, transit and tape),
- (3) Date(s) of the survey, and
- (4) Datum used for the survey.

Authority G.S. 89C-10; 89C-20.

SECTION .1700 – CONTINUING PROFESSIONAL COMPETENCY

21 NCAC 56 .1702 DEFINITIONS

Terms used in this Section are defined as follows:

- (1) Professional Development Hour (PDH) - A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) - Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 contact hours of instruction or presentation.
- (3) College/Unit Semester/Quarter Hour - Credit for Accreditation Board for Engineering and Technology approved course or other related college course.
- (4) Course/Activity - Any course or activity with a ~~clear~~ purpose and objective which will maintain, improve, ~~and/or~~ expand the skills and knowledge relevant to the licensee's field of practice.
- (5) Dual Licensee - A person who is licensed as both an engineer and a land surveyor.
- (6) Sponsor - Organization or individual that has supplied information on a form prescribed and furnished by the Board with respect to the organization or individual's ability to provide instruction in "for credit" courses. Courses offered by those designated as "Sponsor" must contain a ~~clear~~ purpose and objective, and result in the maintenance, improvement, ~~and/or~~ expansion of skills and knowledge relevant to a licensee's field of practice. ~~Courses offered by "Sponsors" are deemed acceptable for PDH credit without scrutiny of individual course content.~~

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1703 REQUIREMENTS

Every licensee shall obtain 15 PDH units during the renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of 15 PDH units may be carried forward into the subsequent renewal period. Selection of courses and activities which meet the requirements of Rule .1702(4) of this Section is the responsibility of the licensee. Licensees may select courses other than those offered by sponsors. Post evaluation of courses ~~offered by other than sponsors as defined in Rule .1702(6) of this Section~~ may result in non-acceptance. PDH units may be earned as follows:

- (1) Completion of college courses;
- (2) Completion of continuing education ~~courses; courses, seminars, or workshops;~~
- (3) Completion of correspondence, televised, internet, videotaped, audiotaped, and other ~~short courses/tutorials; —courses/tutorials provided an exam is required for completion;~~
- (4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- (5) Teaching or instructing in Items (1) through (4) of this Rule;
- (6) Authoring published papers, articles, or books;
- (7) Active participation in professional or technical ~~societies; societies as defined in Rule .1705(e) of this Section;~~
- (8) Patents; and
- (9) Authoring exam questions accepted for use in the engineering or land surveying exams.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1705 DETERMINATION OF CREDIT

- (a) The Board of Examiners has final authority with respect to approval of courses, sponsors, credit, PDH value for courses, and other methods of earning credit.
- (b) Credit for college or community college courses shall be based upon course credit established by the college.
- (c) Credit for continuing education courses, seminars and workshops shall be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and technical society meetings shall earn PDH units for the actual time of each program.
- (d) Credit for correspondence, televised, internet, videotaped, audiotaped, and other courses/tutorials, provided an exam is required for completion, shall be based upon one PDH unit for each hour assigned to the course, provided such hours are a reasonably estimated time for an average professional to complete the course.
- ~~(d)(e)~~ Credit determination for published papers, articles and books and obtaining patents is the responsibility of the licensee.
- ~~(e)(f)~~ Credit for active participation in professional and technical societies (limited to 2 PDH per organization), requires that a licensee serve as an officer or ~~actively~~ participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1706 RECORDKEEPING

The licensee shall maintain the following records to be used to support credits ~~claimed.~~ claimed. ~~Records required include, but are not limited to:~~

- (1) a log showing the type of activity claimed, title or specific subject, sponsoring organization, location, duration, date,—instructor's or speaker's name, and PDH credits ~~earned;~~ earned, and other information on a form as prescribed by the Board; and
- (2) attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance;~~or attendance.~~
- (3) ~~records as maintained by the National Professional Development Registry for Engineers and Surveyors (NPDRES) of the National Society of Professional Engineers (NSPE).~~

These records must be maintained for a period of three years and copies may be requested by the board for audit verification purposes. The Board shall approve other records that contain the information required by this Rule.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1707 EXEMPTIONS

A licensee may be exempt from the professional development educational requirements for one of the following reasons:

- (1) New licensees by way of examination or ~~reciprocity~~comity shall be exempt for their first renewal period.
- (2) A licensee serving on temporary active duty in the uniformed services of the United States for a period of time exceeding 120 consecutive days in a year ~~shall be~~ exempt from obtaining the professional development hours required during that year.
- (3) The Board shall exempt a licensee ~~Licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by~~ if the board ~~Board may be exempt.~~ determines that the licensee is experiencing physical disability, illness, or other extenuating circumstances that prevent the licensee from obtaining professional development hours. Supporting documentation must be furnished to the board.
- (4) Licensees who list their occupation as "Inactive" on the board approved renewal form and who ~~further certify that they~~ are no longer ~~receiving any remuneration from providing professional engineering or land surveying services~~ shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or

land surveying, professional development hours must be earned in accordance with the requirements of Rule .1708 in this Section before returning to active practice for each year exempted not to exceed the annual requirement for two years.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1709 COMITY/OUT-OF-JURISDICTION RESIDENT

Licensees who are residents of jurisdictions other than North Carolina ~~must~~shall meet the CPC requirements of their resident jurisdiction. ~~The requirements for North Carolina will be deemed as satisfied when a non-resident licensee provides evidence of having met the requirements of his or her resident jurisdiction.~~ If licensees ~~reside~~ the licensee resides in a jurisdiction that has no CPC continuing professional competency (CPC) requirement, or the licensee is exempt from the CPC requirement in the licensee's resident jurisdiction, the resident licensee must meet the requirements of North Carolina.

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1712 COMPLIANCE

(a) Compliance with annual Continuing ~~professional~~ Professional Competency (CPC) requirements shall be determined through an audit process conducted by the Board. Determination of individuals to be audited shall be accomplished through a random selection process or as the result of information available to the Board. Individuals selected for auditing shall provide the Board with the following documentation of the CPC activities claimed for the renewal ~~period, including but not limited to:~~ period:

- (1) Attendance verification records in the form of transcripts, completion certificates, other documents supporting evidence of attendance, ~~or~~ and a log as defined in Rule .1706 of the ~~Section.~~ Section; and
- (2) Information regarding course content, instructors and sponsoring organization, for activities presented by other than approved sponsors as defined in Rule .1713 of this Section.

(b) Attendance records shall be maintained by individual licensees for a period of three years for audit verification purposes.

~~(c) Failure to comply with annual CPC requirements shall result in non-renewal and all disciplinary actions allow by G. S. 89C21.~~

Authority G.S. 89C-10(a); 89C-17.

21 NCAC 56 .1713 SPONSORS

(a) The Board shall approve sponsors of Continuing Professional Competency (CPC) ~~activities and not particular~~ courses. activities. The Board shall maintain a list of sponsors which have agreed to conduct programs in accordance with the standards of CPC activities set forth in 21 NCAC 56.1700. Such

sponsors shall indicate their agreement with the requirements by executing a Sponsor Agreement on a form provided by the Board. These sponsors shall be designated as "Approved Sponsors," Sponsors based upon approval by the Board of the sponsor application and payment of a one hundred fifty dollar (\$150.00) application fee.

(b) By entering into an agreement with the Board to be designated as an "Approved Sponsor," the sponsor shall agree to:

- (1) Allow persons designated by this Board to attend any or all courses, without fee or charge, for the purpose of determining that said course meets the standards of the Board.
- (2) Allow persons designated by this Board to review course material for the purpose of determining that ~~said~~the course meets the standards of the Board.
- (3) State in every brochure, publication or announcement concerning the course, the general content of the course and the specific knowledge or skill to be taught or addressed, as well as the credit to be earned in Professional Development Hours (PDH).
- (4) Ensure that the instructors or presenters of the course or program are qualified to teach the subject matter.
- (5) Provide persons completing the course with written documentation attesting to that person's attendance to the course, as well as the name of the course, the date and location held, the instructor's name and the number of PDHs earned.
- (6) Provide attendees an evaluation form as provided by the Board that is to be collected and retained for audit by the Board.
- ~~(6)~~(7) Submit quarterly reports to the Board (whether, or not, a course was offered in that quarter) which shall include the sponsor's name, the name of the course, the date and location held, the instructor's name, the number of PDHs earned and a list of attendees.
- ~~(7)~~(8) Have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPC program and who has the responsibility for assuring and demonstrating to the Board compliance with ~~these Rules, this Rule,~~ as well as for any other organization working with the sponsor for the development, distribution ~~and/or~~ or presentation of CPC courses or activities.
- ~~(8)~~(9) Retain for a period of three years a copy of the ~~above documentation.~~ documentation required by this Paragraph.

(c) Sponsors shall renew annually on a form provided by the Board.

(d) Failure of an approved sponsor to comply with the terms of the CPC sponsor agreement ~~shall be~~ grounds for the Board to revoke, suspend or terminate the agreement, to remove the sponsor's name from the list of approved sponsors and to notify the public of such action. A sponsor that is given notice of

revocation, suspension or termination ~~can~~may request an administrative hearing to be conducted as provided in 21 NCAC ~~56.140056.1400~~ Contested Cases.

(e) Approval of a sponsor is equivalent to the language of licensing a sponsor in G.S. 89C-10(h).

Authority G.S. 89C-10; 89C-17.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01H .0632.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: January 14, 2009

Time: 10:00 a.m.

Location: Office of State Personnel, Administration Building, 3rd floor, 121 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: *The current rule and policy requires that an applicant complete a Form-PD-107, or its equivalent, in order to apply for State employment. We are proposing to amend the rule to allow applicants to submit a resume for use in the initial stages of the selection process. If the applicant is selected for an interview, the applicant would then be required to complete the Form PD-107 or its equivalent.*

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, or 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: January 14, 2009

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 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION

Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. At the discretion of the

agency, a resume may be accepted in lieu of an application in the initial stages of the screening process. Applicants selected for an interview shall complete and submit a State application (Form PD-107 or its equivalent) at the time of the interview. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. Also, persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the application or resume. The agency shall verify eligibility for veterans' preference. The knowing and willful failure of a subject person to certify compliance when submitting an application for consideration, or to falsely certify compliance, may be grounds for dismissal from employment.

Authority G.S. 96-29; 126-4(4).

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on September 18, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT****MEDICAL CARE COMMISSION**

<u>Required Spaces</u>	10A NCAC 13D .3201*	22:21 NCR
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PUBLIC HEALTH, COMMISSION FOR

<u>Minimum Standard Health Department: Staffing</u>	10A NCAC 46 .0301*	22:14 NCR
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SOCIAL SERVICES COMMISSION

<u>Scope</u>	10A NCAC 70F .0101*	22:22 NCR
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<u>Licensure</u>	10A NCAC 70F .0102*	22:22 NCR
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<u>Governance</u>	10A NCAC 70F .0201*	22:22 NCR
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<u>Responsibilities of the Governing Body</u>	10A NCAC 70F .0202*	22:22 NCR
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<u>Finances, Fees and Insurance</u>	10A NCAC 70F .0203*	22:22 NCR
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<u>Agency Setting</u>	10A NCAC 70F .0204	22:22 NCR
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<u>Responsibility to Licensing Authority</u>	10A NCAC 70F .0205*	22:22 NCR
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<u>Personnel Policies</u>	10A NCAC 70F .0206*	22:22 NCR
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<u>Staff</u>	10A NCAC 70F .0207*	22:22 NCR
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<u>Confidentiality</u>	10A NCAC 70F .0208*	22:22 NCR
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<u>Client Rights</u>	10A NCAC 70F .0209	22:22 NCR
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<u>Grievance Procedures</u>	10A NCAC 70F .0210	22:22 NCR
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<u>Searches</u>	10A NCAC 70F .0211	22:22 NCR
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<u>Medication Administration</u>	10A NCAC 70F .0212	22:22 NCR
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<u>Home-Schooling</u>	10A NCAC 70F .0213	22:22 NCR
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<u>Scope</u>	10A NCAC 70G .0101	22:22 NCR
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<u>Organization and Administration</u>	10A NCAC 70G .0102	22:22 NCR
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<u>Personnel</u>	10A NCAC 70G .0201	22:22 NCR
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<u>Intake Procedures and Practices</u>	10A NCAC 70G .0202	22:22 NCR
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<u>Case Plan</u>	10A NCAC 70G .0203	22:22 NCR
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<u>Placement Services</u>	10A NCAC 70G .0204	22:22 NCR
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<u>Records</u>	10A NCAC 70G .0205	22:22 NCR
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<u>Assessment and Treatment/Habilitation or Service...</u>	10A NCAC 70G .0206	22:22 NCR
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<u>Client Records for Children Receiving Mental....</u>	10A NCAC 70G .0207	22:22 NCR
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<u>Medication Requirements</u>	10A NCAC 70G .0208	22:22 NCR
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<u>Behavior Management and Discipline</u>	10A NCAC 70G .0209	22:22 NCR
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<u>Staffing Requirements</u>	10A NCAC 70G .0301	22:22 NCR
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<u>Training Requirements</u>	10A NCAC 70G .0302	22:22 NCR
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<u>Scope</u>	10A NCAC 70G .0401	22:22 NCR
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APPROVED RULES

<u>Definitions</u>	10A NCAC 70G .0402	22:22 NCR
<u>Personnel</u>	10A NCAC 70G .0501*	22:22 NCR
<u>Application Procedures and Practices</u>	10A NCAC 70G .0502*	22:22 NCR
<u>Placement Services</u>	10A NCAC 70G .0503*	22:22 NCR
<u>Out-of-Home Family Services Agreement for Children...</u>	10A NCAC 70G .0504*	22:22 NCR
<u>Person-Centered Plan for Children Receiving Therapeutic...</u>	10A NCAC 70G .0505*	22:22 NCR
<u>Client Records</u>	10A NCAC 70G .0506*	22:22 NCR
<u>Client Rights</u>	10A NCAC 70G .0507	22:22 NCR
<u>Grievance Procedures</u>	10A NCAC 70G .0508	22:22 NCR
<u>Searches</u>	10A NCAC 70G .0509	22:22 NCR
<u>Medication Administration Requirements</u>	10A NCAC 70G .0510*	22:22 NCR
<u>Home-Schooling</u>	10A NCAC 70G .0511*	22:22 NCR
<u>Physical Restraining Holds, Behavior Management and Disci...</u>	10A NCAC 70G .0512*	22:22 NCR
<u>Critical Incidents</u>	10A NCAC 70G .0513*	22:22 NCR
<u>Applicability</u>	10A NCAC 70H .0101	22:22 NCR
<u>Organization and Administration</u>	10A NCAC 70H .0102	22:22 NCR
<u>Applicability</u>	10A NCAC 70H .0112	22:22 NCR
<u>Intake Procedures and Practices</u>	10A NCAC 70H .0103	22:22 NCR
<u>Case Plan</u>	10A NCAC 70H .0104	22:22 NCR
<u>Placement Services to Families and Children</u>	10A NCAC 70H .0105	22:22 NCR
<u>Adoptive Home Recruitment</u>	10A NCAC 70H .0106	22:22 NCR
<u>Adoptive Home Application</u>	10A NCAC 70H .0107	22:22 NCR
<u>Preplacement Assessment</u>	10A NCAC 70H .0108	22:22 NCR
<u>Notification Regarding Preplacement Assessment</u>	10A NCAC 70H .0109	22:22 NCR
<u>Services to Adoptive Applicants and Families</u>	10A NCAC 70H .0110	22:22 NCR
<u>Legal Process</u>	10A NCAC 70H .0111	22:22 NCR
<u>Applicability</u>	10A NCAC 70H .0112	22:22 NCR
<u>Scope</u>	10A NCAC 70H .0201*	22:22 NCR
<u>Organization and Administration</u>	10A NCAC 70H .0301*	22:22 NCR
<u>Conflict of Interest</u>	10A NCAC 70H .0302	22:22 NCR
<u>Personnel</u>	10A NCAC 70H .0401*	22:22 NCR
<u>Intake Procedures and Out-of-Home Family Services...</u>	10A NCAC 70H .0402*	22:22 NCR
<u>Placement Services To Families and Children</u>	10A NCAC 70H .0403*	22:22 NCR
<u>Adoptive Home Application</u>	10A NCAC 70H .0404	22:22 NCR
<u>Preplacement Assessment</u>	10A NCAC 70H .0405*	22:22 NCR
<u>Notification Regarding Preplacement Assessment</u>	10A NCAC 70H .0406*	22:22 NCR
<u>Services to Adoptive Applicants and Families</u>	10A NCAC 70H .0407*	22:22 NCR
<u>Legal Process</u>	10A NCAC 70H .0408	22:22 NCR
<u>Records</u>	10A NCAC 70H .0409	22:22 NCR
<u>Licensing Process</u>	10A NCAC 70I .0102	22:22 NCR
<u>Definitions</u>	10A NCAC 70I .0201*	22:22 NCR
<u>Responsibility to Licensing Authority</u>	10A NCAC 70I .0202*	22:22 NCR
<u>Substantiations of Neglect Against the Facility</u>	10A NCAC 70I .0203	22:22 NCR

APPROVED RULES

<u>Licensure Procedures</u>	10A NCAC 70I .0204*	22:22 NCR
<u>Governance</u>	10A NCAC 70I .0301*	22:22 NCR
<u>Responsibilities of the Governing Body</u>	10A NCAC 70I .0302*	22:22 NCR
<u>Finances and Insurance</u>	10A NCAC 70I .0303*	22:22 NCR
<u>Internal Operating Procedures</u>	10A NCAC 70I .0304	22:22 NCR
<u>Recordkeeping and Recording</u>	10A NCAC 70I .0305*	22:22 NCR
<u>Client Rights</u>	10A NCAC 70I .0306	22:22 NCR
<u>Grievance Procedures</u>	10A NCAC 70I .0307	22:22 NCR
<u>Personnel Policies</u>	10A NCAC 70I .0401	22:22 NCR
<u>Personnel Deployment</u>	10A NCAC 70I .0402*	22:22 NCR
<u>Personnel File</u>	10A NCAC 70I .0403*	22:22 NCR
<u>Personnel Qualifications</u>	10A NCAC 70I .0404*	22:22 NCR
<u>Personnel Positions</u>	10A NCAC 70I .0405*	22:22 NCR
<u>Volunteers</u>	10A NCAC 70I .0407	22:22 NCR
<u>Admission Policies</u>	10A NCAC 70I .0501*	22:22 NCR
<u>Admission Procedures</u>	10A NCAC 70I .0502	22:22 NCR
<u>Admission Agreement</u>	10A NCAC 70I .0503*	22:22 NCR
<u>Orientation</u>	10A NCAC 70I .0504*	22:22 NCR
<u>Discharge Policies and Procedures</u>	10A NCAC 70I .0505*	22:22 NCR
<u>Client Records</u>	10A NCAC 70I .0506*	22:22 NCR
<u>Program Policies and Practices</u>	10A NCAC 70I .0601*	22:22 NCR
<u>Family Involvement</u>	10A NCAC 70I .0602*	22:22 NCR
<u>Visiting Resources</u>	10A NCAC 70I .0603	22:22 NCR
<u>Health Services</u>	10A NCAC 70I .0604*	22:22 NCR
<u>Routine Aspects of Health, Personal Hygiene, and Safety</u>	10A NCAC 70I .0605*	22:22 NCR
<u>Nutrition</u>	10A NCAC 70I .0606*	22:22 NCR
<u>Recreation and Leisure</u>	10A NCAC 70I .0609	22:22 NCR
<u>Religion and Spiritual</u>	10A NCAC 70I .0610*	22:22 NCR
<u>Work</u>	10A NCAC 70I .0612*	22:22 NCR
<u>Discipline and Behavior Management</u>	10A NCAC 70I .0613*	22:22 NCR
<u>Critical Incidents and Critical Incident Reports</u>	10A NCAC 70I .0614*	22:22 NCR
<u>Searches</u>	10A NCAC 70I .0615*	22:22 NCR
<u>Requirements for Approval</u>	10A NCAC 70I .0701	22:22 NCR
<u>Construction and Renovation</u>	10A NCAC 70I .0702	22:22 NCR
<u>Applicable Building Codes</u>	10A NCAC 70I .0703	22:22 NCR
<u>Fire and Building Safety</u>	10A NCAC 70I .0704	22:22 NCR
<u>General Sanitation</u>	10A NCAC 70I .0705	22:22 NCR
<u>Bathing and Toilet Areas</u>	10A NCAC 70I .0706	22:22 NCR
<u>Sleeping Areas</u>	10A NCAC 70I .0707	22:22 NCR
<u>Living/Activity Areas</u>	10A NCAC 70I .0708	22:22 NCR
<u>Dining Areas</u>	10A NCAC 70I .0709	22:22 NCR
<u>Heat, Light and Ventilation</u>	10A NCAC 70I .0710	22:22 NCR
<u>Exterior Space</u>	10A NCAC 70I .0711	22:22 NCR
<u>Inspections</u>	10A NCAC 70I .0712	22:22 NCR
<u>Vehicles Used for Transportation of Children</u>	10A NCAC 70I .0713	22:22 NCR
<u>Staffing Requirements</u>	10A NCAC 70I .0801	22:22 NCR

APPROVED RULES

<u>Training Requirements</u>	10A NCAC 70I .0802	22:22 NCR
<u>Application of Physical Plant Requirements</u>	10A NCAC 70I .0901*	22:22 NCR
<u>Design and Construction</u>	10A NCAC 70I .0902*	22:22 NCR
<u>Location</u>	10A NCAC 70I .0903	22:22 NCR
<u>Living Arrangement</u>	10A NCAC 70I .0904	22:22 NCR
<u>Living/Activity Areas</u>	10A NCAC 70I .0905	22:22 NCR
<u>Dining Areas</u>	10A NCAC 70I .0906	22:22 NCR
<u>Kitchen</u>	10A NCAC 70I .0907	22:22 NCR
<u>Laundry Room</u>	10A NCAC 70I .0908	22:22 NCR
<u>Sleeping Areas</u>	10A NCAC 70I .0909*	22:22 NCR
<u>Bathing and Toilet Areas</u>	10A NCAC 70I .0910	22:22 NCR
<u>Corridors</u>	10A NCAC 70I .0911	22:22 NCR
<u>Outside Entrance and Exits</u>	10A NCAC 70I .0912	22:22 NCR
<u>Floors</u>	10A NCAC 70I .0913	22:22 NCR
<u>Housekeeping and Furnishings</u>	10A NCAC 70I .0914	22:22 NCR
<u>Fire Safety and Disaster Plan</u>	10A NCAC 70I .0915*	22:22 NCR
<u>Building Service Equipment</u>	10A NCAC 70I .0916*	22:22 NCR
<u>Outside Premises</u>	10A NCAC 70I .0917	22:22 NCR
<u>Vehicles Used For Transportation of Children</u>	10A NCAC 70I .0918*	22:22 NCR
<u>Applicability</u>	10A NCAC 70J .0101*	22:22 NCR
<u>Personnel</u>	10A NCAC 70J .0103*	22:22 NCR
<u>Applicability</u>	10A NCAC 70J .0201*	22:22 NCR
<u>Admission Procedures</u>	10A NCAC 70J .0202*	22:22 NCR
<u>Admission Criteria</u>	10A NCAC 70J .0203*	22:22 NCR
<u>Recordkeeping</u>	10A NCAC 70J .0204	22:22 NCR
<u>Service Planning</u>	10A NCAC 70J .0205	22:22 NCR
<u>Discharge Services</u>	10A NCAC 70J .0206*	22:22 NCR
<u>Definition</u>	10A NCAC 70K .0101*	22:22 NCR
<u>Organization and Administration</u>	10A NCAC 70K .0102	22:22 NCR
<u>Licensing Actions</u>	10A NCAC 70K .0103*	22:22 NCR
<u>Personnel</u>	10A NCAC 70K .0201*	22:22 NCR
<u>Services</u>	10A NCAC 70K .0202*	22:22 NCR
<u>Case Record</u>	10A NCAC 70K .0203	22:22 NCR
<u>Program of Care</u>	10A NCAC 70K .0204*	22:22 NCR
<u>Physical Facilities</u>	10A NCAC 70K .0205	22:22 NCR
<u>Case Plan or Out-of-Home Family Services Agreement</u>	10A NCAC 70K .0206*	22:22 NCR
<u>Client Rights</u>	10A NCAC 70K .0207	22:22 NCR
<u>Grievance Procedures</u>	10A NCAC 70K .0208*	22:22 NCR
<u>Searches</u>	10A NCAC 70K .0209*	22:22 NCR
<u>Critical Incidents and Critical Incident Reports</u>	10A NCAC 70K .0210*	22:22 NCR
<u>Application of Physical Plant Requirements</u>	10A NCAC 70K .0301*	22:22 NCR
<u>Design and Construction</u>	10A NCAC 70K .0302*	22:22 NCR
<u>Location</u>	10A NCAC 70K .0303	22:22 NCR
<u>Living Arrangement</u>	10A NCAC 70K .0304	22:22 NCR
<u>Living Room</u>	10A NCAC 70K .0305*	22:22 NCR
<u>Dining Room</u>	10A NCAC 70K .0306*	22:22 NCR

APPROVED RULES

<u>Kitchen</u>	10A	NCAC	70K	.0307	22:22 NCR
<u>Bedrooms</u>	10A	NCAC	70K	.0308*	22:22 NCR
<u>Bathrooms</u>	10A	NCAC	70K	.0309	22:22 NCR
<u>Corridors</u>	10A	NCAC	70K	.0310	22:22 NCR
<u>Outside Entrances and Exits</u>	10A	NCAC	70K	.0311	22:22 NCR
<u>Laundry Room</u>	10A	NCAC	70K	.0312	22:22 NCR
<u>Floors</u>	10A	NCAC	70K	.0313	22:22 NCR
<u>Housekeeping and Furnishings</u>	10A	NCAC	70K	.0314	22:22 NCR
<u>Fire Safety and Disaster Plan</u>	10A	NCAC	70K	.0315*	22:22 NCR
<u>Building Service Equipment</u>	10A	NCAC	70K	.0316	22:22 NCR
<u>Outside Premises</u>	10A	NCAC	70K	.0317	22:22 NCR
<u>Use of Volunteers in Children's Services Case Reviews</u>	10A	NCAC	70L	.0101	22:22 NCR
<u>Waiver of Licensing Rules</u>	10A	NCAC	70L	.0102*	22:22 NCR
<u>Denial, Amendment, Suspension and Revocation</u>	10A	NCAC	70L	.0201*	22:22 NCR
<u>Appeal Procedures</u>	10A	NCAC	70L	.0301	22:22 NCR
<u>Scope</u>	10A	NCAC	70M	.0101	22:22 NCR
<u>Public Agencies</u>	10A	NCAC	70M	.0201*	22:22 NCR
<u>Services to Adoptive Applicants</u>	10A	NCAC	70M	.0302*	22:22 NCR
<u>Adoptive Home Recruitment</u>	10A	NCAC	70M	.0304	22:22 NCR
<u>General Eligibility</u>	10A	NCAC	70M	.0502*	22:22 NCR

INSURANCE, DEPARTMENT OF

<u>Calculation Procedure and Data Requirements for Rate Devi...</u>	11	NCAC	16	.0403*	22:24 NCR
<u>Maximum Net Retention Standard</u>	11	NCAC	18	.0118*	22:24 NCR

LABOR, DEPARTMENT OF

<u>Shop Inspections and National Board R Stamp Qualification...</u>	13	NCAC	13	.0210*	n/a G.S. 150B-21.5(a)(3)
<u>Standards</u>	13	NCAC	13	.0701*	n/a G.S. 150B-21.5(a)(3)

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Scope of Delegated Authority</u>	15A	NCAC	01O	.0101*	22:23 NCR
<u>Eligibility for Delegation of Authority</u>	15A	NCAC	01O	.0102	22:23 NCR
<u>Delegation of Authority</u>	15A	NCAC	01O	.0103	22:23 NCR

MARINE FISHERIES COMMISSION

<u>Definitions</u>	15A	NCAC	03I	.0101*	22:20 NCR
<u>Purse Seines</u>	15A	NCAC	03J	.0105*	22:20 NCR
<u>Atlantic Ocean</u>	15A	NCAC	03J	.0202	22:20 NCR
<u>Prohibited Shellfish Areas/Activities</u>	15A	NCAC	03K	.0101	22:20 NCR
<u>Prohibited Rakes</u>	15A	NCAC	03K	.0102	22:20 NCR
<u>Shellfish Management Areas</u>	15A	NCAC	03K	.0103	22:20 NCR
<u>Recreational Harvest of Shellfish</u>	15A	NCAC	03K	.0105	22:20 NCR
<u>Taking our Unloading Oysters and Clams on Sunday</u>	15A	NCAC	03K	.0106*	22:20 NCR

APPROVED RULES

or at Night

<u>Depuration of Shellfish</u>	15A	NCAC	03K	.0107*	22:20 NCR
<u>Dredges/Mechanical Methods</u>	15A	NCAC	03K	.0108	22:20 NCR
<u>Shellfish Harvester and Dealer Tags</u>	15A	NCAC	03K	.0109	22:20 NCR
<u>Open Season and Possession Limit</u>	15A	NCAC	03K	.0201*	22:20 NCR
<u>Seed Oyster Management Areas</u>	15A	NCAC	03K	.0208	22:20 NCR
<u>Oyster Sanctuaries</u>	15A	NCAC	03K	.0209*	22:20 NCR
<u>Prohibited Taking</u>	15A	NCAC	03K	.0304	22:20 NCR
<u>Recreational Harvest of Crabs</u>	15A	NCAC	03L	.0209	22:20 NCR
<u>Unmarketable Finfish</u>	15A	NCAC	03M	.0102	22:20 NCR
<u>General</u>	15A	NCAC	03M	.0201	22:20 NCR
<u>Season, Size and Harvest Limit: Atlantic Ocean</u>	15A	NCAC	03M	.0204	22:20 NCR
<u>Spanish and King Mackerel</u>	15A	NCAC	03M	.0301*	22:20 NCR
<u>Season and Areas</u>	15A	NCAC	03M	.0401	22:20 NCR
<u>Foodfish Prohibited</u>	15A	NCAC	03M	.0402	22:20 NCR
<u>Fishing on Weekends and Holidays Prohibited</u>	15A	NCAC	03M	.0403	22:20 NCR
<u>Fish Spill Reporting Mandatory</u>	15A	NCAC	03M	.0404	22:20 NCR
<u>Red Drum</u>	15A	NCAC	03M	.0501	22:20 NCR
<u>Trout</u>	15A	NCAC	03M	.0504*	22:20 NCR
<u>Shark</u>	15A	NCAC	03M	.0505	22:20 NCR
<u>Snapper-Grouper Complex</u>	15A	NCAC	03M	.0506*	22:20 NCR
<u>Bluefish</u>	15A	NCAC	03M	.0511	22:20 NCR
<u>Compliance with Fishery</u>	15A	NCAC	03M	.0512*	22:20 NCR
<u>River Herring</u>	15A	NCAC	03M	.0513	22:20 NCR
<u>Scup</u>	15A	NCAC	03M	.0514	22:20 NCR
<u>Kingfish (Sea Mullet)</u>	15A	NCAC	03M	.0518	22:20 NCR
<u>Shad</u>	15A	NCAC	03M	.0519	22:20 NCR
<u>Tuna</u>	15A	NCAC	03M	.0520	22:20 NCR
<u>Standards for Shellfish Bottom and Water Column</u>	15A	NCAC	03O	.0201*	22:20 NCR
<u>Lease</u>					
<u>Shellfish Lease Application</u>	15A	NCAC	03O	.0203*	22:20 NCR
<u>Shellfish Franchises</u>	15A	NCAC	03O	.0210	22:20 NCR
<u>Application Process</u>	15A	NCAC	03O	.0402	22:20 NCR
<u>Eligibility Criteria</u>	15A	NCAC	03O	.0404	22:20 NCR
<u>Designated See Oyster Management Areas</u>	15A	NCAC	03R	.0116	22:20 NCR
<u>Oyster Sanctuaries</u>	15A	NCAC	03R	.0117	22:20 NCR

MASSAGE AND BODYWORK THERAPY, BOARD OF

<u>Application and Scope</u>	21	NCAC	30	.0201*	22:17 NCR
<u>Treatment in Body Cavities</u>	21	NCAC	30	.0516*	22:17 NCR

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Location</u>	26	NCAC	01	.0101*	n/a G.S. 150B-21.5(a)(4)
<u>Scope and Availability</u>	26	NCAC	02C	.0401*	n/a G.S. 150B-21.5(a)(4)
<u>Content and Filing Procedures</u>	26	NCAC	04	.0202*	n/a G.S. 150B-21.5(a)(4)

APPROVED RULES

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3.)

AGRICULTURE, BOARD OF

<u>Adoption by Reference</u>	02	NCAC	52J .0401*	22:09 NCR
<u>Authorized Persons</u>	02	NCAC	52J .0402*	22:09 NCR
<u>Definitions</u>	02	NCAC	52J .0403*	22:09 NCR
<u>Certification Requirements for Euthanasia Technicians</u>	02	NCAC	52J .0404*	22:09 NCR
<u>Certification Standards</u>	02	NCAC	52J .0405*	22:09 NCR
<u>Application Requirements</u>	02	NCAC	52J .0406*	22:09 NCR
<u>Training and Examinations</u>	02	NCAC	52J .0407*	22:09 NCR
<u>Trainers</u>	02	NCAC	52J .0408*	22:09 NCR
<u>Probationary Euthanasia Technicians</u>	02	NCAC	52J .0409*	22:09 NCR
<u>Exam Required</u>	02	NCAC	52J .0410	22:09 NCR
<u>New Application</u>	02	NCAC	52J .0411*	22:09 NCR
<u>Issuance of Certification</u>	02	NCAC	52J .0412	22:09 NCR
<u>Length of Certification</u>	02	NCAC	52J .0413*	22:09 NCR
<u>Termination of Employment</u>	02	NCAC	52J .0414	22:09 NCR
<u>Notice of Termination</u>	02	NCAC	52J .0415	22:09 NCR
<u>Recertification</u>	02	NCAC	52J .0416*	22:09 NCR
<u>Certification Renewal</u>	02	NCAC	52J .0417*	22:09 NCR
<u>Duties</u>	02	NCAC	52J .0418*	22:09 NCR
<u>Grounds for Discipline - Certified Euthanasia Technicians</u>	02	NCAC	52J .0419*	22:09 NCR
<u>Intracardiac Injection</u>	02	NCAC	52J .0501*	22:09 NCR
<u>Carbon Monoxide Equipment</u>	02	NCAC	52J .0601*	22:09 NCR
<u>Dead Animals</u>	02	NCAC	52J .0603*	22:09 NCR
<u>Individual Separation</u>	02	NCAC	52J .0604*	22:09 NCR
<u>Chamber Requirements</u>	02	NCAC	52J .0605*	22:09 NCR
<u>Inspections and Records</u>	02	NCAC	52J .0606*	22:09 NCR
<u>Cleaning Chamber</u>	02	NCAC	52J .0607*	22:09 NCR
<u>Operational Guides and Instruction Manuals</u>	02	NCAC	52J .0608*	22:09 NCR
<u>Persons Required to be Present</u>	02	NCAC	52J .0609*	22:09 NCR
<u>Methods of Euthanasia Permitted Under Extraordinary Circu...</u>	02	NCAC	52J .0701*	22:09 NCR
<u>Gunshot or Other Methods</u>	02	NCAC	52J .0702*	22:09 NCR
<u>Methods and Standards</u>	02	NCAC	52J .0703*	22:09 NCR
<u>Technician Not Required</u>	02	NCAC	52J .0704*	22:09 NCR
<u>Reports</u>	02	NCAC	52J .0705*	22:09 NCR
<u>Manual Required</u>	02	NCAC	52J .0801	22:09 NCR
<u>Contents</u>	02	NCAC	52J .0802*	22:09 NCR
<u>Additional Contents</u>	02	NCAC	52J .0803*	22:09 NCR

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES****02 NCAC 52J .0401****ADOPTION BY REFERENCE**

A person required to obtain a certificate of registration pursuant to G.S. 19A, Article 3 may use any method of euthanasia approved by the American Veterinary Medical Association (AVMA), the Humane Society of the United States (HSUS), or

the American Humane Association (AHA) which are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained as follows:

- (1) AVMA Guidelines on Euthanasia may be accessed at no cost on their website at www.avma.org.
- (2) The HSUS Euthanasia Training Manual can be purchased through their website at www.hsus.org at a cost of nineteen dollars and ninety-five cents (\$19.95).
- (3) The AHA publication, Euthanasia by Injection, can be purchased through their website at www.americanhumane.org at a cost of ten dollars (\$10.00).

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0402 AUTHORIZED PERSONS

Only a Certified Euthanasia Technician, Probationary Euthanasia Technician, or a veterinarian licensed to practice veterinary medicine in North Carolina may euthanize an animal in a certified animal shelter. A Certified Euthanasia Technician shall not euthanize animals using a method for which he or she is not currently certified except as specified in 02 NCAC 52J .0700.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0403 DEFINITIONS

As used in this Subchapter:

- (1) "Certified Euthanasia Technician" means a person employed by a certified facility who has been instructed in the proper methods of humane euthanasia, security and record keeping.
- (2) "Certified facility" means a certified animal shelter, kennel or pet shop that employs at least one Certified Euthanasia Technician or licensed veterinarian to perform euthanasia on animals at that certified facility.
- (3) "Approved Certified Euthanasia Technician trainer" means a person or organization that received permission from the Animal Welfare Section to provide training to applicants or individuals seeking to be Certified Euthanasia Technicians.
- (4) "Chemical Agent" means any chemical approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association which is used to induce death.
- (5) "Applicant" means a person seeking certification as a Euthanasia Technician.
- (6) "Commercially manufactured chamber" means a chamber built with the intention for sale with the purpose of euthanizing animals, and which

meets the requirements of 02 NCAC 52J .0600.

- (7) "Conviction of a criminal offense" means being found guilty, convicted, placed on probation or entering a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure one's own appearance in a criminal proceeding or having received a withheld judgment, prayer for judgment continued or suspended sentence by a court of competent jurisdiction in this state, in a federal court or another state of any felony, as described by federal or state law, or any criminal act that in any way is related to practicing as a Certified Euthanasia Technician.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0404 CERTIFICATION REQUIREMENTS FOR EUTHANASIA TECHNICIANS

- (a) Individuals who perform euthanasia must be trained and qualified as a Certified Euthanasia Technician as set forth in this Section.
- (b) Individuals seeking certification as a Euthanasia Technician shall submit a written application documenting their qualifications to the Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services, 1030 Mail Service Center, Raleigh, NC 27699-1030, on the form provided by the Animal Welfare Section.
- (c) The Animal Welfare Section shall receive and review all applications for Euthanasia Technician certification and determine whether or not to issue the individual applicant proof of certification in the form of a printed certificate.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0405 CERTIFICATION STANDARDS

Applicants for certification as a Certified Euthanasia Technician shall be at least 18 years of age at the date they receive certification. Applicants are not eligible for certification if they have been convicted of a felony offense or a crime or infraction involving animal abuse or neglect and shall demonstrate compliance with this Section.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0406 APPLICATION REQUIREMENTS

An applicant for certification shall:

- (1) submit a completed and signed application form;
- (2) provide a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has completed an approved course, passed the course written

- examination and passed a practical examination in the specific euthanasia techniques for which the applicant is seeking certification, or provide separate documentation of having taken an approved course and passed the written examination and having passed a practical examination given by a different approved Certified Euthanasia Technician trainer; and
- (3) specify in the application form the specific euthanasia techniques the applicant is requesting certification.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0407 TRAINING AND EXAMINATIONS

(a) Training and examinations for euthanasia certification shall consist of:

- (1) Classroom lecture covering the entire list of subjects in Paragraph (b) of this Rule;
- (2) Earning a score of 80 percent correct on a written test provided by the Animal Welfare Section, demonstrating knowledge of the subjects listed in Paragraph (b) of this Rule; and
- (3) Passing a practical examination in each of the euthanasia methods for which the applicant is seeking certification.

(b) The Animal Welfare Section shall develop Certified Euthanasia Technician training programs and materials or accredit training programs and materials to be offered by other individuals, schools, agencies or veterinary practices. The programs and materials shall conform to the processes set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association and shall include the following topics:

- (1) The theory and history of euthanasia methods and practice;
- (2) Animal anatomy;
- (3) Proper animal restraint, handling and methods for controlling animal stress;
- (4) Proper chemical agent dosages, record keeping and usage documentation, chemical agent, instrument and equipment storage, handling and disposal in accordance with rules and the Code of Federal Regulations;
- (5) Proper injection techniques;
- (6) Proper euthanasia techniques not utilizing injected chemical agents;
- (7) Proper and accurate verification of animal death;
- (8) Proper record keeping;
- (9) Proper disposal of euthanized animals;
- (10) Stress management for euthanasia personnel;
- (11) Proper methods and techniques of euthanasia under extraordinary circumstances;

- (12) Proper methods, techniques and chemicals inducing anesthesia and sedation in animals prior to euthanasia; and
- (13) Proper methods, techniques and chemicals used in the practical examination section for Certified Euthanasia Technician.

(c) The Animal Welfare Section shall prepare written examinations to be given to applicants. Following the classroom training detailed in Paragraph (b) of this Rule, the applicant shall take a written examination provided by the Animal Welfare Section that will be used by the approved trainer. Those passing the written examination are eligible for the practical examination of the methods of euthanasia for which the applicant seeks certification.

(d) The applicant must pass a practical examination on each method of euthanasia for which he or she seeks certification.

(e) Applicants for certification in Euthanasia by Injection shall demonstrate the following knowledge and competencies:

- (1) Correctly calculate chemical agent dosage based upon the species, age, weight and condition of the animal;
- (2) Correctly complete all required documentation;
- (3) Correctly draw the properly calculated chemical dosage into a syringe and needle of a type and size appropriate for the animal;
- (4) Correctly administer the chemical agent to the animal;
- (5) Properly perform intravenous and intraperitoneal injections on dogs and intravenous or intraperitoneal injections on cats;
- (6) Knowledge of the medical procedures and drugs necessary for an animal to be euthanized by cardiac injection;
- (7) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (8) Knowledge about the human health risks associated with the use of chemical agents used for euthanasia including signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (9) Proper first aid for a person accidentally exposed to chemical agents used for euthanasia.

(f) Applicants for certification in Euthanasia by Gas Inhalation shall meet the standards set forth in this Paragraph:

- (1) Demonstrate knowledge of the dangers and human health effects of exposure to carbon monoxide gas;
- (2) Demonstrate knowledge about which animals Euthanasia by Gas Inhalation is approved and which species, age, medical or physical conditions make it improper to use Euthanasia by Gas Inhalation;
- (3) Demonstrate proper techniques in placing animals into the chamber;

- (4) Demonstrate knowledge about the maintenance, operation and cleaning of the chamber, fittings, gas cylinder, valves, and other parts of the equipment;
- (5) Demonstrate proper operation of the chamber;
- (6) Demonstrate ability to verify death by:
 - (A) lack of respiration;
 - (B) lack of ocular reflexes;
 - (C) lack of a heartbeat;
- (7) Demonstrate knowledge about the human health risks associated with the use of carbon monoxide when used for euthanasia. Such knowledge shall also include signs and symptoms associated with accidental exposure of the Certified Euthanasia Technician;
- (8) Demonstrate knowledge of proper first aid for a person accidentally exposed to carbon monoxide used for euthanasia.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0408 TRAINERS

(a) Certified Euthanasia Technician training shall be provided by the Animal Welfare Section or by companies or individuals meeting the following criteria:

- (1) Possess working knowledge of euthanasia conducted according to this Section;
- (2) Have actual experience in euthanasia of animals;
- (3) Have experience training staff in euthanasia; and
- (4) Provide references from individuals or organizations previously trained.

(b) Information taught shall conform to this Section and the guidelines set forth by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association.

(c) Trainers shall disclose to their students and the Animal Welfare Section any affiliations with suppliers of equipment or supplies used in euthanasia.

(d) The Animal Welfare Section may make unannounced audit of instruction and testing by trainers.

(e) Prior to providing euthanasia training leading to certification as a Euthanasia Technician, the person or company shall obtain approval before each class for its training program from the Animal Welfare Section.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0409 PROBATIONARY EUTHANASIA TECHNICIANS

An individual who has passed the written exam, but has not taken and passed the practical examination may serve as a Probationary Euthanasia Technician under the direct supervision of:

- (1) a licensed veterinarian; or
- (2) a Certified Euthanasia Technician

for up to three consecutive months or until such time as the next practical euthanasia exam is conducted, whichever is longer. Certified animal shelters employing probationary euthanasia technicians must notify the Animal Welfare Section no later than five days prior to the probationary euthanasia technician's first day serving in that capacity.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0410 EXAM REQUIRED

An individual who has not passed the written exam may not serve as a Certified Euthanasia Technician or Probationary Euthanasia Technician.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0411 NEW APPLICATION

If the individual or applicant fails to pass the practical exam a second time and wishes to apply for certification again, the individual shall submit a new application to the Animal Welfare Section, attend a training program, pass the written exam and take and pass a practical examination on euthanasia. The Animal Welfare Section shall cancel the application of any applicant who fails the written examination twice.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0412 ISSUANCE OF CERTIFICATION

Upon the receipt of materials specified in this Section the Animal Welfare Section shall issue a Certificate.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0413 LENGTH OF CERTIFICATION

A Certificate issued by the Animal Welfare Section is valid for five years from the date of issuance unless it is revoked pursuant to this Section or upon termination of employment or volunteer status as described in this Section.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0414 TERMINATION OF EMPLOYMENT

Upon termination of employment or volunteer status from a certified facility, a Certified Euthanasia Technician shall not perform animal euthanasia in a certified facility until recertified by the Animal Welfare Section. The Certified Euthanasia Technician's certification shall be canceled effectively upon termination of employment or volunteer status. No later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility the Certified Euthanasia Technician shall complete a form notifying the Animal Welfare Section of the termination of

employment or volunteer status and shall return the form and the Certificate to the Animal Welfare Section.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0415 NOTICE OF TERMINATION

A certified facility shall notify the Animal Welfare Section in writing, no later than 10 days from the date of the termination of a Certified Euthanasia Technician's employment or volunteer status at that certified facility.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0416 RECERTIFICATION

(a) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility before the expiration of his certification, the former Certified Euthanasia Technician or employer may request reinstatement of his/her certification from the Animal Welfare Section. The reinstated Certification shall be good for five years from the date of its initial issue.

(b) If a former Certified Euthanasia Technician is employed or is accepted as a volunteer at a certified facility after the expiration of his certification, the former Certified Euthanasia Technician may only euthanize animals under the direct supervision of a licensed veterinarian or currently certified euthanasia technician for three months or until he/she passes practical examination whichever is less. The former Certified Euthanasia Technician and the manager of the certified facility shall each notify the Animal Welfare Section within 10 days of the date the former Certified Euthanasia Technician is employed or accepted as a volunteer.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0417 CERTIFICATION RENEWAL

(a) Certifications may be renewed every five years provided that:

- (1) within the 12 months immediately preceding the application for certification renewal the Certified Euthanasia Technician has taken and passed a practical examination for each method of euthanasia for which they are seeking certification renewal;
- (2) the applicant receives up-to-date information about the method of euthanasia for which the applicant is seeking certification; and
- (3) the applicant receives training in stress management.

(b) The applicant shall submit an application for certification renewal to the Animal Welfare Section. The application shall be on a form created by the Animal Welfare Section and shall include a document from an approved Certified Euthanasia Technician trainer establishing that the applicant has passed a practical examination in the specific euthanasia techniques for which he or she is seeking certification.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0418 DUTIES

A Certified Euthanasia Technician may:

- (1) Prepare animals for euthanasia;
- (2) Record the identification number of the animal, its species, sex, breed description and date, dosages for drugs that are administered and amounts for drugs wasted;
- (3) Order euthanasia supplies;
- (4) Maintain the security of all controlled substances and other drugs in accordance with applicable state and federal laws and regulations;
- (5) Directly supervise probationary Euthanasia Technicians;
- (6) Report to the appropriate government agencies violations or suspicions of a violation of the rules in this Subchapter or any abuse of drugs;
- (7) Euthanize animals;
- (8) Dispose of euthanized animals and expired or unwanted chemical agent(s) or the containers, instruments and equipment used in the administration of drugs in accordance with all applicable federal, state and local laws and regulations; and
- (9) Notify the Animal Welfare Section as required in this Section upon leaving employment or volunteer status at a covered facility.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0419 GROUNDS FOR DISCIPLINE – CERTIFIED EUTHANASIA TECHNICIANS

The Department may refuse to issue, renew, or reinstate the certification of a Euthanasia Technician, or may deny, revoke, suspend, sanction, or place on probation, impose other forms of discipline, and enter into consent agreements and negotiated settlements with Certified Euthanasia Technician pursuant to the procedures set forth in G.S. 150B, Article 3, for any of the following reasons:

- (1) Failure to Carry Out Duties. Failure to carry out the duties of a Certified Euthanasia Technician;
- (2) Abuse of Chemical Substances. Abuse of any drug or chemical substance by:
 - (a) Selling, diverting or giving away drugs or chemical substances;
 - (b) Stealing drugs or chemical substances;
 - (c) Misusing chemical substances; or
 - (d) Abetting anyone in the foregoing activities;
- (3) Euthanizing animals without supervision as required by this subchapter;
- (4) Allowing uncertified individuals to euthanize animals;

- (5) Allowing probationary Euthanasia Technicians to euthanize animals outside of the Certified Euthanasia Technician's personal presence;
- (6) Fraud, misrepresentation, or deception in obtaining certification;
- (7) Unethical or Unprofessional Conduct. Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public. Such conduct includes working in conjunction with any agency or person illegally practicing as a Certified Euthanasia Technician; failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; euthanizing animals in a manner that endangers the health or welfare of the public; gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by the practices generally and currently followed and accepted as approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association; intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and swearing falsely in any testimony or affidavits relating to practicing as a Certified Euthanasia Technician;
- (8) Conviction of any criminal offense as described in this Section;
- (9) Improper Record Keeping. Failure to follow proper record keeping procedures as outlined in the rules in this Subchapter;
- (10) Improper Security and Storage for Chemical Agents. Failure to provide and maintain proper security and storage for euthanasia and restraint drugs as established under applicable United States Drug Enforcement Administration and North Carolina Department of Health and Human Services statutes and rules;
- (11) Improper Disposal of Chemical Agents and Equipment. Failure to dispose of drugs and the containers, instruments and equipment in a manner permitted by this Subchapter;
- (12) Improper Labeling of Approved Chemical Agents. Failure to properly label approved euthanasia and restraint chemical agents;
- (13) Revocation, Suspension or Limitation. The revocation, suspension, limitation, of a license, certificate or registration or any other disciplinary action by another state or United States jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice as a Certified Euthanasia Technician in that state or jurisdiction on grounds other than nonpayment of the renewal fee;

- (14) Failure of any applicant or certificate holder to cooperate with the North Carolina Department of Agriculture and Consumer Services during any investigation or inspection.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0501 INTRACARDIAC INJECTION
Intracardiac injection shall only be used on animals that have been anesthetized or heavily sedated.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0601 CARBON MONOXIDE EQUIPMENT
If carbon monoxide is used for euthanasia in a certified facility, the following requirements shall be met:

- (1) Only commercially compressed, bottled gas shall be used;
- (2) The gas shall be delivered in a commercially manufactured chamber that allows for the individual separation of animals;
- (3) Animals placed inside of the chamber shall be of the same species;
- (4) The chamber shall achieve a minimum six percent uniform concentration of carbon monoxide within two minutes of beginning the administration of the gas;
- (5) Death shall occur within five minutes of beginning the administration of the gas; and
- (6) Animals shall remain in the chamber with carbon monoxide for a minimum of 20 minutes.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review..*

02 NCAC 52J .0603 DEAD ANIMALS
Live animals shall not be placed into a euthanasia chamber with dead animals in certified facilities.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0604 INDIVIDUAL SEPARATION
Animals shall be individually separated within a euthanasia chamber in a certified facility.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0605 CHAMBER REQUIREMENTS
(a) A euthanasia chamber in a certified facility shall be located in a well-ventilated place, preferably outdoors.
(b) The chamber shall be in good working order.
(c) The chamber shall have strong airtight seals around the doors and viewports.

- (d) The chamber shall have at least one port for viewing of the animals during euthanasia.
- (e) The chamber shall be lit sufficiently to allow observation of an animal in any part of the chamber.
- (f) Any chamber electrical wiring or components exposed to carbon monoxide must be warranted by the manufacturer to be explosion proof.
- (g) Any light inside of the chamber shall be shatterproof.
- (h) The chamber shall use exhaust ventilation to evacuate the gas from the chamber before the doors are opened upon completion of the process.
- (i) If the chamber is located outdoors:
 - (1) The exhaust shall be vented at least eight feet above ground level.
 - (2) The minimum stack velocity shall be at least 3,000 feet per minute;
 - (3) If there is a roof above the chamber, the exhaust shall be vented at least three feet above the highest point of the roof; and
 - (4) The exhaust shall not be located within eight feet of any building air intakes.
- (j) If the chamber is located indoors:
 - (1) The exhaust shall be vented to the outdoors at least three feet above the highest point of the roof;
 - (2) The exhaust shall not be located within eight feet of any building air intakes;
 - (3) The minimum stack velocity shall be at least 3,000 feet per minute; and
 - (4) At least two carbon monoxide detectors shall be placed in the room.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0606 INSPECTIONS AND RECORDS

- (a) Chamber seals, exhaust flow, carbon monoxide monitors and other equipment used in the euthanasia process in certified facilities shall be inspected at least monthly and repaired or replaced as necessary.
- (b) The chamber must be inspected at least annually by the manufacturer, its authorized representative or an industrial hygienist knowledgeable about the manufacture and operation of the chamber.
- (c) A record shall be made of each inspection recording the results, the date of the inspection, and the name of the person performing the inspection. The record shall be maintained in the policy and procedure manual for at least two years.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0607 CLEANING CHAMBER

A euthanasia chamber at a certified facility shall be cleaned between uses.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0608 OPERATIONAL GUIDES AND INSTRUCTION MANUALS

Current operational guides and maintenance instruction manuals shall be kept in the room with the euthanasia chamber at all times in a certified facility.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0609 PERSONS REQUIRED TO BE PRESENT

A euthanasia chamber in a certified facility shall not be operated unless a Certified Euthanasia Technician or a veterinarian licensed in North Carolina and one other adult are present at the time of its use.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0701 METHODS OF EUTHANASIA PERMITTED UNDER EXTRAORDINARY CIRCUMSTANCES AND SITUATIONS

For purposes of this Section, extraordinary circumstance or situation includes a situation which is offsite from the shelter, in which an animal poses an immediate risk to animal, human or public health and in which no alternative, less extreme measure of euthanasia is feasible. It also includes circumstances or situations in which it would be inhumane to transport an animal to another location to perform euthanasia.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0702 GUNSHOT OR OTHER METHODS

Under extraordinary circumstances and situations which occur offsite from the shelter, a shelter employee may use gunshot or other extreme method of euthanasia as set forth in the American Veterinary Medical Association, Humane Society of the United States or American Humane Association Guidelines incorporated by reference in 02 NCAC 52J .0401.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0703 METHODS AND STANDARDS

Methods of euthanasia used by a certified facility under an extraordinary circumstance or situation must be approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association for use on that species of animal and must conform to standards set forth by that organization.

*History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.*

02 NCAC 52J .0704 TECHNICIAN NOT REQUIRED

If an extraordinary circumstance or situation occurs and euthanasia is necessary, the person performing the euthanasia is

not required to be a Certified Euthanasia Technician at a certified facility.

History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.

02 NCAC 52J .0705 REPORTS

A licensee or registrant shall prepare a report of any euthanasia performed under extraordinary circumstances or situations, and keep the report on file for at least two years. The report shall include the date, time, identification of the animal, the name of the person performing the final euthanasia, the method of euthanasia and the reason for euthanasia of the animal as permitted by this Section.

History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.

02 NCAC 52J .0801 MANUAL REQUIRED

Any animal shelter performing euthanasia shall have a current policy and procedure manual about euthanasia.

History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.

02 NCAC 52J .0802 CONTENTS

The policy and procedure manual shall set forth the shelter's equipment, process, and the procedures for individual separation of animals.

History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.

02 NCAC 52J .0803 ADDITIONAL CONTENTS

A certified facility's policy and procedure manual shall be kept consistent with the publications listed below and reflect the current information for each. The manual shall include:

- (1) A copy of the current North Carolina Animal Welfare Act and the rules in this Subchapter;
- (2) A copy of the 2000 Report of the American Veterinary Medical Association Panel on Euthanasia and any future revisions, replacements, supplements or changes thereto issued by that organization;
- (3) A current copy of the Euthanasia Training Manual of the Humane Society of the United States;
- (4) A copy of the publication on euthanasia by the American Humane Association;
- (5) A list of methods of euthanasia allowed at the shelter and the policy and procedures for each method;
- (6) A list of Certified Euthanasia Technicians, the methods of euthanasia in which they have received training, and the date of training;
- (7) The name, address and contact information for the veterinarian responsible for the Annual Program of Veterinary Care;

- (8) The name, address and contact information for veterinarians responsible for the veterinary medical care of the animals. The contact information shall include telephone numbers for working hours, weekends, nights and holidays;
- (9) Euthanasia procedure to use in emergencies, after hours, holidays and weekends;
- (10) Procedures to follow if no Certified Euthanasia Technician is present and euthanasia of an animal is necessary;
- (11) Methods of verifying death of an animal after a euthanasia process is performed;
- (12) The name and contact information of the supplier of materials. It shall include:
 - (a) Bottled gas (if applicable);
 - (b) Manufacturer of the chamber used to euthanize animals by inhalant gas (if applicable);
 - (c) Injectable euthanasia solution;
 - (d) Tranquilizer or anesthetic solution;
- (13) Original of U.S. Drug Enforcement Administration certification permitting the use of controlled substances;
- (14) A material safety data sheet for any chemical or gas used for euthanasia in that shelter;
- (15) A material safety data sheet for any anesthetic or tranquilizer used in that facility;
- (16) Notice of the signs and symptoms associated with human exposure to the agents used for euthanasia at the facility;
- (17) First aid for people accidentally exposed to the agents used for euthanasia at the facility; and
- (18) Contact information of the physician or medical facility providing medical treatment to employees of the facility. The information shall include the name of the medical facility, the telephone number for both working and after-hours contact and directions to the medical facility from the certified facility including a map. If the medical facility does not provide service after-hours, on weekends or on holidays, there must be contact information as described in this item for the nearest medical facility, urgent care clinic or emergency room that does provide care during that time.

History Note: Authority G.S. 19A-24;
Eff. Pending Legislative Review.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13D .3201 REQUIRED SPACES

- (a) The net floor area of a single bedroom shall not be less than 100 square feet and the net floor area of a room for more than

one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes. When a designated single room exceeds 159 net square feet in floor area, it shall remain a single bedroom and cannot be used as a multi-bedroom unless approved in advance by the Division to meet the requirements of G.S. 131E, Article 9.

(b) The total space set aside for dining, recreation and other common use shall not be less than 25 square feet per bed for a nursing facility and 30 square feet per bed for the adult care home portion of a combination facility. Physical therapy, occupational therapy and rehabilitation space shall not be included in this total.

(c) In nursing facilities, included in the total square footage required by Rule .3201(b) of this Section, a separate dining area or areas at a minimum of 10 square feet per bed shall be provided and a separate activity area or areas at a minimum of 10 square feet per bed shall be provided. The remainder of the total required space for dining and activities may be in a separate area or combined with either of the required dining or activity areas.

(d) In combination facilities, included in the total square footage required by Rule .3201(b) of this Section, a separate dining area or areas at 14 square feet per adult care home bed shall be provided. The adult care home dining area or areas may be combined with the nursing facility dining area or areas. A separate activity area or areas for domiciliary beds shall be provided at 16 square feet per domiciliary bed. The adult care home activity area may not be combined with the activity area or areas required for nursing beds.

(e) Dining, activity, and living space shall be designed and equipped to provide accessibility to both patients confined to wheelchairs and ambulatory patients. Required dining, activity, and living areas shall have windows with views to the outside. The glazing material for the windows shall not be less than eight percent of the floor area required for each dining, activity, or living space.

(f) Closets and storage units for equipment and supplies shall not be included as part of the required dining, activity, and living floor space area.

(g) Handicap accessible outdoor areas for individual and group activities shall be provided.

(h) For nursing beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each occupant with a minimum of 36 cubic feet of clothing storage space at least half of which is for hanging clothes.

(i) For adult care home beds, separate bedroom closets or wardrobes shall be provided in each bedroom to provide each adult care home resident with a minimum of 48 cubic feet of clothing storage space at least half of which is for hanging clothes.

(j) Some means for patients and residents to lock personal articles within the facility shall be provided.

(k) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided in each patient room. One tub or shower shall be provided for each 15 beds not

individually served. There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.

(l) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

- (1) a medication preparation area with a counter, a sink with four-inch faucet trim handles, a medication refrigerator, eye level medication storage, cabinet storage and double locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
- (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
- (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water closet with a device for cleaning bedpans and a means for washing and sanitizing bedpans and other utensils;
- (4) a nurses' toilet and locker space for coats, purses, and personal belongings;
- (5) an audio-visual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
- (6) a soiled linen storage room;
- (7) a clean linen storage room;
- (8) a nourishment station in an area enclosed with walls and doors which contains work space, cabinets and refrigerated storage, and a small stove, microwave oven or hot plate; and
- (9) one nurses' station consisting of desk space for writing, storage space for office supplies, storage space for patients' records and space for nurses' call equipment.

(m) Clean linen storage shall be provided in a separate room from bulk supplies. Clean linen for nursing units may be stored in closed carts, or cabinets in the clean utility room, or in a linen closet on the unit floor.

(n) A soiled linen room shall be provided.

(o) Each nursing unit shall be provided with at least one janitor's closet. The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care and employee facilities shall be provided janitor's closets and may share one as a group.

(p) Stretcher and wheelchair storage shall be provided.

(q) Bulk storage shall be provided at the rate of five square feet of floor area per bed.

(r) Office space shall be provided for persons holding the following positions: administrator, director of nursing, social services director, activities director and physical therapist. There shall also be a business office.

(s) Each combination facility shall provide a minimum of one residential washer and residential dryer located to be accessible by adult care home staff, residents, and family, unless personal laundry service is provided by the facility.

History Note: Authority G.S. 131E-104;

Eff. January 1, 1996;
Amended Eff. October 1, 2008.

10A NCAC 46 .0301 MINIMUM STANDARD HEALTH DEPARTMENT: STAFFING

In addition to meeting the requirements in 10A NCAC 48B .0103, to be accredited pursuant to G.S. 130A-34.1, a local health department shall meet the following requirements:

- (1) The local health department shall employ a full-time health director, a full-time public health nurse, a full-time registered sanitarian, and a full-time secretary. For this Rule, full-time means the employee is employed to work a standard work week of the local health department. However, the local health department may share a local health director with one or more other local health departments.
- (2) All local health department nurses shall either:
 - (a) Have a nursing degree from a baccalaureate school accredited by the National League for Nursing or the Commission on Collegiate Nursing Education; or
 - (b) Complete within one year of employment with the health department an introductory course in principles and practices of public health and public health nursing sponsored by the Department. The curriculum for the course shall be developed by the Department with input from local health departments and schools of nursing.

History Note: Authority G.S. 130A-5(3); 130A-9; 130A-34.1;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. July 1, 1985;
Transferred and Recodified from 10 NCAC 12 .0101 Eff. April 4, 1990;
Amended Eff. October 1, 2008; September 1, 1990.

10A NCAC 70F .0101 SCOPE

The rules in this Subchapter apply to agencies that receive children for the purpose of placement in family foster homes, therapeutic foster homes, adoptive homes, and residential maternity homes. In addition, if agencies provide therapeutic foster care services, the rules in 10A NCAC 27G .0203 and .0204; 10A NCAC 70E; and 10A NCAC 70G apply. The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for child-placing agencies for adoption, child-placing agencies for foster care, and residential maternity homes.

History Note: Authority G.S. 131D-1; 131D-10.3;
131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. January 1, 2002; July 1, 1990;
Temporary Amendment Eff. February 1, 2002;
Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70F .0102 LICENSURE

- (a) Licensure is required in accordance with G.S. 131D-10.3.
- (b) Licenses shall be in effect for two years unless suspended or revoked. Appeal procedures specified in 10A NCAC 70L .0301 shall apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.
- (c) Applicants shall inform the licensing authority of any current licenses or licenses held in the past five years for child-placing agencies, maternity homes, or residential child-care facilities in other states. Applicants shall provide written documentation from the licensing authority in other states regarding violations, penalties, or probationary status imposed in other states.

History Note: Authority G.S. 131D-1; 131D-10.3;
131D-10.5; 143B-153;
Eff. February 1, 1986;
Amended Eff. July 18, 2002; July 1, 1990;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. October 1, 2008; August 1, 2004.

10A NCAC 70F .0201 GOVERNANCE

- (a) A private child-placing agency and residential maternity home shall have a governing body that exercises authority and has responsibility for its operation, policies, and practices. The private child-placing agency and maternity home shall notify the licensing authority of the type and structure of the governing body.
- (b) A private child-placing agency and a residential maternity home that operates under articles of incorporation shall file the articles of incorporation with the Department of the Secretary of State (<http://www.secretary.state.nc.us>) The articles shall have a statement of purpose that describes the geographic area to be served, kinds of clients to be served, and the range of services to be provided. An official copy of the articles of incorporation shall be submitted to the licensing authority.
- (c) In the case of non-profit or for-profit corporations, the governing body shall:
 - (1) be composed of no fewer than six members to include men and women;
 - (2) provide for a system of rotation for board members and limitation to the number of consecutive terms a member may serve;
 - (3) establish standing committees;
 - (4) provide orientation for new members; and
 - (5) meet at least four times annually with a quorum present.
- (d) An agency shall submit to the licensing authority a list of members of the governing body. This list shall indicate the name, address, and term of membership of each member and shall identify each officer and the term of that office.

(e) A governmental agency shall identify the statutory basis for its authority to operate a child-placing agency or a residential maternity home.

(f) The agency shall permanently maintain meeting minutes of the governing body and committees.

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008; July 1, 1990.

10A NCAC 70F .0202 RESPONSIBILITIES OF THE GOVERNING BODY

(a) The governing body shall provide leadership for the agency and shall establish the agency's policies and programs.

(b) The governing body shall employ an executive director who is located in the administrative office within the geographical boundaries of North Carolina and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.

(c) The governing body shall require the executive director provide a signed statement that the executive director has no criminal, social or medical history that would adversely affect his or her capacity to work with children and adults. The governing body shall ensure that the criminal histories of an executive director are checked prior to employment and based on the criminal history; a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not 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. The governing body shall require that the executive director provide a signed statement that he or she has not abused, neglected or exploited a disabled adult and that he or she has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

(d) The governing body shall annually evaluate the executive director's performance except a sole proprietor or partner is exempt from this Rule if he or she serves as executive director.

(e) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall submit an annual audit of their financial statements

to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

(f) The governing body shall annually evaluate the agency's services. This evaluation shall include the agency's interaction with other community agencies to serve its clients.

(g) The governing body shall establish in writing the policies and procedures for control and access to and receipt, use, or release of information about its clients.

(h) The governing body of child-placing agencies providing foster care services shall develop a written disaster plan that is provided to agency personnel and foster parents. The disaster plan shall be prepared and updated at least annually. The governing body of residential maternity homes shall comply with 10A NCAC 70K .0315(g).

(i) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and storage of client records. The specifics of this plan shall be submitted to the licensing authority before the actual closing of the agency.

History Note: Authority G.S. 131D-1; 131D-10.5; 131D-10.6; 143B-153; Eff. February 1, 1986; Amended Eff. July 1, 1990; Temporary Amendment Eff. February 1, 2002; Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70F .0203 FINANCES, FEES AND INSURANCE

(a) Child-placing agencies and residential maternity homes shall have a written line item budget, showing planned expenditures and revenues available to operate the agency for a 12 month period. A copy of the budget shall be submitted to the licensing authority prior to initial licensure and biennially thereafter.

(b) Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

(c) Child-placing agencies and residential maternity homes shall have a written policy on fees for services which shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency shall make the policy available to applicants for services at the time an application for service is made and to the public upon request.

(d) Adoption agencies that provide international adoption services shall inform prospective adoptive parents of the estimated or actual expenses associated with an international adoption that includes:

- (1) application fees;
- (2) preplacement assessment (home study) fees;
- (3) pre-adoption service fees;
- (4) government and facilitator fees;
- (5) placement service fees;
- (6) post-placement and post-adoption service fees;

- (7) travel and other costs and fees in the child's country of origin; and
 - (8) additional costs associated with the adoption.
- (e) Child-placing agencies and residential maternity homes shall notify the licensing authority, parents, guardian, and legal custodian (if applicable) of its status related to liability insurance for the agency and staff to applicants for services at the time an application for service is made.

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008; July 1, 1990.

10A NCAC 70F .0204 AGENCY SETTING

- (a) The agency shall maintain an administrative office within the geographical boundaries of North Carolina from which the activities carried out under the North Carolina license are handled.
- (b) The agency shall provide and maintain office space, equipment and supplies to ensure the following:
 - (1) confidentiality and safekeeping of records;
 - (2) privacy for interviewing and conferences; and
 - (3) availability of visiting rooms for families and children.
- (c) The current license shall be posted at all times in a conspicuous place in the primary administrative North Carolina office of the agency.
- (d) The administrative office of a child-placing agency for foster care and a child-placing agency for adoption shall not be located in a private residence that is occupied, a group home or maternity home that is occupied, a crisis pregnancy center or any other similar occupied dwelling, business, or facility. The office of a residential maternity home may be located in the maternity home.

History Note: Authority G.S. 131D-1; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008.

10A NCAC 70F .0205 RESPONSIBILITY TO LICENSING AUTHORITY

- (a) The agency shall submit, biennially to the licensing authority, the information and materials to document compliance with the licensure rules and to support issuance of a license.
- (b) The agency shall submit to the licensing authority a biennial statistical report of program activities.
- (c) The agency shall provide written notification to the licensing authority of a change in the executive director within 72 hours.
- (d) The agency shall provide written notification to the licensing authority of any changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70E, 70F, 70G, 70H, or 70K. The agency shall receive written approval from the licensing authority before instituting any changes in policies and procedures.
- (e) Child-placing agencies for foster care shall comply with requirements related to the handling and reporting of critical incidents in accordance with 10A NCAC 70G .0513. Residential maternity homes shall comply with requirements

related to the handling and reporting of critical incidents in accordance with 10A NCAC 70K .0210.

- (f) When there is a death of a child or resident in placement in a home supervised by the agency, the executive director or his or her designee shall notify the licensing authority within 72 hours.
- (g) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner and holds at least five percent interest of the agency.
- (h) The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.
- (i) The agency shall notify the local management entity within 24 hours of placement that a child may require Mental Health, Developmental Disability or Substance Abuse services.
- (j) If a child-placing agency for foster care is monitored by a local management entity, the agency shall provide data to the local management entity, as required by Department of Health and Human Services for monitoring and reporting to the General Assembly.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. July 18, 2002; July 1, 1990; Temporary Amendment Eff. July 1, 2003; Amended Eff. October 1, 2008; August 1, 2004.

10A NCAC 70F .0206 PERSONNEL POLICIES

- (a) The agency shall have written policies for all employees (full-time, part-time and contracted) which include the following:
 - (1) written job descriptions and titles for each position defining the qualifications, duties, and lines of authority;
 - (2) salary scales;
 - (3) a description of employee benefits;
 - (4) opportunities for professional growth through supervision, orientation, in-service training, and staff development;
 - (5) procedures for annual evaluation of the work and performance of each staff member which includes provision for employee participation in the evaluation process;
 - (6) a description of the termination procedures established for resignation, retirement, or discharge; and
 - (7) a written grievance procedure for employees.
- (b) The agency shall have a personnel file for each employee (full-time, part-time and, contracted) which includes the following:
 - (1) the application for employment, including record of work experience;
 - (2) documentation of at least three references;
 - (3) applicable professional credentials or certifications (prior to employment certified college transcripts shall be obtained for positions requiring college degrees);

- (4) signed statement indicating the employee's understanding of and willingness to comply with confidentiality requirements;
- (5) signed statement that the employee has no criminal, social, or medical history which would adversely affect the employee's capacity to work with children and adults;
- (6) criminal record checks certified by the Clerk of Superior Court;
- (7) results of the search of the North Carolina Sex Offender and Public Protection Registry;
- (8) results of the search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256);
- (9) results of the Responsible Individuals List as defined in 10A NCAC 70A .0102 that indicate the employee has not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
- (10) signed statement that the applicant has not abused or neglected a child, has been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child;
- (11) signed statement that the applicant has not abused, neglected, or exploited a disabled adult;
- (12) signed statement that the applicant has not been a domestic violence perpetrator;
- (13) log of training;
- (14) annual performance evaluations;
- (15) documentation of disciplinary actions;
- (16) documentation of grievances files;
- (17) employee's starting and termination dates; and
- (18) reason for termination.

(c) The agency shall have written procedures which safeguard the confidentiality of the personnel records.

History Note: Authority G.S. 131D-1; 131D-10.5; 131D-10.6; 143B-153;

Eff. February 1, 1986;

Amended Eff. October 1, 2008; July 1, 1990.

10A NCAC 70F .0207 STAFF

- (a) The agency shall verify prior to employment the personal qualifications of employees through at least three references.
- (b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults. Prior to employment, the agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the applicant has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The agency shall require that each applicant

provide a signed statement that the applicant has not 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. Prior to employment, a certified criminal record check for the applicant shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness for employment. The agency shall require that each applicant provide a signed statement that the applicant has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(c) The agency shall employ staff qualified to perform administrative, supervisory, direct care, social work, therapeutic, and placement services.

(d) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff shall maintain strict confidentiality concerning contents of the case records.

(e) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart shall be submitted prior to initial licensure and biennially thereafter.

(f) An agency which uses volunteers and interns as unpaid staff to work directly with clients shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require three references relevant to the role and responsibilities to be assumed;
- (3) designate a staff member to supervise and evaluate volunteers and interns;
- (4) develop and implement a plan for the orientation and training of volunteers and interns in the philosophy of the agency and the needs of the clients and their families; and
- (5) require that each volunteer and intern provide a signed statement that they have no criminal, social or medical history that would adversely affect their capacity to work with children and adults. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the intern or volunteer has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness to serve as a volunteer or intern. Prior to beginning volunteer or intern duties, a certified criminal record check shall be obtained and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry

(pursuant to G.S. 131E-256), and based on these findings, a decision is made concerning the individual's fitness to serve as a volunteer or intern. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused or neglected a child, been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused, neglected, or exploited a disabled adult and has not been a domestic violence perpetrator.

History Note: Authority G.S. 131D-1; 131D-10.5; 131D-10.6; 143B-153;
Eff. February 1, 1986;
Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70F .0208 CONFIDENTIALITY

(a) The agency shall develop and enforce a policy on confidentiality that will:

- (1) identify the individuals with access to or control over confidential information;
- (2) specify that persons who have access to records or specified information in a record be limited to persons authorized pursuant to law. These persons include the client; the parents or guardian or legal custodian when the client is a minor; agency staff; auditing, licensing, or accrediting personnel; and those persons for whom the agency has obtained a signed consent for release of confidential information;
- (3) require that when a client's information is disclosed, a signed consent for release of information is obtained on a consent for release form signed by the parent(s), guardian, legal custodian or client, if age 18 or older;
- (4) provide a secure place for the storage of records with confidential information;
- (5) inform any individual with access to confidential information of the provisions of this Rule;
- (6) ensure that, upon employment and whenever revisions are made to the policy, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
- (7) permit a client to review his or her case record in the presence of agency personnel on the agency premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record, unless agency personnel determines the information in the client's case record would be harmful to the client;

- (8) in cases of perceived harm to the client, document in writing any refusals to share information with the client, parents, guardian or legal custodian;
 - (9) maintain a confidential case record for each client;
 - (10) maintain confidential personnel records for all employees (full-time, part-time and contracted); and
 - (11) maintain confidential records for all volunteers and interns;
- (b) A child-placing agency for foster care and a residential maternity home may destroy in office:
- (1) the closed record of a child or resident who has been discharged from foster care or residential maternity care for a period of three years unless included in a federal or state fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits; and
 - (2) a record three years after a child or resident has reached age 18, unless included in a federal fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.

(c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of G.S. 8-45.1, following which the original files may be destroyed by a shredding process. The adoption agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application, unless included in a federal or state fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.

History Note: Authority G.S. 131D-10.5; 143B-153;
Temporary Adoption Eff. February 1, 2002;
Eff. July 18, 2002;
Amended Eff. October 1, 2008.

10A NCAC 70F .0209	CLIENT RIGHTS
10A NCAC 70F .0210	GRIEVANCE PROCEDURES
10A NCAC 70F .0211	SEARCHES
10A NCAC 70F .0212	MEDICATION
ADMINISTRATION	
10A NCAC 70F .0213	HOME-SCHOOLING

History Note: Authority G.S. 131D-10.5; 143B-153;
Temporary Adoption Eff. February 1, 2002;
Eff. July 18, 2002;
Repealed Eff. October 1, 2008.

10A NCAC 70G .0101	SCOPE
10A NCAC 70G .0102	ORGANIZATION AND ADMINISTRATION

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

Eff. February 1, 1986;

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

Repealed Eff. October 1, 2008.

10A NCAC 70G .0201 PERSONNEL
10A NCAC 70G .0202 INTAKE PROCEDURES AND PRACTICES
10A NCAC 70G .0203 CASE PLAN
10A NCAC 70G .0204 PLACEMENT SERVICES
10A NCAC 70G .0205 RECORDS

History Note: Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Repeal Eff. October 1, 2008.

10A NCAC 70G .0206 ASSESSMENT AND TREATMENT/HABILITATION OR SERVICE PLAN
10A NCAC 70G .0207 CLIENT RECORDS FOR CHILDREN RECEIVING MENTAL HEALTH TREATMENT SERVICES
10A NCAC 70G .0208 MEDICATION REQUIREMENTS
10A NCAC 70G .0209 BEHAVIOR MANAGEMENT AND DISCIPLINE

History Note: Authority G.S. 131D-10.5; 143B-153; S.L. 1999-237;

Eff. February 18, 2008;

Amended Eff. July 1, 1990;

Repealed Eff. October 1, 2008.

10A NCAC 70G .0301 STAFFING REQUIREMENTS
10A NCAC 70G .0302 TRAINING REQUIREMENTS

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

Eff. September 1, 2007;

Repealed Eff. October 1, 2008.

10A NCAC 70G .0401 SCOPE

The rules in this Subchapter apply to persons who receive children for the purpose of placement in family foster homes and therapeutic foster homes. Persons licensed or seeking a license to provide family foster care and therapeutic foster care services for children shall comply with 10A NCAC 70C, 70D, 70E, 70F and 70G. In addition, persons licensed or seeking a license to provide therapeutic foster care services shall comply with 10A NCAC 27G .0203 and .0204. The North Carolina Department of Health and Human Services, Division of Social Services is the licensing authority for child-placing agencies for foster care.

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

Eff. October 1, 2008.

10A NCAC 70G .0402 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 70G:

- (1) "Agency" means a child placing agency as defined in G.S. 131D-10.2 that is authorized by law to receive children for purposes of placement in foster homes or adoptive homes.
- (2) "Family Foster Home" has the meaning as defined in G.S. 131D-10.2(8).
- (3) "Family Foster Care" means a planned, goal-directed service in which the temporary protection and care of children take place in a family foster home. Family foster care is a child welfare service for children and their parents who must live apart from each other for a period of time due to abuse, neglect, dependency, or other circumstances necessitating out-of-home care.
- (4) "Guardian" means an individual as defined in G.S. 7B-600 who is appointed by the court to serve as the guardian of the person for a juvenile. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces and enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. Guardian also means an individual appointed by the clerk of court in North Carolina to exercise all the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21A of Chapter 35A whose authority has actually commenced and also means an individual appointed in another jurisdiction according to the law of that jurisdiction who has the powers consistent with G.S. 35A-1241.
- (5) "Legal Custodian" means a person or agency that has been awarded legal custody of a juvenile by a court of competent jurisdiction.
- (6) "Licensing Authority" means the North Carolina Division of Social Services.
- (7) "Out-of-Home Family Services Agreement" is a Division of Social Services document required of all children in the custody of a county department of social services receiving family foster care services or therapeutic foster care services. This agreement is used to define the primary permanency plan; to identify the family's strengths and needs; to set objectives and case activities to assist the family in resolving those issues that place the child at risk; to specify consequences if the plan does or does not succeed; and to establish the alternative permanency plan if the primary plan does not succeed. The agreement must address the services to be provided or arranged; the visitation plan designed to

maintain links with the family; expectations of the family, agency, placement provider and community members; target dates; and expected outcomes.

- (8) "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.
- (9) "Parent" means the birth parent or adoptive parent.
- (10) "Person-Centered Plan" is a Division of Mental Health, Developmental Disabilities and Substance Abuse Services document and must be completed on all children receiving therapeutic foster care services. The person-centered plan is the umbrella under which all planning for treatment, services and supports occurs. Person-centered planning begins with the identification of the reason the individual/family is requesting assistance. It focuses on the identification of the individual's/family's needs and desired life outcomes--not just a request for a specific service. The plan captures all goals and objectives and outlines each team member's responsibilities within the plan.
- (11) "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.
- (12) "Therapeutic Foster Care" means a foster home where the foster parent has received additional training in providing care to children with behavioral mental health or substance abuse problems.

History Note: Authority G.S. 131D-10.1; 131D-10.3; 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70G .0501 PERSONNEL

- (a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.
- (b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall have a bachelor's

degree from a college or university listed in the most current edition of the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

- (c) The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.

- (d) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Social workers providing foster home licensing services (licensing 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 worker and serve no more than ten children and ten foster families. Agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than eight children and eight foster families.

- (e) 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	6-11
3	12-17
There shall be one additional supervisor for every one to five additional social workers.	

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70G .0502 APPLICATION PROCEDURES AND PRACTICES

- (a) The policies for acceptance of an applicant for services shall be in writing and shall relate to the stated purpose of the agency.
- (b) Acceptance of an applicant for services shall be limited to those for whom the agency is qualified by staff, program and services to provide services.
- (c) There shall be an application for services to place a child signed by the parent, guardian, legal custodian, or authorized representative of the legal custodian.
- (d) The child shall be accepted for placement by a written placement agreement signed by the parent, guardian, legal custodian or authorized representative of the legal custodian.

History Note: Authority G.S. 131D-10.5; 143B-153; 143B-154;

Eff. October 1, 2008.

10A NCAC 70G .0503 PLACEMENT SERVICES

(a) The agency shall assist the parents or guardian to assume or resume their parental roles and responsibilities as specified in the out-of-home family services agreement or person-centered plan.

(b) The agency shall assist the parents or guardian to gain access to the services necessary to accomplish the goals and objectives specified in the out-of-home family services agreement or person-centered plan.

(c) The agency shall encourage contacts between parents or guardian and children after placement, in accordance with the visitation and contact plan.

(d) The agency shall have a signed agreement with the parents, guardian or legal custodian of the child in care which includes the expectations and responsibilities of the agency and the parents, guardian or legal custodian for carrying out the steps to meet the out-of-home family services agreement or person-centered plan goals, the financial arrangements for the child in care, and visitation and contact plans.

(e) The agency shall select the most appropriate form of care for the child consistent with the needs of the child, parents and guardian for family foster care or therapeutic foster care. The agency shall provide for any services the child may need and shall make every effort when placing the child to select the least restrictive and most appropriate setting closest to the child's home.

(f) The agency shall document any need to place a child in a family foster home or therapeutic foster home that is beyond a radius of 150 miles from the child placing agency and the child's parents or guardian.

(g) The agency, when selecting care, shall take into consideration a child's racial, cultural, ethnic, and religious heritage and preserve them to the extent possible without jeopardizing the child's right to care.

(h) The agency shall involve the parents or guardian in the selection of the placement.

(i) The family foster home or the therapeutic foster home shall be licensed by the Division of Social Services.

(j) The agency social worker for the child shall become acquainted with the child and family prior to placement, except when a child is placed on an emergency basis or in the case of an infant;

(k) The agency social worker shall help the child understand the reasons for placement and prepare him or her for the new environment. The social worker shall, except when placing under emergency conditions, arrange at least one preplacement visit for the child and shall be available to the child, the parents or guardian, and foster parents for supportive services.

(l) No child shall be accepted into a foster home without having had a current medical examination by a licensed medical provider (physician, physician's assistant or nurse practitioner). Medical examinations completed by a licensed medical provider within 12 months prior to the admission of the child in foster care are considered current. If a child has not had a medical examination by a licensed medical provider within 12 months prior to admission, the agency shall arrange a medical examination for the child within two weeks after admission or sooner if indicated by the child's health condition. The medical

examination report shall include a signed statement by a licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the foster home. If a child is in the custody of a county department of social services, is already scheduled to have and is having a medical examination completed annually, and is entering a foster home, the schedule of annual medical examinations do not have to be changed. A copy of the most recent medical examination report shall be obtained from the responsible county department of social services by the agency.

(m) The agency shall obtain and record a developmental history for each child.

(n) The agency shall supervise the care of the child and shall coordinate the planning and services for the child and family as stated in the out-of-home family services agreement or person-centered plan.

(o) Children in family foster homes and therapeutic foster homes shall have a monthly face-to-face contact by the social worker or case manager or more if specified in the out-of-home family services agreement or person-centered plan. The parents or guardian of children in family foster care and therapeutic foster care shall have a monthly face-to-face contact by the social worker or case manager unless the out-of-home family services agreement or person-centered plan indicates a different schedule of face-to-face contacts.

(p) The agency social worker or case manager shall meet with the children and the parents, guardian or legal custodian, either separately or together based on the out-of-home family services agreement or person-centered plan to assess and work on the following:

- (1) progress in resolving problems which precipitated placement;
- (2) parent and child relationship difficulties;
- (3) adjustment to separation;
- (4) adjustment to placement; and
- (5) achievement of out-of-home family services agreement goals or person-centered plan goals.

(q) The agency shall refer the child's parents or guardian to other agencies in the community if they require services the agency does not provide and it is specified in the out-of-home family services agreement or person-centered plan. The agency shall receive reports from the agency providing services regarding the parents' or guardian's progress or lack of progress.

(r) The agency shall make provisions for social work, mental health and health care services as stated in the out-of-home family services agreement or person-centered plan.

(s) The agency shall give foster parents assistance, training, consultation, and emotional support in caring for children and in resolving problems related to their role as foster parents. Family foster care parents shall have one face-to-face contact per month by the social worker or case manager unless the out-of-home family services agreement indicates a different schedule of face-to-face contacts for each family foster care child placed in the home. Phone support and 24-hour on-call support shall be provided to family foster care parents and therapeutic foster care parents. The agency shall provide each foster parent with a Foster Parent Handbook that outlines agency procedures, requirements and expectations.

*History Note: Authority G.S. 131D-10.5;
Eff. October 1, 2008.*

10A NCAC 70G .0504 OUT-OF-HOME FAMILY SERVICES AGREEMENT FOR CHILDREN RECEIVING FAMILY FOSTER CARE SERVICES

(a) The agency shall develop a written out-of-home family services agreement within 30 days of admission of a child in a family foster home. The out-of-home family services agreement shall be developed in cooperation with the child, parents, guardian or legal custodian and foster parents when possible. The out-of-home family services agreement shall be based upon an assessment of the needs of the child, parents or guardian. The out-of-home family services agreement shall include goals stated in specific, realistic, and measurable terms and plans that are action oriented, including specific responsibilities of staff, parents or guardian, other family members, legal custodian, foster parents and the child.

(b) The out-of-home family services agreement shall be reviewed by the agency within 60 days of placement, the second out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months. Parents, guardian, legal custodian, foster parents, the child, as well as any individual or agency designated as providing services, shall participate in the reviews to determine the child's and parents' or guardian's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the child-placing agency, the department of social services, parents or guardian, foster parents, other service providers and child shall develop a single out-of-home family services agreement. The child-placing agency and foster parents shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) may serve as the out-of-home family services agreement for the child-placing agency if the documents reflect input and participation by the child-placing agency and foster parents.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70G .0505 PERSON-CENTERED PLAN FOR CHILDREN RECEIVING THERAPEUTIC FOSTER CARE SERVICES

(a) When therapeutic foster care services are provided, the agency shall complete an assessment for each child prior to the delivery of services that shall include:

- (1) the child's presenting problem;
- (2) the child's needs and strengths;
- (3) the provisional or admitting diagnosis with an established diagnosis determined within 30 days of placement,
- (4) a social, family and medical history; and

- (5) evaluations or assessments, such as psychiatric, psychological, substance abuse, medical, vocational and educational, as appropriate to the child's needs.

(b) When services are provided prior to the establishment and implementation of the person-centered plan, strategies to address the child's presenting problem shall be documented.

(c) The person-centered plan shall be developed based on the assessment, in partnership with the child, parents, guardian and the legal custodian if applicable. A preliminary person-centered plan shall be developed within 24 hours following placement. A person-centered plan shall be developed within 30 days of placement for children who are expected to receive services beyond 30 days of placement.

(d) The person-centered plan for each therapeutic foster child shall include:

- (1) outcomes that are anticipated to be achieved by the provision of the service and a projected date of achievement;
- (2) strategies for achieving the outcomes;
- (3) staff responsibilities;
- (4) responsibilities of the child, parents, guardian or legal custodian and the responsibilities of the foster parents;
- (5) a schedule for review of the person-centered plan at least annually in consultation with the child, parents, guardian or legal custodian;
- (6) basis for an evaluation or assessment of outcome achievement; and
- (7) written consent or agreement by the child, parents, guardian and legal custodian if applicable or a written statement by the agency stating the reason such consent could not be obtained.

(e) If a child is in the custody of a county department of social services and is placed in a therapeutic foster home, an out-of-home family services agreement shall also be completed. The outcomes, objectives and strategies of the person-centered plan and the out-of-home family services agreement shall be consistent and compatible.

*History Note: Authority G.S. 131D-10.5;
Eff. October 1, 2008.*

10A NCAC 70G .0506 CLIENT RECORDS

(a) The agency shall maintain an individual record for each child receiving foster care services which contains:

- (1) an application for services that includes:
 - (A) demographic information about the child, including name, address, sex, race, birth date, birth place, educational information, medical information and client record number;
 - (B) demographic information about the parents or guardian of the child, including names, addresses, telephone numbers, birth dates, races, religion and marital status;

- (C) demographic information about the siblings and other relatives of the child, including names, addresses, and telephone numbers;
 - (D) the reasons the child was removed from the home of his or her parents;
 - (E) a record of the child's prior placements with names and addresses of foster parents and other caregivers and dates of care provided by each foster parent or caregiver, and
 - (F) the services the agency shall provide the child and his or her parents or guardian.
 - (2) legal documents of importance to the child including a birth certificate and any court dispositions;
 - (3) pre-admission medical examination report or a medical examination report completed within two weeks of admission (unless the child's health status indicates the completion of a medical examination report sooner) and copies of subsequent medical examination reports;
 - (4) medical reports including medical history, cumulative health history, immunization records, and available psychological and psychiatric reports; and if applicable:
 - (A) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Revised DSM IV;
 - (B) documentation of screening and assessment;
 - (C) medication orders and Medication Administration Record (MAR);
 - (D) documentation of medication administration errors;
 - (E) documentation of adverse drug reactions; and
 - (F) orders and copies of lab tests;
 - (5) educational assessments, records and reports of school-age children;
 - (6) intake study which includes initial social assessment and background of parents or guardian and the circumstances leading to the decision to place the child;
 - (7) signed out-of-home family services agreement or person-centered plan along with out-of-home family services agreement or person-centered plan reviews which reflect the status of the child, parents or guardian in relation to the out-of-home family services agreement or person-centered plan and any progress or lack of progress in the goals of the out-of-home family services agreement or person-centered plan;
 - (8) documentation of services provided;
 - (9) documentation which reflects the dates and content of social worker's or case manager's visits with the child;
 - (10) documentation of the agency's involvement with the parents, guardian or legal custodian, including services offered, delivered, or rejected;
 - (11) documentation which includes the content of any administrative or service reviews;
 - (12) a visitation and contact plan that specifies the child's contacts with parents, guardian, siblings and other family members and individuals who may have contact with the child;
 - (13) consents for release of information;
 - (14) a signed statement from the parents, guardian or legal custodian, granting permission to seek emergency care from a hospital or licensed medical provider;
 - (15) emergency information for each child that shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the child's preferred licensed medical provider;
 - (16) authorization from the parents, guardian, legal custodian or licensed medical provider to administer non-prescription medications;
 - (17) consents for overnight travel and other travel consents based on the requirements of the parents, guardian or legal custodian;
 - (18) consents for time-limited audio-visual recordings signed by the parents, guardian or legal custodian, and child, if 12 years of age or older;
 - (19) documentation of searches for drugs, weapons, contraband or stolen property, including date and time of the search, action taken by foster parents and the agency, name of foster parent informing the agency, the date and time the agency is informed of the search, the date and time of the notification to the child's parents, guardian or legal custodian; and
 - (20) discharge summary including date and time of discharge, the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met, and plans for the services needed to meet these goals.
- (b) If the agency maintains a separate record on the parents and guardians of children whom they place into care, the parents' or guardians' record shall contain:
- (1) demographic information including names, addresses, birth dates, races, religion, family composition;
 - (2) social histories, including any psychological or psychiatric reports and medical histories;

- (3) strengths and needs of the parents or guardian and the services required;
- (4) signed agreements between the agency and parents or guardian;
- (5) summary of dates of contacts and progress toward goals;
- (6) case review reports; and
- (7) discharge summary.

(c) Documentation shall be entered into the child's, parents' or guardian's records within five days of occurrence.

(d) The agency shall keep separate records for each family foster home which contains:

- (1) application;
- (2) mutual home assessment;
- (3) medical examination reports;
- (4) fire inspection safety report;
- (5) environmental conditions checklist;
- (6) proof of high school diploma or GED;
- (7) dates and content of worker's contacts with the foster family;
- (8) training record that includes all required and ongoing training;
- (9) foster parent agreement signed by foster parents and agency representative;
- (10) discipline agreement signed by foster parents and agency representative;
- (11) three references relevant to the role and responsibilities of a foster parent;
- (12) annual assessment of strengths and needs of the foster family in providing foster care to children;
- (13) chronological record of all placements of children receiving care in the home, including the dates of their care and an assessment of the care;
- (14) written approval letter from executive director or his or her designee authorizing foster parents to administer physical restraint holds, if applicable;
- (15) signed statement by the foster parents and adult members of the household that they have not been found to have abused or neglected a child or have not 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.
- (16) signed statement by the foster parents and adult members of the household that they have not been confirmed or substantiated for abusing, neglecting or exploiting a disabled adult;
- (17) documentation of the results of the search of the Responsible Individual's List as defined in 10A NCAC 70A .0102 for all adult members of the household that indicate they have not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;

- (18) signed statement by the foster parents and adult members of the household that they have not been a domestic violence perpetrator;
- (19) documentation of the results of the search of the North Carolina Sex Offender and Public Protection Registry of all adult members of the household;
- (20) documentation of the results of the search of the North Carolina Nurse Aide Registry pursuant to G. S. 131E-255 of all adult members of the household;
- (21) documentation of the results of the search of the North Carolina Health Care Personnel Registry pursuant to G.S. 131E-256 of all adult members of the household;
- (22) copies of waivers, as specified in 10A NCAC 70L .0102; and
- (23) when closed, a summary containing reasons for the closing of the home and an assessment of the strengths and needs of the foster family in providing foster care to children.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70G .0507 CLIENT RIGHTS

- (a) The agency shall develop and implement policies and procedures to protect the individual rights and dignity of children and families who are provided services by the agency.
- (b) The agency shall have a client's and family's rights policy that complies with 10A NCAC 70E .1101(a).
- (c) The agency shall have a policy that prohibits direct involvement by a child in funds solicitation for the agency.
- (d) The agency shall have a policy, which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian or legal custodian and child, if 12 years of age or older.
- (e) Each agency shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70G .0508 GRIEVANCE PROCEDURES

- (a) The agency shall provide to each child and parents, guardian or legal custodian, upon placement:
 - (1) a written description of policies and procedures that the child and parents, guardian or legal custodian follow to register complaints;
 - (2) information about client's and parents', guardian's or legal custodian's rights;
 - (3) the process for appealing a decision or action of the agency; and
 - (4) the process of resolution of a complaint.
- (b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the child's record.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70G .0509 SEARCHES

(a) The agency shall have written policies and procedures regarding foster parents conducting searches of children's rooms and possessions that shall be discussed with the parents, guardian or legal custodian, and child prior to or upon placement.

(b) The search policies and procedures shall include:

- (1) circumstances under which searches are conducted;
- (2) persons who are allowed to conduct searches;
- (3) provision for documenting searches and informing the agency, parents, guardian and legal custodian of searches; and
- (4) provision for removing and disposing of items seized as a result of searches.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

**10A NCAC 70G .0510 MEDICATION
ADMINISTRATION REQUIREMENTS**

(a) The agency shall have written policies and procedures regarding foster parents administering medications to children placed in their home that shall be discussed with each child and the child's parents, guardian or legal custodian, prior to or upon placement.

(b) These policies and procedures shall address medication:

- (1) administration;
- (2) dispensing, packaging, labeling, storage and disposal;
- (3) review;
- (4) education and training; and
- (5) documentation, including medication orders, Medication Administration Record (MAR), orders and copies of lab tests, and medication administration errors and adverse drug reactions.

(c) Upon discharge of a child from foster care, the foster parents or the agency shall return prescription medication to the person or agency legally authorized to remove the child from foster care. Unwanted, out-dated, improperly labeled, damaged, adulterated or discontinued prescription medications shall be returned to a pharmacy for disposal.

(d) The agency shall ensure that each child started or maintained on a medication by a licensed medical provider receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee. In instances where the ability of the child to understand the education is questionable, the agency shall ensure that a responsible person receives either oral or written education regarding the prescribed medication by the licensed medical provider or his or her designee and provides either oral or written instructions to the child. The agency shall ensure that the medication education provided is sufficient to enable the child or other responsible person to make an informed consent, to safely administer the

medication and to encourage compliance with the prescribed regimen.

*History Note: Authority G.S. 131D-10.5;
Eff. October 1, 2008.*

10A NCAC 70G .0511 HOME-SCHOOLING

(a) The agency shall have written policies and procedures regarding foster parents providing home-schooling to children placed in their home that shall be discussed with the child and the child's parents, guardian or legal custodian prior to or upon placement.

(b) The home-schooling policies and procedures shall include:

- (1) a requirement for the foster parents to meet the provisions of Part 3 of Article 39 of Chapter 115C of the General Statutes;
- (2) an educational assessment of the child that establishes the need for home-schooling;
- (3) expectation of the child's placement to remain stable for the time period of home-schooling; and
- (4) parental or guardian consent, if the parents' or guardian's consent can be obtained and consent of the legal custodian.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

**10A NCAC 70G .0512 PHYSICAL RESTRAINT HOLDS,
BEHAVIOR MANAGEMENT AND DISCIPLINE**

(a) Agencies using physical restraint holds shall, within 72 hours of an incident involving a physical restraint, review the incident report to ensure that correct steps were followed and forward the report to the parents, guardian or legal custodian and the licensing authority on a report form developed by the licensing authority.

(b) Agencies shall submit a report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted.

(c) Agencies shall maintain reports of physical restraint holds in a manner consistent with the agency's risk management policies (clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency) and make them available to the licensing authority upon request.

(d) Foster parents who utilize physical restraint holds shall receive 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. 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. Foster parents shall be trained by instructors who have met the following qualifications and training requirements:

- (1) trainers shall demonstrate competence by scoring 100% on testing in a training program

- aimed at preventing, reducing and eliminating the need for restrictive interventions;
- (2) trainers shall demonstrate competence by scoring 100% on testing in a training program teaching the use of physical restraint; trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program;
- (3) 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;
- (4) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and shall include, but not be limited to, presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures;
- (5) trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint;
- (6) trainers shall be currently trained in CPR;
- (7) trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach,
- (8) trainers shall teach a program on the use of physical restraints at least once annually; and
- (9) trainers shall complete a refresher instructor training at least every two years.

(e) Foster parents shall receive written approval from the executive director or his or her designee of the supervising agency to administer physical restraint holds. A copy of this letter shall be placed in the foster home record.

(f) Agencies shall complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. The review of the policies and techniques shall be documented and submitted to the licensing authority at the time of relicensure as part of the reapplication process.

*History Note: Authority G.S. 131D-10.5; 143B-153
Eff. October 1, 2008.*

10A NCAC 70G .0513 CRITICAL INCIDENTS

(a) The agency shall have written policies and procedures for reporting critical incidents.

(b) The agency shall follow policies and procedures for handling any suspected incidents of abuse or neglect of a child involving staff, subcontractors, volunteers, interns or foster parents in a foster home supervised by the agency. The policies and procedures shall include:

- (1) a provision for reporting any suspicion of abuse or neglect to the appropriate county department of social services for investigation;

- (2) a provision for recording any suspected incident of abuse or neglect and for reporting it to the executive director or to the governing body;
- (3) a provision for notifying parents, guardian or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) a policy concerning the action to be taken when the incident involves a foster parent;
- (7) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (8) a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(c) Critical incident reports shall be submitted to the licensing authority by the executive director or his or her designee on a form provided by the licensing authority within 72 hours of the critical incident. Critical incidents involving a child in placement in a foster home supervised by the agency include the following:

- (1) a death of a child;
- (2) reports of abuse and neglect;
- (3) admission to a hospital;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours;
- (6) arrest for violations of state, municipal, county or federal laws; and
- (7) reports of physical restraint holds.

(d) Documentation of critical incidents shall include:

- (1) name of child or children involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) name of child's parent, guardian or legal custodian notified and the date and time of notification; and
- (8) approval of supervisory or administrative staff reviewing the report.

(e) When there is a death of a child in placement in a foster home supervised by the agency, the executive director or his or her designee shall notify the parent, guardian or legal custodian and the licensing authority within 72 hours of the death of the child.

(f) Critical incident reports shall be maintained in manner consistent with the agency's risk management policies that include clinical decisions and activities undertaken to identify,

evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency and shall be made available to the licensing authority upon request.

History Note: Authority G.S. 131D-1; 131D-10.5;
Eff. October 1, 2008.

10A NCAC 70H .0101	APPLICABILITY
10A NCAC 70H .0102	ORGANIZATION AND ADMINISTRATION
10A NCAC 70H .0103	INTAKE PROCEDURES AND PRACTICES
10A NCAC 70H .0104	CASE PLAN
10A NCAC 70H .0105	PLACEMENT SERVICES TO FAMILIES AND CHILDREN
10A NCAC 70H .0106	ADOPTIVE HOME RECRUITMENT
10A NCAC 70H .0107	ADOPTIVE HOME APPLICATION
10A NCAC 70H .0108	PREPLACEMENT ASSESSMENT
10A NCAC 70H .0109	NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT
10A NCAC 70H .0110	SERVICES TO ADOPTIVE APPLICANTS AND FAMILIES
10A NCAC 70H .0111	LEGAL PROCESS
10A NCAC 70H .0112	RECORDS

History Note: Authority G.S. 48-2-502; 48-3-204; 48-3-303; 110-57.1; 131D-10.3; 131D-10.5; 143B-153;

Eff. February 1, 1986;

Amended Eff. June 1, 1990;

Temporary Amendment Eff. Amended Eff. April 1, 1997; January 1, 1997; July 1, 1996; Eff. December 6, 1996;

Amended Eff. March 1, 1992; November 1, 1996;

Recodified from 10 NCAC 41P .0001 Eff. December 6, 1996 (70H .0101);

Recodified from 10 NCAC 41P .0002 Eff. December 6, 1996 (70H .0102);

Recodified from 10 NCAC 41P .0003 Eff. December 6, 1996 (70H .0103);

Recodified from 10 NCAC 41P .0004 Eff. December 6, 1996 (70H .0104);

Recodified from 10 NCAC 41P .0005 Eff. December 6, 1996 (70H .0105);

Recodified from 10 NCAC 41P .0006 Eff. December 6, 1996 (70H .0106);

Recodified from 10 NCAC 41P .0007 Eff. December 6, 1996 (70H .0107);

Recodified from 10 NCAC 41P .0008 Eff. December 6, 1996 (70H .0108);

Recodified from 10 NCAC 41P .0009 Eff. December 6, 1996 (70H .0109);

Recodified from 10 NCAC 41P .0110 Eff. December 6, 1996 (70H .0110);

Recodified from 10 NCAC 41P .0011 Eff. December 6, 1996 (70H .0111);

Recodified from 10 NCAC 41P .0012 Eff. December 6, 1996 (70H .0112);

Repealed Eff. October 1, 2008.

10A NCAC 70H .0201 SCOPE

(a) Rules in 10A NCAC 70H shall apply to all persons intending to provide adoption services which includes:

- (1) the provision of casework and other supportive services to biological parents considering adoption;
- (2) provision of casework and other supportive services to the child considered for adoption;
- (3) provision of casework and other supportive services to adoptive applicants through pre-placement studies;
- (4) selection of home and placement process;
- (5) supervision after placement;
- (6) fulfillment of social and legal responsibilities;
- (7) compilation and preservation of complete case records; and
- (8) provision of post-adoption consultation services.

(b) County departments of social services shall comply with requirements of 10A NCAC 70M.

(c) The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for adoption child-placing agencies.

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

Eff. October 1, 2008.

10A NCAC 70H .0301 ORGANIZATION AND ADMINISTRATION

Persons licensed or seeking license to provide adoption services shall comply with requirements of 10A NCAC 70F, Chapter 48 of the General Statutes of North Carolina, and G.S. 7B-3800, the Interstate Compact on Placement of Children.

History Note: Authority G.S. 48-3-204; 131D-10.3; 131D-10.5; 143B-153;

Eff. October 1, 2008.

10A NCAC 70H .0302 CONFLICT OF INTEREST

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

(c) Private child-placing agencies shall not supervise adoptive placements of agency owners.

History Note: Authority G.S. 48-3-204; 131D-10.3; 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70H .0401 PERSONNEL

(a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

(b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers counseling birth families, preparing and assessing adoptive applicants for infant placements and supporting these families shall serve no more than 50 families.

(e) Social workers preparing children ages six and above or children having special needs shall serve no more than 15 children.

(f) Social workers preparing and assessing adoptive applicants for the placement of children ages six and above or children who have special needs shall serve no more than 20 families.

(g) Social workers preparing and assessing families for international adoptions shall serve no more than 35 families.

(h) Supervision of adoption social workers shall be assigned as follows:

Supervisors Required	Social Workers
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-11
3	12-17
There shall be one additional supervisor for every one to five additional social workers.	

(i) Staff members of the adoption agency may maintain dual employment or serve as volunteers with maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis

pregnancy center. Staff members, owners, officers directors of the adoption agency may serve on the board of directors of maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70H .0402 INTAKE PROCEDURES AND OUT-OF-HOME FAMILY SERVICES AGREEMENT

(a) The policies for acceptance of an applicant for adoption services shall be defined in writing and shall relate to the stated purpose of the agency. Acceptance of an applicant for services shall be limited to those for whom the agency is qualified by staff, program and services to give appropriate services.

(b) Applicants for international adoptions shall receive information that includes the following topics:

- (1) the characteristics of children who need adoptive families;
- (2) the criteria by which the adoption agency and sending countries determine eligibility for adoptive parents;
- (3) the adoption services that will be available, when they will be available and how long they will be available;
- (4) steps in the adoption process;
- (5) immigration and obtaining citizenship;
- (6) average waiting time;
- (7) risks associated with international adoptions;
- (8) adoption requirements of the sending county; and
- (9) the use of other organizations or individuals to provide services.

(c) The agency shall develop a written out-of-home family services agreement for children within 30 days of acceptance as a client if the child is placed in foster care and a permanent placement has not been achieved. The out-of-home family services agreement shall be developed in cooperation with the child and the child's parents, guardian or legal custodian when possible.

(d) The out-of-home family services agreement shall include goals stated in specific, realistic and measurable terms and plans that are action oriented, including specific responsibilities of staff, family members and the child.

(e) The out-of-home family services agreement shall be based upon an assessment of the needs of the child and the child's parents.

(f) The out-of-home family services agreement shall be reviewed within 60 days of placement, the second out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months to determine the child's and family's progress or lack of progress towards meeting the goals, and to determine changes that need to be made in the out-of-home family services agreement.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.

10A NCAC 70H .0403 PLACEMENT SERVICES TO FAMILIES AND CHILDREN

(a) Those persons providing as part of their adoption services program unplanned pregnancy services shall:

- (1) respect the client's choice of alternatives to the unplanned pregnancy;
- (2) assure the clients of confidential handling of and restricted access to the case record;
- (3) offer alternate plans of care for the child and give supportive services or make appropriate referrals to other resources for clients who do not release the child for adoption; and
- (4) assist the client in obtaining maternity home care during her pregnancy.

(b) The agency shall help those parents reaching the decision to relinquish their children to the agency for adoptive placement to have an understanding of the meaning of adoption and its potential impact on the child's and their lives. The agency may notify the birth parents when a placement has occurred and when an adoption decree is issued if the birth parents and adoptive parents are in agreement about this notification.

(c) At the point a parent executes the document for relinquishment of a child for adoption, the agency shall ascertain that the parent has an understanding of the effects of this action and of the time period allowed for revocation of the relinquishment document. When the agency has received the parent's relinquishment document, the executive director shall indicate acceptance of the relinquishment document by signing the appropriate form for this purpose. A copy of the relinquishment document for adoption and of the agency's acceptance document shall be given to the parent. The executive director shall designate the agency's supervisor of adoptions or the adoptions social worker handling the case to accept the document for relinquishment of a child for adoption in the event the executive director is not available to accept the relinquishment document. An agency shall acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Chapter 48 of the General Statutes or by terminating the rights and duties of a parent or guardian of the minor.

(d) In addition to providing services to the child, agencies providing adoption services shall include a child in the selection of an adoptive home and in preparation for adoptive placement.

History Note: Authority G.S. 48-3-204; 131D-10.5; 143B-153;
Eff. October 1, 2008.

10A NCAC 70H .0404 ADOPTIVE HOME APPLICATION

The agency shall provide an application form for prospective adoptive parents and shall determine in response to the completed application whether, within the scope of the agency's program, it is appropriate to conduct a preplacement assessment with the applicants. While the age of applicants is among the factors that may be considered in determining whether the

agency conducts a preplacement assessment with the applicants, there shall be no fixed chronological age at which applicants are automatically rejected for study.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.

10A NCAC 70H .0405 PREPLACEMENT ASSESSMENT

(a) The agency shall complete a preplacement assessment within 90 days after the application for adoption has been approved and the request for the assessment has been received. In a case involving a single adoptive applicant, there shall be two separate face-to-face interviews occurring on two different dates. In a case involving joint applicants, there shall be a separate face-to-face interview with each applicant and an additional two face-to-face interviews with both applicants. At least one interview shall be conducted in the applicants' home. There shall be separate face-to-face interviews with each member of the household ten years of age or older. The assessment process shall be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any assessment that was completed 18 months or more before placement of a child occurs shall be updated to include current information about the family. Any agency updating a preplacement assessment not originally completed by that agency assumes responsibility for the entire assessment, and the new assessment shall reflect that it is the responsibility of the agency conducting the update. Physical examinations of family members shall be current to within 18 months of the assessment.

(b) The agency shall assess the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' reasons for wanting to adopt;
- (2) the strengths and needs of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and other individuals involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the birth parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) whether the applicant has ever been convicted of a crime other than a minor traffic violation;

- (13) the strengths and needs of birth children or previously adopted children,
- (14) the applicant's physical and mental health, including any addiction to alcohol or drugs;
- (15) current financial information provided by the applicant, including property and income;
- (16) the applicants' personal character references;
- (17) the applicant's religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work;
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family;
- (21) any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
- (22) whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, neglected, dependent, undisciplined or delinquent, and the outcome of the proceeding or whether the individual 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;
- (23) whether the applicant has located a parent interested in placing a child for adoption with the applicant, and a brief, non identifying description of the parent and the child;
- (24) the applicants' age, date of birth, nationality, race or ethnicity;
- (25) the applicant's marital and family status and history, including the presence of any children born to or adopted by the applicant, and any other children in the household;
- (26) the applicant's educational and employment history and any special skills; and
- (27) any additional fact or circumstance that may be relevant to a determination of the applicant's suitability to be an adoptive parent, including the quality of the home environment and the level of functioning of any children in the household.

When any of the information listed in this Paragraph is not reasonably available, the preplacement assessment shall state why the information is unavailable.

(c) The assessment is prepared and typed by the agency and shall be reviewed by the agency's adoption review committee, signed and dated by an authorized agency representative when complete and final, and it shall become part of the applicants' permanent record.

(d) Once the agency has made a decision regarding the suitability of the applicant as an adoptive placement, the preplacement assessment shall include specific documentation of

the factors which support that determination. If the agency determines that the applicant is not suitable to be an adoptive parent, the assessment shall state the specific facts that support the determination. A specific concern is one that reasonably indicates the placement of any minor, or a particular minor, in the home of the applicant would pose a significant risk of harm to the well-being of the minor.

(e) The agency preparing the preplacement assessment may redact from the assessment provided to the placing parent or guardian information reflecting the prospective adoptive parent's financial account balances and information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses.

*History Note: Authority G.S. 48-2-502; 48-3-303; 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70H .0406 NOTIFICATION REGARDING PREPLACEMENT ASSESSMENT

(a) The agency shall notify the client who was the subject of a preplacement assessment whether the assessment was favorable or unfavorable within 30 days after the agency completes the assessment.

(b) The agency shall share with the client the specific reasons a child cannot be placed in their home if the preplacement assessment is unfavorable.

(c) The client may request an internal review by the executive director of the adoption agency if the client disagrees with the unfavorable preplacement assessment.

(d) The client may file a response with the Division of Social Services, Adoption Unit, and the adoption agency after exhausting the agency's procedures for internal review. The Division of Social Services, Adoption Unit, shall acknowledge receipt of the response within 30 days, but has no authority to take any action with respect to the response. A copy of the response shall be attached to the unfavorable preplacement assessment.

(e) The Division of Social Services, Adoption Unit shall notify the county department of social services of an unfavorable preplacement assessment and the county department of social services shall take appropriate action regarding any child placed in the home of the prospective adoptive parent who is the subject of an unfavorable assessment.

*History Note: Authority G.S. 48-3-303; 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70H .0407 SERVICES TO ADOPTIVE APPLICANTS AND FAMILIES

(a) The agency shall provide to adopted applicants a written statement of the adoption services it provides and of its procedure for selecting a prospective adoptive parent for a child, including the role of the child's parent or guardian and any criteria requested by the child's parent or guardian in the selection process. This statement shall include a schedule of any fees or expenses charged by the agency and a summary of the

provisions of Chapter 48 of the General Statutes that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent. An agency which prepares preplacement assessments shall state whether it is available to provide post-placement services, including the report to the court pursuant to G.S. 48-2-501, and whether it can provide adoption services to the adoptee and adoptive parents after the decree of adoption has been entered.

(b) The agency shall discuss the children available for adoption with the adoptive applicants. The selection of a prospective adoptive parent for a minor shall be made by the agency.

(c) Following completion of a preplacement assessment, the agency shall prepare the adoptive applicants for the placement of a particular child. Preparation shall include:

- (1) information about the needs and expectations of the child and of the adoptive family;
- (2) information to the extent allowed by law as specified in G.S. 48-3-205 about the child's background and the health history of the child's birth parents and other relatives; and
- (3) visits with the child prior to placement.

(d) An agency social worker shall visit in the home of the adoptive family after the placement of a child and prior to the decree of adoption. The first visit shall occur within two weeks after placement. Frequency of visits thereafter shall be determined by the child's and family's needs. Observations made during the visits shall be used in making recommendations to the court in regard to the decree of adoption.

(e) When applicable, the agency shall take steps necessary to assure that the adoptive placement is in compliance with the Interstate Compact on the Placement of Children, G.S. 7B-3800.

History Note: Authority G.S. 48-2-502; 48-3-203; 48-3-204; 48-3-205; 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70H .0408 LEGAL PROCESS

(a) The agency shall instruct the adoptive parents in procedures regarding the legal process for adoption and shall instruct them to file their adoption petition pursuant to G.S. 48-2-302(a) within 30 days of placement of the child for adoption unless that time is extended by the clerk.

(b) The agency shall prepare and file the required consents and other documents and reports with the court at the appropriate times once the adoption petition has been filed.

(c) During the process of preparing court reports, the petitioner, and each member of the petitioner's home shall be interviewed by the agency social worker in the petitioner's home. An additional interview shall be conducted in the presence of the petitioner and the adoptee to observe interactions between them. The report to the court shall be in writing and contain the information required by G.S. 48-2-502(b).

(d) The agency shall give the petitioner a copy of each report filed with the court and retain a copy. In an agency adoption, pursuant to G.S. 48-2-502(b), the agency shall not release to the petitioner a copy of any court order, judgment, decree, or pending legal proceeding containing identifying information that could reasonably be expected to lead directly to the identify of

the adoptee at birth or any former parent or family member of the adoptee.

History Note: Authority G.S. 48-2-302; 48-2-502; 48-10-105; 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70H .0409 RECORDS

(a) The agency shall keep separate records for each adoptive applicant and family that contain the following:

- (1) application form;
- (2) certified copies of marriage certificates, if applicable;
- (3) certified documentation of marriage termination, if applicable;
- (4) current medical records on all family members and psychological or psychiatric reports, if applicable;
- (5) references from at least three sources;
- (6) preplacement assessment conducted by the agency;
- (7) copies of correspondence to, from, and in regard to the applicants;
- (8) summary and dates and content of contacts prior to and following approval for adoption until the decree of adoption is entered;
- (9) copies of information given to the applicant and family concerning the child or children to be placed for adoption with them;
- (10) copies of all legal documents pertaining to the adoption; and
- (11) summary containing the placement decision, pre-placement and post-placement contacts with the family and child.

(b) In the event the applicants were not accepted or did not have a child placed with them, the record shall contain a narrative indicating the reasons and the manner in which the decision was presented to the applicants. The agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application or application denial, unless included in a federal or state fiscal or program audit that is unresolved. The agency may destroy the record in office when released from all audits.

(c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of G.S. 8-45.1, following which the original files may be destroyed by a shredding process.

(d) All children, birth parents and adoptive applicant and family records shall be kept in locked quarters and information from the files may be divulged only in compliance with provisions of G.S. 48-9-103 and G.S. 48-9-105.

History Note: Authority G.S. 48-3-303; 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0102 LICENSING PROCESS

(a) The license process for a residential child-care facility shall consist of an application phase, an investigatory phase and a decision making phase.

(b) Application Phase. An applicant shall apply for a license to operate a residential child-care facility to the licensing authority prior to the first child being accepted for full-time care. An applicant shall apply for renewal of a license to operate a residential child-care facility to the licensing authority prior to the expiration of the current license.

(c) Investigatory Phase. During the investigatory phase, the applicant shall submit to the licensing authority information on the proposed program and projected methods of operation. For proposed private and public residential child-care facilities, the licensing authority staff, together with those seeking licensure, shall complete the investigatory phase

(d) Decision Regarding Licensure. An applicant shall submit all the materials required by Subchapters 70I and 70J, to the licensing authority prior to the decision to issue a license to operate.

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

Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);

Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0201 DEFINITIONS

In addition to the definitions found in G.S. 131D-10.2, the following definitions apply to the rules in Subchapters 70I and 70J of this Chapter.

- (1) "Child-caring institution" means a residential child-care facility utilizing permanent buildings located on one site for 13 or more foster children.
- (2) "Children's foster care camp" means a residential child-care facility that provides foster care at either a permanent camp site or in a wilderness setting.
- (3) "Direct service personnel" means staff responsible for the direct services provided to children and their families including child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.
- (4) "Emergency shelter care" means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with 10A NCAC 70J .0200.
- (5) "Executive director" means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential child-care and services.
- (6) "Foster child" means an individual less than 18 years of age who has not been emancipated under North Carolina law, or one who is 18 to 21 years of age and continues to reside in a residential child-care facility, who is dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined, delinquent,

or otherwise in need of care away from home and not held in detention.

- (7) "Full license" means a license issued for two years when all licensing requirements are met.
- (8) "Group home" means a residential child-care facility operated either under public or private auspices that receives for 24-hour care no more than 12 children. This number includes the caregivers' own children and other relative children residing in the home under the age of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of 12. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.
- (9) "License" means permission granted in writing to a corporation, agency or county government by the licensing authority to engage in the provision of full-time residential child-care or child-placing activities based upon an initial determination, and biennially thereafter, that such corporation, agency, or a county government has met and complied with standards set forth in this Subchapter.
- (10) "Licensing authority" means the North Carolina Department of Health and Human Services, Division of Social Services.
- (11) "Licensed medical provider" means a physician, physician's assistant or certified nurse practitioner.
- (12) "Out-of-home family services agreement" means a document developed with the child's custodian that identifies a child's permanency plan (return to parents, placement with relatives, guardianship, and adoption). The out-of-home family services agreement describes a child's needs, goals and objectives in a residential child-care facility and the tasks and assignments of the staff of the residential child-care facility to meet a child's and family's needs, goals and objectives. The out-of-home family services agreement specify what must change in order for the parents to meet the needs of the child. Basic goal planning steps include:
 - (a) involving the family in the process;
 - (b) identifying goals that are both realistic and achievable;
 - (c) using family strengths when outlining objectives and activities to attain the goals;
 - (d) spelling out the steps necessary for success;
 - (e) documenting who will do what and when they will do it; and
 - (f) providing for review.

- (13) "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 residential child-care facility.
- (14) "Private agency residential child-care facility" means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.
- (15) "Private residential child-care facility" means a residential child-care facility under the control, management and supervision of a private non-profit or for-profit corporation, sole proprietorship or partnership that operates independently of a licensed child-placing agency or any other residential child-care facility.
- (16) "Provisional license" means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.
- (17) "Public agency residential child-care facility" means a residential child-care facility under the control, management or supervision of a county department of social services.
- (18) "Public residential child-care facility" means a residential child-care facility under the control, management or supervision of a county government other than a county department of social services.
- (19) "Staff" means full-time, part-time and contracted staff persons.
- (20) "Visitation and contact plan" means a specific document that is developed by the child's custodian for each child that specifies whom the child may visit with and have contact with and the circumstances under which the visits and contacts shall take place.
- (21) "Volunteer" means a person working in a staff position for an agency who is not paid.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. July 18, 2002;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. October 1, 2008; August 1, 2004.

10A NCAC 70I .0202 RESPONSIBILITY TO LICENSING AUTHORITY

(a) A residential child-care facility shall biennially submit to the licensing authority the information and materials required by rules in Subchapters 70I and 70J of this Chapter to document compliance and to support issuance of a license.

- (b) A residential child-care facility shall submit to the licensing authority a biennial statistical report of program activities.
- (c) A residential child-care facility shall provide written notification to the licensing authority of a change in the executive director.
- (d) A residential child-care facility shall provide written notification to the licensing authority of any changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70I and 70J of this Chapter. The residential child-care facility shall receive written approval from the licensing authority before instituting any changes in policies and procedures.
- (e) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.
- (f) The current license of a residential child-care facility shall be posted at all times in a conspicuous place within the facility.
- (g) When there is a death of a child who is a resident of a residential child-care facility, the executive director or his or her designee shall immediately notify the licensing authority in accordance with Rule. 0614 of this Subchapter.
- (h) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner.
- (i) The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.
- (j) A residential child-care facility shall notify the local management entity where services are being provided within 24 hours of placement that a child may require mental health, developmental disabilities or substance abuse services.
- (k) If a residential child-care facility is monitored by a local management entity the residential child-care facility shall provide data to the local management entity as required by Department of Health and Human Services, pursuant to 10A NCAC 27G .0608, for monitoring and reporting to the General Assembly.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. July 18, 2002;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. October 1, 2008; August 1, 2004.

10A NCAC 70I .0203 SUBSTANTIATIONS OF NEGLECT AGAINST THE FACILITY

- (a) When there is a substantiation of neglect against a residential child-care facility by a county department of social services, a corrective action plan shall be submitted by the executive director or his/her designee to the licensing authority within 30 days of the case decision by the county department of social services conducting the investigative assessment.
- (b) Following the receipt of the corrective action plan, the licensing authority shall make one unannounced on-site visit to the facility within the 30 days following the receipt of the corrective action plan.

(c) The licensing authority shall make subsequent onsite visits at varying frequencies and times throughout the ensuing year to determine that the corrective actions have been implemented.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0204 LICENSURE PROCEDURES

(a) Private Residential Child-Care Facility Licensure Procedures:

- (1) A private residential child-care facility shall submit the following materials to the licensing authority during the application phase:
 - (A) Articles of Incorporation;
 - (B) Bylaws; and
 - (C) Governing Board list with names, addresses, occupations, length of time and terms on the board, and board positions held and number of terms, if applicable.
- (2) A private residential child-care facility shall submit the following materials to the licensing authority during the investigatory phase before an initial license may be issued, with the exception of Part (K) of this Subparagraph which shall be maintained at the facility for review:
 - (A) License Application and Summary;
 - (B) Program policies and procedures stating the purpose, outlining admission criteria, as well as defining areas of responsibilities for services which the facility will assume for children in care and for services to be provided by the referring agency or individual, and discharge criteria;
 - (C) Description of the child-care program and evaluation method;
 - (D) Program forms;
 - (E) Budget outlining anticipated costs and sources of revenue for the first year of operation;
 - (F) Personnel policies;
 - (G) Organizational chart;
 - (H) Job descriptions;
 - (I) Staff resumes;
 - (J) Full and part-time staff work schedules;
 - (K) A medical examination report completed by a licensed medical provider on all full-time and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or relative children of direct care personnel residing in the facility within 12 months prior to the license

date. There shall be documentation that all adult direct care personnel residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical history form (DSS-5017) shall be completed by all direct care personnel residing in the facility at the time of initial licensure. A medical examination report, TB test (if required) and a medical history form (DSS-5017) shall be completed on any children or relative children of direct care personnel who subsequently begin residing in the facility;

- (L) Fire and Building Safety Inspection Report completed and approved by the local fire inspector;
- (M) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian;
- (N) Written approval from the local zoning authority; and
- (O) Written approval from the Division of Health Service Regulation.

- (3) The licensing authority shall make one or more visits to the residential child-care facility to complete the licensing study.
- (4) Based on information obtained during the investigatory phase, licensing authority staff shall evaluate the residential child-care facility's proposed program and methods of operation to determine compliance with rules in Subchapters 70I and 70J of this Chapter.
- (5) The licensing authority shall notify the residential child-care facility in writing of the licensure decision, conditions of the license and any recommendations regarding the child-care program.

(b) Licensure Procedures for Private Agency, Public Agency and Public Residential Child-Care Facilities.

- (1) A private agency, public agency and public residential child-care facility shall submit the following materials to the licensing authority before a license may be issued, with the exception of Part (I) of this Subparagraph

which shall be maintained at the facility for review:

- (A) License Application and Summary;
- (B) Program policies and procedures stating purpose, outlining admission criteria, as well as defining areas of responsibilities and discharge criteria;
- (C) Description of the child-care program and evaluation method;
- (D) Program forms;
- (E) Budget outlining anticipated costs and sources of revenue for the first year of operation;
- (F) Job descriptions;
- (G) Staff resumes;
- (H) Full and part-time staff work schedules;
- (I) A medical examination report completed by a licensed medical provider on all full- and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or relative children of direct care personnel residing in the facility within 12 months prior to the license date. There shall be documentation that all adult direct care personnel residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the facility have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical history form (DSS-5017) shall be completed by all direct care personnel residing in the facility at the time of initial licensure. A medical examination report, TB test (if required) and a medical history form (DSS-5017) shall be completed on any children or relative children of direct care personnel who subsequently begin residing in the facility;
- (J) Fire and Building Safety Inspection Report completed and approved by the local fire inspector;

- (K) Inspection Form for Residential Care Facilities, completed and approved by the county sanitarian;
- (L) Written approval from the zoning authority; and
- (M) Written approval from the Division of Health Service Regulation.

- (2) The licensing authority staff shall notify the residential child-care facility in writing of the licensure decision, conditions of the license, and any recommendations regarding the residential child-care program.

(c) Licensure Procedures Following Second Year of Operation for all residential child-care facilities.

- (1) Prior to the license expiration date, the licensing authority shall notify a residential child-care facility in writing of the licensure renewal requirements.

- (2) A residential child-care facility shall submit the following materials to the licensing authority before a license for a residential child-care facility may be renewed, with the exception of Parts (E) and (F) of this Subparagraph, which shall be maintained at the facility for review:

- (A) License Application and Summary;
- (B) Governing board list with names, addresses, occupations, length of time and terms on the board, and board positions held and number of terms, if applicable;
- (C) Budget outlining anticipated costs and sources of revenue of the next operating year, with estimation of daily cost of care per child for past year;
- (D) Annual statistical report of program activities as required by Rule .0202(b) of this Section;
- (E) A medical examination report completed by a licensed medical provider on all full- and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff), and any children or other relative children residing in the living unit prior to employment;
- (F) A medical history form completed by all full- and part-time direct care personnel residing in the facility (this includes any staff member who may serve in the capacity of direct care staff) who have been employed since the last relicensing period and any children or other relative children residing in the facility. A residential child-care facility shall have

documentation that all full- and part-time direct care personnel residing in the facility who have been employed since the last relicensing period have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. The birth children of direct care personnel who reside in the facility shall be tested for TB only if one or more of the parents test positive for TB. There shall be documentation that adopted children and other relative children residing in the facility have had a TB skin test or chest x-ray unless contraindicated by a licensed medical provider;

- (G) The residential child-care facility shall have fire inspections from the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority biennially with the licensure renewal application;
 - (H) The residential child-care facility shall have sanitation inspections from the county sanitarian. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority biennially with the licensure renewal application;
 - (I) Updated or revised materials including policies, procedures, forms, or amendments to Bylaws or Articles; and
 - (J) If the agency receives foster care maintenance payments of State funds, an annual audit of its financial statements that is in compliance with 10A NCAC 70D .0105(a)(5).
- (3) The licensing authority shall biennially conduct onsite visits to private residential child-care facilities, private agency residential child-care facilities, public agency residential child-care facilities or public residential child-care facilities to determine if licensure standards for residential child-care facilities continue to be met. The licensing authority may conduct announced and unannounced on-site visits to residential child-care facilities.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0301 GOVERNANCE

(a) A private residential child-care facility shall operate under articles of incorporation that are filed with the Department of the Secretary of State (<http://www.secretary.state.nc.us>). A private residential child-care facility shall submit a copy of the articles of incorporation to the licensing authority. The articles of incorporation shall have a statement of purpose which describes the geographic area to be served, kinds of children to be admitted, and the range of services to be provided.

(b) A private residential child-care facility shall have a governing body that exercises authority over and has responsibility for its operation, policies and practices. The residential child-care facility shall notify the licensing authority of the type and structure of the governing body.

(c) In the case of non-profit or for-profit corporations, the governing body shall:

- (1) be composed of no fewer than six members to include men and women;
- (2) provide for a system of rotation for board members, for limitation to the number of consecutive terms a member may serve;
- (3) establish standing committees;
- (4) provide orientation for new members; and
- (5) meet at least four times annually with a quorum present.

(d) Public residential child-care facilities operated by governmental agencies shall be governed by appointed officials of a governmental unit.

(e) A residential child-care facility shall submit to the licensing authority a list of members of the governing body. This list shall indicate the name, address and terms of membership of each member and shall identify each officer and the term of that office.

(f) A residential child-care facility shall permanently maintain meeting minutes of the governing body and committees.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0302 RESPONSIBILITIES OF THE GOVERNING BODY

The governing body shall:

- (1) adopt administrative, personnel, and program policies which are reviewed at least every two years;
- (2) review and approve a budget prior to the beginning of the fiscal year;
- (3) establish and review policies on fundraising and investment management at least every two years;
- (4) annually review and accept the financial audit, in the case of a private residential child-care facility;
- (5) employ an executive director (CEO, director, president, superintendent) and delegate authority to that person to employ and dismiss staff, implement board policies, and manage day-to-day operation of the facility;

- (6) ensure that the criminal history of the executive director is checked prior to employment, and based on the criminal history, a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 701 .0102, to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he/she has not 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. The governing body shall require that the executive director provide a signed statement that the executive director has not abused, neglected or exploited a disabled adult and that the executive director has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.
- (7) permit the executive director or his or her designee to attend all meetings of the governing body and committees with the exception of those held for the purpose of reviewing his performance, status, or compensation;
- (8) annually evaluate and document the executive director's performance through specific criteria and objectives;
- (9) initiate and review an annual evaluation of services and direct needed changes based on the evaluation;
- (10) annually review facility needs related to risk management; and
- (11) maintain a long range plan and review annually.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);

Amended Eff. October 1, 2008.

10A NCAC 701 .0303 FINANCES AND INSURANCE

- (a) Fiscal Management: The executive director shall:
 - (1) implement sound financial practices in order to prepare and review the budget, and to be accountable to the community; and
 - (2) report to the governing body at least quarterly or more frequently, if requested by any member of the governing body, on present financial status and anticipated problems.
- (b) A residential child-care facility shall:
 - (1) have a plan of financing which assures sufficient funds to enable it to carry out its defined purposes and provide proper care and services for children;
 - (2) develop adequate resources and manage them prudently in order to obtain the revenues that support its programs and prevent the interruption of needed care and services to clients;
 - (3) have a written budget specifying income and expenditures which serves as the plan for management of its financial resources for the program year; and
 - (4) have a written policy on fees for services which shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency shall make the policy available to applicants for services at the time an application for services is made.
- (c) Audit: If the agency receives foster care maintenance payments of State funds, it must submit an annual audit of its financial statements that is in compliance with 10A NCAC 70D .0105(a)(5).
- (d) Insurance: A residential child-care facility shall notify the licensing authority, parents, guardian and legal custodian (if applicable) of its status related to liability insurance for the agency and staff. A residential child-care facility shall provide a written statement of its status related to liability insurance for the residential child-care facility and staff to applicants for services at the time an application for service is made.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Amended Eff. October 1, 2008.

10A NCAC 701 .0304 INTERNAL OPERATING PROCEDURES

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Repealed Eff. October 1, 2008.

10A NCAC 70I .0305 RECORDKEEPING AND REPORTING

(a) A residential child-care facility shall develop and enforce a policy on confidentiality that shall:

- (1) identify the individuals with access to or control over confidential information;
- (2) specify that persons who have access to records or specified information in a record be limited to persons authorized by law specifically including the parents, guardian or legal custodian (if applicable) and children (12 years of age and older), agency staff auditing, licensing, or accrediting personnel; and those persons for whom the agency has obtained a consent for release of confidential information signed by the parents, guardian or legal custodian; and
- (3) require that when a child's information is disclosed, a signed consent for release of information is obtained on a consent for release form.

(b) A residential child-care facility shall:

- (1) provide a secure place for the storage of records with confidential information;
- (2) inform any individual with access to confidential information of the provisions of this Rule;
- (3) ensure that, upon employment and whenever revisions are made, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
- (4) permit a child to review his or her case record in the presence of facility personnel on the facility premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record, unless facility personnel determine the information in the child's case record would be harmful to the child;
- (5) in cases of perceived harm to the child, document in writing any refusals to share information with the parents, guardian and legal custodian (if applicable) and child (12 years of age and older);
- (6) maintain a confidential case record for each child;
- (7) maintain confidential personnel records for all employees; and
- (8) maintain confidential records for all volunteers.

(c) A residential child-care facility may destroy in office a closed record in which a child has been discharged for a period of three years unless included in a federal or state fiscal or program audit that is unresolved. A residential child-care facility may destroy in office a record three years after a child has reached age 18, unless included in a federal or state fiscal or program audit that is unresolved. The agency may destroy these closed records in office when the federal or state fiscal or

program audits have been resolved and the agency is released from all audits.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0306 CLIENT RIGHTS

(a) A residential child-care facility shall develop and implement policies and procedures to protect the individual rights and dignity of children and families.

(b) A residential child-care facility shall have a client's and family's rights policy which includes that each child has the right to:

- (1) privacy;
- (2) be provided adequate food, clothing, and shelter;
- (3) have access to family time and have telephone conversations with family members, when not contraindicated in the child's visitation and contact plan;
- (4) have personal property and a space for storage;
- (5) express opinions on issues concerning the child's care or treatment;
- (6) receive care in a manner that recognizes variations in cultural values and traditions;
- (7) be free from coercion by facility personnel with regard to religious decisions. The facility shall have a process to assure that, whenever practical, the wishes of the parents or guardians with regard to a child's religious participation are ascertained and followed;
- (8) not be identified in connection with publicity for the facility which shall bring the child or the child's family embarrassment; and
- (9) not be forced to acknowledge dependency on or gratitude to the facility.

(c) A residential child-care facility shall have a policy which prohibits direct involvement by a child in funds solicitation for the facility.

(d) A residential child-care facility shall have a policy which prohibits the child's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the parents, guardian or legal custodian and child (12 years of age and older).

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0307 GRIEVANCE PROCEDURES

(a) A residential child-care facility shall provide to each child and parents, guardian or legal custodian upon admission:

- (1) a written description of policies and procedures which the child, parents, guardian or legal custodian follow to register complaints;
- (2) information about a child's rights;

- (3) the process for appealing a decision or action of the facility; and
 - (4) the process for resolution of a complaint.
- (b) Upon resolution of a grievance, a residential child-care facility shall maintain a copy of the complaint and the resolution in the case record.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0401 PERSONNEL POLICIES

A residential child-care facility shall have written personnel policies and procedures which shall be provided to all employees (full-time, part-time and contracted). Revisions of all personnel policies shall be in writing and provided to employees. Policies and procedures shall address the following areas:

- (1) recruitment and hiring;
- (2) compensation structure and benefits;
- (3) orientation plan for new employees;
- (4) training and staff development;
- (5) regulations regarding use of equipment and assets;
- (6) notification of work schedule;
- (7) description of leave policy, including time-off duty for disciplinary actions for direct care staff;
- (8) termination;
- (9) operational procedures regarding grievances which provide the opportunity and means to lodge complaints and appeals;
- (10) description of the process for revision of personnel policies;
- (11) annual evaluations;
- (12) staff quarters and searches; and
- (13) disciplinary measures.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0402 PERSONNEL DEPLOYMENT

- (a) A residential child-care facility shall ensure that the deployment of personnel supports the stated mission of the facility.
- (b) There shall be a written job description for each position, which includes duties, responsibilities, qualifications, and to whom the position is responsible. Job descriptions shall be consistent with duties being performed.
- (c) A residential child-care facility shall have procedures for annual evaluation of the work performance of each employee which provides for employee participation in the process.
- (d) A residential child-care facility shall have an organizational plan which delineates the number of staff and levels of supervisors/managers, taking into account the complexity and size of the workload of each staff. The plan shall demonstrate supervision of staff in accordance with the rules in Subchapters 70I and 70J of this Chapter, if applicable.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0403 PERSONNEL FILE

A residential child-care facility shall maintain a personnel file for each employee (full-time, part-time and contracted) which includes the following:

- (1) application for employment including the record of previous employment;
- (2) documentation of at least three references;
- (3) applicable position specific credentials or certifications (prior to employment certified college transcripts shall be obtained for positions requiring college degrees);
- (4) medical information required for each staff by licensure standards (initial and biennial medical examinations, initial TB test and medical history form);
- (5) signed statement indicating the employee's understanding of and willingness to comply with confidentiality agreement requirements;
- (6) signed statement that the employee has no criminal convictions that would adversely affect his or her capacity and ability to provide care, safety and security for the children in residence;
- (7) criminal record checks certified by the Clerk of Superior Court;
- (8) results of the search of the North Carolina Sex Offender and Public Protection Registry;
- (9) results of the search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256);
- (10) results of the search of the Responsible Individuals List as defined in 10A NCAC 70A .0102 which indicates the employee has not had child protective services involvement resulting in a substantiation of child abuse or serious neglect;
- (11) a signed statement that the employee has not 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;
- (12) signed statement that the employee has not abused, neglected or exploited a disabled adult;
- (13) signed statement that the employee has not been a domestic violence perpetrator;
- (14) record of completed orientation;
- (15) log of training;
- (16) written approval letter from executive director or his or her designee authorizing employee to administer physical restraint holds, if applicable;
- (17) annual performance evaluations;
- (18) documentation of disciplinary actions;

- (19) documentation of grievances filed;
- (20) employee's starting and termination dates;
- (21) reason for termination;
- (22) signed and dated release or notation of employee's waiver of release for future employment references; and
- (23) documentation of a driving record check, if applicable.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153;

Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);

Amended Eff. October 1, 2008.

10A NCAC 70I .0404 PERSONNEL QUALIFICATIONS

(a) Criminal Records Check by the Residential Child-Care Facility. Applicants, employees, volunteers or interns who have a history of criminal convictions that would adversely affect their capacity and ability to provide care, safety and security for the children in residence shall not be employed or utilized as volunteers or interns. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern does not have such a record prior to beginning employment, volunteer duties or internships. Prior to employment or before beginning volunteer duties or internships, a certified criminal record check for the applicant, volunteer or intern shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these searches, a decision shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70A .0102, to determine if the applicant, employee, volunteer or intern has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall require that each applicant, employee, volunteer or intern provide a signed statement that the applicant, employee, volunteer or intern has not 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. A signed statement shall be obtained attesting that the applicant, volunteer or intern has not abused, neglected or exploited a disabled adult and has not been a domestic violence perpetrator.

(b) Child Abuse. Employees, volunteers or interns who have a criminal conviction of child abuse shall not be permitted any contact with children.

(c) Driver's License. Employees, volunteers or interns driving a residential child-care facility vehicle shall possess a valid driver's license appropriate for the type of vehicle used.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153;

Eff. July 1, 1999 (See S.L. 1999, c.237 s. 11.30);

Amended Eff. October 1, 2008.

10A NCAC 70I .0405 PERSONNEL POSITIONS

(a) Executive Director. There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 children.

(b) The executive director employed after July 1, 2008, shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling 1-888-349-7715.

(c) The executive director shall:

- (1) be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing board and licensing requirements;
- (2) explain licensing standards, residential child-care standards and the residential child-care facility's services to the board, the facility's constituency, other human service agencies and the public;
- (3) initiate and carry out the program of residential child-care as approved by the governing board;
- (4) report to the governing board on all phases of operation at least quarterly;
- (5) delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) establish and oversee fiscal practices, present the annual operating budget and quarterly reports to the governing board;
- (7) evaluate, at least annually, the training needs of the staff; plan and implement staff training and consultation to address identified needs;
- (8) employ and discharge staff and meet on a regular basis with administrative and management staff to review, discuss and formulate policies and procedures;
- (9) supervise staff who report directly to the executive director; and
- (10) conduct an annual individual written evaluation of each staff member who reports directly to the executive director. This evaluation shall contain both a review of job responsibilities and goals for future job performance.

(d) Clerical, Maintenance and Other Support Personnel. The residential child-care facility shall employ or contract personnel qualified to perform all clerical, support and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting and financial functions.

(f) Direct Care Service Personnel. Any staff member who assumes the duties of direct care service personnel in the living unit shall comply with all the standards for direct care services personnel in the living unit.

- (1) Direct care service personnel, hired after October 1, 2008, shall:
 - (A) have a high school diploma or GED;
 - (B) complete a medical history form prior to assuming the position;
 - (C) have a medical examination by a licensed medical provider 12 months prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease which may pose a risk of transmission in the residential child-care facility. After the initial examination, the cost of the medical examinations as required by licensure shall be at the expense of the facility;
 - (D) have a TB skin test or chest x-ray, unless the medical provider advises against this test, prior to assuming the position;
- (2) Standards for direct care service personnel in the living unit:
 - (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) A residential child-care facility shall ensure that a staff member trained in cardiopulmonary resuscitation (CPR) and first aid, such as those provided by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the children in care; and that direct care service personnel shall receive training in first aid and CPR within the first thirty days of employment. Training in CPR shall be appropriate for the ages of children in care. First aid and CPR training shall be updated as required by the American Red Cross, the American Heart Association or equivalent organizations.
 - (C) A residential child-care facility shall ensure that direct care service personnel receive supervision and training in the areas of child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct care service personnel in accordance with the needs of the client population, including, training in child sexual abuse. Direct care service personnel shall receive 24 hours of continuing education annually.
- (3) Direct care service supervisory personnel, hired after October 1, 2008, shall have a high school diploma or GED.
- (4) Standards for direct care service supervisory personnel:
 - (A) There shall be at least one supervisor for every 15 direct care service personnel.
 - (B) Supervisory staff shall be selected on the basis of the knowledge, experience and competence required to manage direct service personnel.
 - (C) Direct care service supervisory personnel shall receive 24 hours of continuing education annually.
- (g) Social work supervisors shall be employed by the residential child-care facility to supervise, evaluate and monitor the work and progress of the social work staff.
 - (1) Social work supervisors shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling 1-888-349-7715. Social work supervisors shall receive 24 hours of continuing education annually.
 - (2) Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
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.	
- (h) Social workers shall be employed by the residential child-care facility to provide social work services to the children in

care and their families in accordance with the out-of-home family services agreement.

- (1) Social workers shall have at a minimum a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.
- (2) There shall be at least one social worker assigned for every 15 children.
- (3) A residential child-care facility shall ensure that social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse.
- (4) Social workers shall be familiar with community resources for children and their families in addition to the agency's services.
- (5) Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance with the residential child-care program.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0407 VOLUNTEERS

A residential child-care facility shall have a written description of the specific responsibilities and the provision of supervision of all volunteers. Volunteers shall:

- (1) meet the personnel qualifications specified in 10A NCAC 70I .0404;
- (2) meet the qualifications and implement the duties of the position as specified;
- (3) be provided sufficient orientation, training and supervision to enable knowledge of the facility's purpose and services, the needs of children and families served and the role and responsibilities to be assumed;
- (4) provide three references relevant to the role and responsibilities to be assumed;
- (5) have documentation in their personnel files of a search of the Responsible Individual's List as defined in 10A NCAC 70A .0102; documentation of a criminal record check; documentation of a search conducted of the North Carolina Sex Offender, Public Protection Registry; and documentation of a search of the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-356). Volunteers shall provide signed statements prior to employment that they have not abused or neglected a child or have been a respondent in a juvenile court proceeding that resulted in the removal of a child or have had child protective services involvement that

resulted in the removal of a child. Volunteers shall also provide signed statements that they have not abused, neglected or exploited a disabled adult and that they have not been a domestic violence perpetrator; and

- (6) agree in writing to abide by the confidentiality policies of the agency.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0501 ADMISSION POLICIES

- (a) A residential child-care facility shall have written admission policies which define and describe the age, sex and type of child to be served.
- (b) The residential child-care facility shall limit admissions to children who need out of home care apart from their families and for whom the facility is qualified by staff, program, buildings and services to give appropriate care.
- (c) In the case of private referrals, the residential child-care facility shall:
 - (1) document reasonable efforts to prevent placement;
 - (2) establish that the facility provides the least restrictive setting for the child; and
 - (3) develop and implement an out-of-home family services agreement with the child's family for reunification, when possible.
- (d) In the case of out-of-state referrals (both public and private), the residential child-care facility shall not admit a child to the facility without the approval of Interstate Compact on the Placement of Children.
- (e) The residential child-care facility shall provide each applicant a handbook of admission procedures which includes:
 - (1) a description of the admissions process;
 - (2) the application, including any fees for services;
 - (3) the preplacement activities for the child, parents, guardian or legal custodian; and
 - (4) an explanation of the group assignment method.
- (f) The residential child-care facility shall maintain a referral log which includes:
 - (1) child's name, age, sex, and race;
 - (2) names of parents, guardian or legal custodian; and
 - (3) disposition of admission.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0502 ADMISSION PROCEDURES

- (a) A residential child-care facility shall establish and implement an intake process which includes:
 - (1) receipt of an application and a face-to-face interview with the child, parents, guardian or legal custodian, and family whenever possible,

with a specific effort to help the child understand the purpose of and need for out of home care and residential child-care services; and

- (2) an exchange of information about the facility's program and the child's needs, and to provide written information required in 10A NCAC 70I .0307(a) and 10A NCAC 70I .0504(a).

(b) The agency requesting placement shall complete a written intake study for each child accepted into residential care which includes:

- (1) circumstances that led to the need for placement, and the child's understanding of the placement;
- (2) assessment of family issues and justification that the facility meets the needs of the child and family;
- (3) short-term placement goals and long range permanent plan, including the parent's, guardian's or legal custodian's expectations;
- (4) description of the child's family and significant others;
- (5) description of the child's behavior;
- (6) child specific information, including:
 - (A) medical history, including any current medical problems;
 - (B) developmental history and current level of functioning;
 - (C) educational history, if applicable; and
 - (D) the results of current psychological testing, if applicable.

History Note: Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156;

Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);

Amended Eff. October 1, 2008.

10A NCAC 70I .0503 ADMISSION AGREEMENT

(a) At admission, a residential child-care facility shall develop a written agreement between the parents, guardian or legal custodian and the facility which specifies the services to be provided by the facility and the responsibilities of the parents, guardian or legal custodian which includes the following:

- (1) statement of consent for placement by the parents, guardian or legal custodian, with the date of admission;
- (2) plan for providing admission information on the child's care, developmental, educational, medical, and psychological needs to the parents, guardian or legal custodian, the frequency of out-of-home family service agreement reviews, and receipt of program information required by 10A NCAC 70I .0307(a) and 10A NCAC 70I .0504(a);
- (3) statement of facility responsibility for working with the child's parents, guardian or legal custodian;

- (4) statement related to the provision of religious training and practices and consent to these by the parents, guardian or legal custodian;
- (5) visitation and contact plan;
- (6) fees and plan for payment of care;
- (7) plan for discharge to include projected length of stay; and
- (8) statement of facility responsibility for aftercare services.

(b) For foster children 18 years of age and older residing in the residential child-care facility or reentering the facility, the facility shall obtain a voluntary placement consent signed by the foster child that specifies the conditions for residential child-care and services.

History Note: Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156;

Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);

Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0504 ORIENTATION

(a) A residential child-care facility shall provide information and discuss the program policies governing residential care and services for children with the child's parents, guardian or legal custodian and the child at or before admission, which include:

- (1) family time, mail, gifts, personal possessions, money, and telephone calls and restrictions which may be imposed on these;
- (2) discipline and behavior management, including the use of searches of children's rooms and possessions;
- (3) program of religious training and practices;
- (4) educational resources;
- (5) trips away from the facility;
- (6) use of volunteers, if any;
- (7) physical restraint practices;
- (8) client rights and grievance procedures; and
- (9) daily and seasonal schedules.

(b) The residential child-care facility shall obtain the out-of-home family services agreement from the county department of social services at or before admission when the county department of social services is the legal custodian. In the case of a private placement, the facility shall develop an out-of-home family services agreement.

(c) The residential child-care facility shall develop a written out-of-home family services agreement for each child within 30 days of admission. The out-of-home family services agreement shall be reviewed initially within 60 days, the second review shall be within 90 days of the initial review and the third and subsequent reviews shall be held every six months, inviting parents or guardian, the legal custodian, if different, the child, as well as any individual or agency designated as providing services to participate.

(d) The out-of-home family services agreement shall be developed utilizing information from an assessment of the child's and family's needs and include goals based on normal developmental tasks and needs. The goals and objectives shall be based on identified issues, be behaviorally specific, time limited and measurable and include staff assignments and

specific strategies to be taken to meet the goals in the following areas:

- (1) special interests and personal goals;
- (2) intellectual, academic and vocational;
- (3) psychological and emotional;
- (4) medical;
- (5) social and family relationships;
- (6) cultural and spiritual; and
- (7) basic living skills.

(e) A visitation and contact plan shall be developed for each child by the parents, guardian or legal custodian, if different.

(f) A written discharge plan shall be part of the out-of-home family services agreement.

(g) Direct care staff shall be informed about the child's out-of-home family services agreement by the executive director of the residential child-care facility or his or her designee and shall participate or provide input at the reviews as described in Paragraph (c) of this Rule.

(h) A copy of the child's out-of-home family services agreement shall be provided to the parents, guardian and the executive director of the residential child-care facility or his or her designee by the county department of social services serving as the legal custodian. The child's out-of-home family services agreement shall be provided to other agencies and individuals listed as providing services to the child and his or her parents or guardian. An age appropriate version of the out-of-home family services agreement shall be written and provided to each child by the legal custodian.

(i) The child's out-of-home family services agreement review shall include:

- (1) an evaluation of progress towards meeting identified needs;
- (2) any new needs identified since the child's out-of-home family services agreement was developed or last reviewed and behaviorally-specific strategies to meet these needs, including instructions to staff;
- (3) an update of the estimated length of stay and discharge plan; and
- (4) signatures of the persons participating in the review.

(j) If the legal custodian is a county department of social services, the residential child-care agency, department of social services, parents or guardian, other service providers and child shall develop a single out-of-home family services agreement. The residential child-care staff shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) may serve as the out-of-home family services agreement for the residential child-care facility if the documents reflect input and participation by the residential child-care facility.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0505 DISCHARGE POLICIES AND PROCEDURES

(a) A residential child-care facility shall have written discharge policies that will establish the guidelines for terminating the facility's residential care and services to the child and family to include the following:

- (1) opportunity for the parents, guardian or legal custodian to be informed and have opportunity to discuss the decision to discharge the child;
- (2) designation of a timeframe for the child to be discharged which allows sufficient time for the child and facility to prepare for departure and for arrangements to be made for the child's care;
- (3) discharge of a child under 18 years of age only to the parents, guardian or legal custodian;
- (4) completion of a summary within 30 days of discharge, which includes the following:
 - (A) date, time and circumstances of discharge;
 - (B) name, address and telephone number of the parents, guardian, legal custodian or authorized individual to whom the child was discharged;
 - (C) services provided and evaluation;
 - (D) recommendations for needed services; and
 - (E) provision of or referral for after care services.

(b) Upon a child's departure, the residential child-care facility shall provide a copy of the child's educational, medical and dental records, clinical materials (as available) and other related materials to the parents, guardian or legal custodian.

(c) Upon a child's departure, the residential child-care facility shall send all personal clothing and belongings with the child.

(d) Upon a child's departure, the residential child-care facility shall return prescription medications to the person or agency legally authorized to remove the child from residential child-care.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237 s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0506 CLIENT RECORDS

(a) A residential child-care facility shall maintain a client record for each child which contains the following:

- (1) documentation of placement authority by parents, guardian or legal custodian;
- (2) written placement consent and agreement;
- (3) intake study and related documents;
- (4) completed application for services that includes demographic information on the child and the child's family;
- (5) documentation that verifies the child's birth;
- (6) pre-admission medical examination report or a medical examination report completed within two weeks of admission (unless the child's health status indicates the completion of a

- medical examination report sooner) and copies of subsequent medical examination reports;
 - (7) immunization records;
 - (8) out-of-home family services agreement and reviews;
 - (9) court orders;
 - (10) visitation and contact plan, including type, duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement; the facility shall maintain documentation of all family time;
 - (11) consents for release of information;
 - (12) consent for emergency medical treatment;
 - (13) consents for out-of-state field trips;
 - (14) consents for time-limited audio-visual recording signed by both the child and parents or guardian, and legal custodian (if applicable);
 - (15) ongoing record of medical and dental care;
 - (16) documentation of medical insurance;
 - (17) progress notes; and
 - (18) discharge summary including date of discharge, time of discharge and the name, address, telephone number and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met and plans for the services needed to meet these goals.
- (b) The residential child-care facility shall maintain client records for the purpose of:
- (1) protecting the legal rights of the child, parents, guardian or legal custodian, and the facility;
 - (2) documenting service provision to the child and family, including an evaluation of effectiveness of services provided; and
 - (3) providing a source of information about individual children, as well as information for the facility in planning its program of care and services.
- (c) Staff members recording entries in client records shall date, initial or sign entries.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0601 PROGRAM POLICIES AND PRACTICES

- (a) A residential child-care facility shall have a written program description and written program policies and procedures.
- (b) The residential child-care facility shall design a program to provide opportunities for positive learning experiences and to meet the needs of children and families.
- (c) The residential child-care facility shall provide a daily schedule of activities to meet the needs of children, which allows time for privacy and individual pursuits.

- (d) The residential child-care facility shall consider each child an unique individual, providing opportunities which take into consideration each child's ethnic and cultural backgrounds.
- (e) The residential child-care facility shall give each child individual attention and nurturing.
- (f) The residential child-care facility shall provide each child with the opportunity to have interaction with adults and children of both sexes.
- (g) The residential child-care facility shall instruct and supervise each child in personal care, hygiene, and grooming appropriate for the age, sex, race and developmental capacity of the child.
- (h) The residential child-care facility shall ensure that each child has normal contacts in the community in which the facility is located through participation in events such as school functions, recreational facilities, church youth groups, part-time paid employment, community service and volunteer work. An exception shall be made when community contact is inconsistent with the program design.
- (i) The residential child-care facility shall encourage each child to form friendships with children outside the facility, to visit friends in the community, and have their friends visit them at the facility. An exception shall be made when contact with friends is inconsistent with the program design or out-of-home family services agreement.
- (j) The residential child-care facility shall provide residents with access to telephones to maintain contact with friends and family members.
- (k) The residential child-care facility shall maintain a log of children in residence which includes:
 - (1) child's name, age, sex and race;
 - (2) name of parents, guardian or legal custodian; and
 - (3) dates of admission and discharge.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70I .0602 FAMILY INVOLVEMENT

- (a) A residential child-care facility shall have written policies and procedures regarding family involvement which support and encourage families to participate in planning, communication and family time.
- (b) The facility shall afford parents, guardians and legal custodians opportunities to participate in planning events for their child and themselves.
- (c) Parents, guardians and legal custodians shall allow children to send and receive unopened mail and to have telephone conversations with parents, guardians, other family members and other individuals. An exception shall be made if it is determined by the parents, guardians or legal custodians that it is in the child's best interest, to restrict communication based on the out-of-home family services agreement, visitation and contact plan or a court order.
- (d) The facility shall afford children and parents, guardians, other family members and individuals opportunities for family time, based on the purpose of placement and in support of the child's goals and in compliance with the child's visitation and contact plan.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Amended Eff. October 1, 2008.

10A NCAC 70I .0603 VISITING RESOURCES

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Repealed Eff. October 1, 2008.

10A NCAC 70I .0604 HEALTH SERVICES

(a) No child shall be accepted into a residential child-care facility without having had a medical examination by a licensed medical provider within 12 months prior to admission, or a medical examination by a licensed medical provider within two weeks after admission or sooner if indicated by the child's health status. The medical examination shall include a signed statement by the licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the facility. If a child is in the custody of a department of social services, is already scheduled to have and is having a medical examination report completed annually, and is entering a facility, the schedule of annual medical examination reports shall not be changed. A copy of the most recent medical examination report shall be obtained from the responsible county department of social services by the facility.

(b) A child admitted to a residential child-care facility shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola), rubella, mumps, and any other disease as required by 10A NCAC 41A .0400, as age appropriate, prior to admission. The facility shall obtain documentation of immunization. A copy of 10A NCAC 41A .0400 may be accessed at the following website (<http://www.oah.state.nc.us/rules/>) at the time of adoption of this Rule.

(c) A residential child-care facility shall make arrangements with one or more licensed medical providers or medical clinics and with at least one dentist for the care of the children.

(d) Each child shall have a medical examination at least once a year and more often as needed. A child shall not be allowed to participate in activities that pose risks to his or her health. Any illness, disease or medical condition of a child shall be identified and treated promptly through proper medical care. Children shall have a psychiatric or psychological examination or both when indicated and treatment when indicated.

(e) Children shall have had a dental examination, by a licensed dentist, within one year prior to admission or arrangements shall be made for an exam within six weeks after admission and annually thereafter. The facility shall document dental services in the child's record.

(f) The facility shall instruct direct child-care staff on medical care which may be given by them without specific orders from a licensed medical provider. The facility shall instruct direct child-care staff in the procedures for obtaining medical care beyond home health care and handling medical emergencies.

(g) The residential child-care facility shall arrange with a hospital for the admission of children from the facility in the event of serious illness or emergency.

(h) The residential child-care facility shall obtain a mouthpiece, utilize universal precautions and other precautionary equipment for administering CPR for the children in residence.

(i) The residential child-care facility shall ensure that first aid kits are available for immediate use in each living unit, recreation area and in vehicles used to transport children.

(j) The residential child-care facility shall not engage in any home health care practices that conflict with the control measures for communicable diseases in 10A NCAC 41A .0200. A copy of 10A NCAC 41A .0200 may be accessed at the following website (<http://www.oah.state.nc.us/rules/>) at the time of adoption of this Rule.

(k) Direct child-care staff shall be able to recognize common symptoms of illnesses in children and be alert to any infectious condition and take proper precautions to prevent the spread of such a condition.

(l) Direct child-care staff shall be able to provide home health care. A thermometer shall be kept available for use. When there is risk of transmission, arrangements shall be made for isolation and attendant care of a child with a communicable disease.

(m) Prescription medications shall be administered only when approved by a licensed medical provider.

(n) Non-prescription medication shall be administered only when approved by the parents, guardian, legal custodian or a licensed medical provider.

(o) All medicines, prescription and non prescription, shall be stored in a locked cabinet, closet or box not accessible to children.

(p) Each child shall have a medical record which contains written consent from the legal custodian or parent authorizing routine medical and dental treatment and emergency treatment.

(q) Each child shall have a medical record which contains the preadmission medical examination report, or a medical examination report within two weeks after admission (or sooner if indicated by the child's health status), immunization records, and records of ongoing medical and dental care and examinations received, including hospitalizations, illnesses or accidents and treatment provided.

(r) A residential child-care facility shall have written policies and procedures regarding the administration of medications to children placed in the residential child-care facility. The executive director of a residential child-care facility, or his or her designee, shall discuss and provide these policies and procedures to the parents, guardian or legal custodian, and the child (if 12 years of age or older), upon admission.

(s) The residential child-care facility shall maintain a Medication Administration Record (MAR) for each child that documents all medications administered.

(t) The residential child-care facility shall document medication errors, adverse drug reactions and medication orders in the child's Medication Administration Record (MAR).

(u) Upon discharge of a child, the residential child-care facility shall return prescription medications to the person or agency legally authorized to remove the child from residential child-care. The residential child-care facility shall provide oral or written education to the person or agency legally authorized to remove the child from residential child-care regarding the medications. Unwanted, out-dated, improperly labeled,

damaged, adulterated or discontinued prescription medications shall be returned to a pharmacy for disposal.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0605 ROUTINE ASPECTS OF HEALTH, PERSONAL HYGIENE, AND SAFETY

(a) Staff shall receive training in and apply general infection control measures and procedures which include Universal Precautions specified by the Centers on Disease Control, U.S. Department of Health and Human Services, Public Health Services, Atlanta, Georgia. A copy of general infection control procedures which are hereby incorporated by reference including subsequent amendments and editions, may be obtained from National Technical Information Services, 5285 Part Royal Road, Springfield, Virginia, 22161, (703) 487-4650, at a cost of seven dollars (\$7.00).

(b) Each child in a residential child-care facility shall have enough sleep for his or her age at regular and reasonable hours and under conditions conducive to rest.

(c) Staff of a residential child-care facility shall teach children the importance of cleanliness and how to keep themselves clean. Staff of a residential child-care shall provide training in all aspects of personal hygiene.

(d) Each child shall have his or her own toothbrush, comb, towel and wash cloth and his or her own separate place for keeping these personal articles. Towels, wash cloths, and bed linens shall be changed weekly or more often as required by good hygiene.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0606 NUTRITION

(a) Meals served shall meet nutritional requirements as advised by the National Research Council which are hereby incorporated by reference including subsequent amendments and editions. Copies of the Recommended Daily Dietary Allowances may be obtained from the USDA Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200N, Washington, DC 20036, at no cost.

(b) Any modified food needs of an individual child shall be provided under the direction of a licensed medical provider or a licensed dietician/nutritionist.

(c) Menus shall be planned by or in consultation with a licensed dietician/nutritionist biennially. The facility shall obtain documentation of consultation.

(d) Staff who eat with children shall be served the same food except staff may be served tea and coffee. An exception shall be made if differences in age or special dietary needs are factors.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0609 RECREATION AND LEISURE ACTIVITIES

(a) A residential child-care facility shall develop a written schedule of planned recreational, leisure, or physical exercise activities with input from both staff and children which meets the children's developmental needs, and which shall be posted in each facility.

(b) A residential child-care facility shall provide a variety of indoor and outdoor, individual and group recreational opportunities, with suitable space and competent adult supervision, appropriate to the age, interests, and needs of each child.

(c) A residential child-care facility shall provide recreational opportunities for children to play with children of both genders. An exception shall be made when the program cares for only one gender.

(d) A residential child-care facility shall have an individualized recreation plan for any child who has special recreational needs.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237 s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0610 RELIGION AND SPIRITUAL DEVELOPMENT

(a) A residential child-care facility shall have written policies and procedures on religious training and practices and shall provide these policies to children and their parents, guardian or legal custodian prior to admission.

(b) The residential child-care facility shall develop a plan for each child to meet the child's spiritual needs which takes into account the parent's, guardian's or legal custodian's position regarding a child's religious participation.

(c) The residential child-care facility shall have written policies and procedures which include that each child is free from coercion with regard to religious decisions.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0612 WORK

(a) A residential child-care facility shall provide opportunities for each child to learn the value of work and the development of good work habits.

(b) The residential child-care facility shall comply with the provisions of the NC Wage and Hour Act concerning age, abilities, hours of labor and hazardous occupations in the assignment of work to children.

(c) The residential child-care facility shall not substitute children for employed staff in assigning work.

(d) The residential child-care facility shall not require children to be solely responsible for any major phase of operation or maintenance of the home such as cooking, laundering, housekeeping, farming, or repair work.

(e) The residential child-care facility shall not require children to work for the purpose of paying the facility for their cost of care except when adolescents or young adults preparing for independent living enter into written agreements with the facility

and are paid for their work and assume a gradual degree of responsibility for their own needs.

(f) The residential child-care facility shall provide children who are on work assignments with adult supervision.

(g) The residential child-care facility shall ensure that children's work assignments do not interfere with school, recreation, study period, adequate sleep, community contacts and family time.

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

Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);

Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70I .0613 DISCIPLINE AND BEHAVIOR MANAGEMENT

(a) A residential child-care facility shall have written policies and procedures on discipline and behavior management, including the type and use of physical restraint holds, if utilized. A copy of the written policies and procedures shall be provided to and discussed with each child and the child's parents, guardian or legal custodian prior to or at the time of admission. Policies and procedures shall include:

- (1) proactive means for interacting with and teaching children which emphasize praise and encouragement for exhibiting self control and desired behavior; and
- (2) methods for protecting children and others when a child is out of control.

(b) A residential child-care facility shall implement standards for behavior which are reasonable and developmentally appropriate.

(c) A residential child-care facility shall not engage in discipline or behavior management which includes:

- (1) corporal and physical punishment;
- (2) cruel, severe, or humiliating actions;
- (3) discipline of one child by another child;
- (4) denial of food, sleep, clothing or shelter;
- (5) denial of family contact, including family time, telephone or mail contacts with family;
- (6) assignment of extremely strenuous exercise or work;
- (7) verbal abuse or ridicule;
- (8) mechanical restraints;
- (9) a drug used as a restraint, except as outlined in Paragraph (e) of this Rule;
- (10) seclusion or isolation time-out; or
- (11) physical restraints except as outlined in Paragraph (f) of this Rule.

(d) 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 residential child-care facility may use non-isolation time-out as a behavioral control measure when the facility provides it within hearing distance and sight of a staff member. The length of time alone shall be appropriate to the child's age and development.

(e) A 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, staff convenience or as a substitute for adequate staffing.

(f) Physical restraint of a child means physically holding a child who is at imminent risk of harm to himself or others until the child is calm.

(g) Physical restraint holds shall be administered only by staff trained in the use of physical restraint holds. No child or group of children shall be allowed to participate in the physical restraint of another child.

(h) Before employing a physical restraint, the residential child-care facility shall take into consideration the child's medical condition and any medications the child may be taking.

(i) No child shall be physically restrained utilizing a protective or mechanical device. Physical restraint holds shall:

- (1) not be used for purposes of discipline or convenience;
- (2) only be used when there is imminent risk of harm to the child or others and less restrictive approaches have failed;
- (3) be administered in the least restrictive manner possible to protect the child or others from imminent risk of harm; and
- (4) end when the child becomes calm.

(j) A residential child-care facility shall:

- (1) ensure that any physical restraint hold utilized on a child is administered by a trained staff member with a second trained staff member in attendance. An exception may occur when no other staff member is present or can be called for immediate assistance. Concurrent with the administration of a physical restraint hold and for a minimum of 15 minutes subsequent to the termination of the hold, a staff member 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. 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 staff member 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, a staff member shall immediately seek medical attention for the child. Following the use of a physical restraint hold, a staff member shall conduct an interview with the child about the incident, and the staff administering the physical restraint hold shall be interviewed about the incident;
- (2) document each incident of a child being subjected to a physical restraint hold on an incident report. This report shall include the following:
 - (A) the child's name, age, height and weight;
 - (B) the type of hold utilized;

- (C) the duration of the hold;
- (D) the staff member administering the hold;
- (E) the staff member witnessing the hold;
- (F) the supervisory staff who reviewed the incident report; less restrictive alternatives that were attempted prior to utilizing physical restraint;
- (G) the child's behavior which necessitated the use of physical restraint; whether the child's condition necessitated medical attention;
- (H) planning and debriefing conducted with the child and staff to eliminate or reduce the probability of reoccurrence; and
- (I) the total number of restraints of the child since admission.

Within 72 hours, supervisory staff shall review the incident report to ensure that correct steps were followed and shall forward the report to the parents, guardian or legal custodian and the licensing authority on a report form developed by the licensing authority. If a child dies as a result of a physical restraint hold, the residential child-care facility shall report the death of the child to the parents, guardian or legal custodian and to the licensing authority within 72 hours;

- (3) submit a summary report to the licensing authority by the 10th day of each month indicating the number of physical restraint holds used during the previous month on each child and any injuries that resulted;
- (4) ensure that any physical restraint hold utilized on a child is administered by a trained staff member who has completed 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 the child's breathing, verbal responsiveness and motor control. Training shall also include debriefing children and staff involved in physical restraint holds. Thereafter, staff authorized to use physical restraint holds shall annually complete at least eight hours of behavior management training, including techniques for de-escalating problem behavior. Instructor qualifications and training requirements shall include:

- (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; trainers shall demonstrate

- competence by scoring 100% on testing in a training program teaching the use of physical restraint;
- (B) trainers shall demonstrate competence by scoring a passing grade on testing in an instructor training program;
- (C) 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;
- (D) the content of the instructor training shall be approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and shall include, presentation of understanding the adult learner, methods of teaching content of the course, evaluation of trainee performance and documentation procedures;
- (E) trainers shall be retrained at least annually and demonstrate competence in the use of physical restraint;
- (F) trainers shall be currently trained in CPR;
- (G) trainers shall have coached experience in teaching the use of restrictive interventions at least two times with a positive review by the coach, trainers shall teach a program on the use of physical restraints at least once annually; and
- (H) trainers shall complete a refresher instructor training at least every two years.

- (5) complete an annual review of the discipline and behavior management policies and techniques to verify that the physical restraint holds being utilized are being applied properly and safely. This review shall be documented and submitted to the licensing authority as part of the biennial licensing renewal application; and

- (6) maintain reports of physical restraint holds in a manner consistent with the agency's risk management policies (clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to clients, staff and visitors and reduce the risk of loss to the agency) and make them available to the licensing authority upon request.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999;
Temporary Amendment Eff. July 20, 1999;
Temporary Amendment Eff. May 15, 2000;
Amended Eff. October 1, 2008; April 19, 2001.*

10A NCAC 70I .0614 CRITICAL INCIDENTS AND CRITICAL INCIDENT REPORTS

- (a) A residential child-care facility shall have written policies and procedures for handling and reporting critical incidents.
- (b) Critical incident reports shall be submitted to the licensing authority by the executive director or designee on a form developed by the licensing authority within 72 hours of the critical incident. Critical incidents involving a child who is a resident of a residential child-care facility include the following:
 - (1) a death of a child;
 - (2) reports of abuse and neglect;
 - (3) admission to a hospital;
 - (4) suicide attempt;
 - (5) runaway lasting more than 24 hours;
 - (6) arrest for violations of state, municipal, county or federal laws; and
 - (7) reports of physical restraint holds.
- (c) Documentation of critical incidents shall include:
 - (1) name of child or children involved;
 - (2) date and time of incident;
 - (3) brief description of incident;
 - (4) action taken by staff;
 - (5) need for medical attention;
 - (6) name of staff involved and person completing the report;
 - (7) name of child's parents, guardian or legal custodian notified and date and time of notification; and
 - (8) approval of supervisory or administrative staff reviewing the report.

(d) When there is a death of a child who is a resident of a residential child-care facility, the executive director or his or her designee shall notify the parents, guardian or legal custodian and the licensing authority within 72 hours.

(e) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of abuse or neglect of children involving staff, subcontractors, volunteers or interns. The policies and procedures shall include:

- (1) a provision for reporting any suspicions of abuse or neglect to the appropriate county department of social services for an investigative assessment in accordance with G.S. 7B-301;

- (2) a provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or governing body;
- (3) a provision for notifying the parents, guardian or legal custodian;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment.;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an investigative assessment by a county department of social services; and
- (7) a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(f) Critical incident reports shall be maintained in a manner consistent with the agency's risk management policies and shall be made available to the licensing authority upon request.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. October 1, 2008; July 18, 2002.*

10A NCAC 70I .0615 SEARCHES

(a) A residential child-care facility shall have written policies and procedures on conducting searches of children's rooms and possessions which shall be discussed with each child, their parents, guardian or legal custodian prior to or upon admission.

(b) The search policies and procedures shall include:

- (1) circumstances under which searches are conducted;
- (2) personnel authorized to conduct searches;
- (3) provision for documenting searches and informing supervisory personnel of searches; and
- (4) provision for removing and disposing of items seized as a result of searches.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. October 1, 2008.*

10A NCAC 70I .0701 REQUIREMENTS FOR APPROVAL

10A NCAC 70I .0702 CONSTRUCTION AND RENOVATION

10A NCAC 70I .0703 APPLICABLE BUILDING CODES

10A NCAC 70I .0704 FIRE AND BUILDING SAFETY

10A NCAC 70I .0705 GENERAL SANITATION

10A NCAC 70I .0706 BATHING AND TOILET AREAS

10A NCAC 70I .0707 SLEEPING AREAS

10A NCAC 70I .0708 LIVING/ACTIVITY AREAS
10A NCAC 70I .0709 DINING AREAS
10A NCAC 70I .0710 HEAT, LIGHT AND VENTILATION
10A NCAC 70I .0711 EXTERIOR SPACE
10A NCAC 70I .0712 INSPECTIONS
10A NCAC 70I .0713 VEHICLES USED FOR TRANSPORTATION OF CHILDREN

History Note: Authority G.S. 131D-10.5; 143B-153; 143B-154; 143B-155; 143B-156;
Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);
Amended Eff. July 18, 2002;
Repealed Eff. October 1, 2008.

10A NCAC 70I .0801 STAFFING REQUIREMENTS
10A NCAC 70I .0802 TRAINING REQUIREMENTS

History Note: Authority G.S. 143B-153;
Eff. September 1, 2007;
Repealed Eff. October 1, 2008.

10A NCAC 70I .0901 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

- (a) New construction and existing buildings proposed for use as a residential child-care facility shall comply with the requirements of this Section.
- (b) Except where otherwise specified, existing licensed facilities or portions of existing licensed facilities shall meet licensure and code requirements in effect at the time of construction, initial licensure, change in service, change in resident capacity or evacuation capability of the residents, addition, renovation or alteration.
- (c) New additions, alterations, modifications and repairs made to the building shall meet the requirements of this Section.
- (d) A residential child-care facility shall not have two different types of occupancies, as defined in the State Building Code, in the same building.
- (e) Rules contained in this Section are the Physical Plant requirements and do not prohibit buildings, systems or operational conditions that exceed these requirements.
- (f) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant requirements shall be approved by the Division of Health Service Regulation when the facility can demonstrate to the Division of Health Service Regulation's satisfaction, that the intent of the physical plant requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.
- (g) The residential child-care facility must comply with all applicable local, state and federal regulations.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.

10A NCAC 70I .0902 DESIGN AND CONSTRUCTION

- (a) Any building licensed for the first time as a residential child-care facility shall meet the applicable requirements of the North Carolina State Building Code. All new construction, additions

- and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for One and Two Family Dwellings, Licensed Residential-Care Facilities or Institutional Occupancy as determined by the Division of Health Service Regulation based on the number and age of the licensed children residents and any other dependents of the live-in staff. The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments can be purchased for one hundred six dollars and twenty-five cents (\$106.25) at the following web site: (http://www.ncdoi.com/OSFM/Engineering/CodeServices/engineering_codeservices_sales.asp) or calling 919-681-6550.
- (b) Mobile homes, whether mobile or permanently situated, shall not be used for residential child-care facilities.
- (c) Each facility shall be planned, constructed, equipped and maintained to provide the services offered in the facility.
- (d) Any existing building converted from another use to a residential child-care facility shall meet all the requirements of a new facility.
- (e) Any existing licensed residential child-care facility when the license is terminated for more than 60 days shall meet all requirements of a new facility prior to being relicensed.
- (f) 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.
- (g) Any existing licensed residential child-care facility that plans to have new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his appointed representative to the Division of Health Service Regulation, Construction Section for review and approval prior to commencement of the work.
- (h) The applicant for a resident child-care facility shall consult the local code enforcement official for information on required permits and building code requirements before starting any construction or renovations.
- (i) If the building is two stories in height and is classified as a Residential Occupancy, it shall meet the following requirements:
 - (1) Children less than six years old shall not be housed on any floor other than the level of exit discharge with adult supervision.
 - (2) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection.
- (j) The basement and the attic shall not to be used for storage or sleeping.
- (k) The ceiling shall be at least seven and one-half feet from the floor.
- (l) All windows shall be maintained operable.
- (m) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the North Carolina Commission for Public Health, which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult

Care Homes and Other Institutions", 15A NCAC 18A .1300 and the "Rules Governing Sanitation of Residential Care Facilities" 15A NCAC 18A .1600 are available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632 at no cost.

(n) The residential child-care facility shall request and obtain current inspections from the local sanitarian and the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority with the licensure renewal application.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0903 LOCATION

(a) A residential child-care facility shall be in a location approved by local zoning boards.

(b) The facility shall be located so that hazards to the residents are minimized.

(c) The site of the facility shall:

- (1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;
- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;
- (4) meet all local ordinances; and
- (5) be free from exposure to pollutants known to the applicant or licensee.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0904 LIVING ARRANGEMENT

A residential child-care facility shall provide living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons. There shall be a designated room for residents to talk privately with staff and to receive visitors.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0905 LIVING/ACTIVITY AREAS

(a) Residential child-care facilities shall have a living room area of a minimum of 200 square feet for a capacity of six or less and 15 square feet per each additional resident.

(b) All living rooms shall have operable windows to meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

(c) The living and activity areas shall be accessible from an outside entrance without going through sleeping, food services or food preparation areas.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0906 DINING AREAS

(a) Residential child-care facilities shall have a minimum dining area of 120 square feet for a capacity of six or less and 14 square feet for each additional resident (including children of live-in-staff).

(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas and shall not be included in the required square footage.

(c) Each dining room shall be provided with operable windows and be lighted to provide 30 foot candles of light at the floor level.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0907 KITCHEN

(a) The kitchen in a residential child-care facility shall be large enough to provide for the preparation and preservation of food and the washing of dishes.

(b) The kitchen floor shall have a non-slippery, water-resistant covering.

(c) The kitchen shall be approved by the local sanitarian for the total number of children as well as any live-in staff and their dependents.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0908 LAUNDRY ROOM

Laundry facilities shall be provided. The laundry equipment shall be located out of the living, dining and bedroom areas.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0909 SLEEPING AREAS

(a) Bedrooms in existing facilities licensed before October 31, 1977 shall provide a minimum of 60 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 80 square feet of floor space in single-occupancy bedrooms. Floor area does not include closets or wardrobes.

(b) Bedrooms in facilities licensed or developed after October 31, 1977 shall provide a minimum of 80 square feet of floor space for each child in multi-occupancy bedrooms and a minimum of 100 square feet of floor space in single-occupancy bedrooms. Floor area does not include closets or wardrobes.

(c) There shall be bedrooms sufficient in number and size to meet the individual needs of residential child-care facility residents, the live-in staff and their dependents.

(d) Only rooms authorized by the Division of Health Service Regulation as bedrooms by plan review or field inspection shall be used for bedrooms.

(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation by plan review or field inspection for that particular bedroom.

- (f) A room where access is through a bathroom, kitchen or other bedroom shall not be approved for a resident's bedroom.
- (g) No child shall share a bedroom with a live-in staff member or children of staff.
- (h) No bedroom shall house more than four children.
- (i) Except for siblings, children of different sexes shall not share a bedroom.
- (j) Each child shall have a bed of his or her own.
- (k) Bunk beds shall be limited to no more than one bed above the other bed with at least three feet vertical clearance between the lower and upper beds. Bunk beds shall have guardrails on both sides of the top bunk. All spaces between the guardrails and bed frame and in the head and foot boards on the top bunk shall be less than 3 ½ inches. Bunk beds shall be provided with secured ladders.
- (l) Individual beds shall be at least three feet apart at the head, foot and sides; bunk beds shall be at least five feet apart, horizontally, at the head, foot and sides.
- (m) Each bed shall be provided with a mattress in good repair.
- (n) No day-bed, convertible sofa or other bedding of a temporary nature shall be used as a bed.
- (o) Bedrooms shall be provided with a minimum of 48 cubic feet of closet or wardrobe space per child and four cubic feet of drawer space per child.
- (p) Each bedroom shall be provided with a window that meets the North Carolina State Building Code for emergency egress. These windows shall be openable without the use of keys or tools.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70I .0910 BATHING AND TOILET AREAS

- (a) Facilities licensed for the first time after the effective date of Subchapters 70I and 70J shall have one full bathroom for each five or fewer persons including live-in staff and family. For children under five years old a tub shall be provided. Live-in staff and their dependents shall have a separate bathroom from children in care.
- (b) The bathrooms shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have privacy partitions for each water closet. Each tub or shower shall have privacy partitions or curtains.
- (c) Bathrooms shall be located as conveniently as possible to the children's bedrooms.
- (d) The entrance to a bathroom shall not be through a kitchen, another resident's bedroom or bathroom.
- (e) The bathrooms shall be lighted to provide 30 foot candles of light at the floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.
- (f) The bathroom floor shall have a non-slippery water-resistant covering.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70I .0911 CORRIDORS

- (a) Corridors shall be a minimum clear width of three feet.

- (b) Corridors shall be lighted with night lights providing one foot-candle of light at the floor.
- (c) Corridors shall be free of all equipment and other obstructions.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70I .0912 OUTSIDE ENTRANCES AND EXITS

- (a) In residential child-care facilities, all floor levels shall have at least two exits. If there are only two, the exit or exit access doors shall be located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.
- (b) At least one entrance and exit door shall be a minimum width of three feet and another shall be a minimum width of two feet and eight inches.
- (c) If the residential child-care facility has any child that requires physical assistance with evacuation, the facility shall have at least one principal outside entrance and exit for the residents' use which shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance and exit is one that is most often used by residents for vehicular access.
- (d) All exits and room door locks and latches shall be easily operable from the inside at all times without keys.
- (e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.
- (f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.
- (g) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70I .0913 FLOORS

- (a) All floors shall be of smooth, non-skid material and constructed to be easily cleanable.
- (b) All floors shall be kept in good repair.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70I .0914 HOUSEKEEPING AND FURNISHINGS

- (a) Each residential child-care facility shall:
 - (1) have walls, ceilings and floors or floor coverings kept clean and in good repair;
 - (2) have no chronic unpleasant odors;
 - (3) have furniture clean and in good repair;
 - (4) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
 - (5) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets and

- additional coverings adequate for resident use on hand at all times;
- (6) have television and radio, each in working order;
- (7) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;
- (8) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and
- (9) have at least one non-pay telephone available at all times that does not depend on electricity or cellular service to operate. Emergency telephone numbers shall be posted at the telephone.
- (b) Each bedroom shall have the following furnishings in good repair and clean for each child:
 - (1) a bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Each bed shall include:
 - (A) at least one pillow with clean pillow case;
 - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
 - (C) clean bedspread and other clean coverings as needed.
 - (2) a bedside type table and lamp or overhead light, that provides a minimum of 30 foot-candle power of illumination for reading.
 - (3) a chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents.
 - (4) a wall or dresser mirror that can be used by each resident.
 - (5) a minimum of one comfortable chair.
- (c) The living room shall have functional living room furnishings for the comfort of residents, with coverings that are easily cleanable.
- (d) The dining room shall include:
 - (1) tables and chairs to seat all residents eating in the dining room; and
 - (2) high chairs and booster seats for infants and children who need them.
- (e) This Rule shall apply to new and existing facilities.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0915 FIRE SAFETY AND DISASTER PLAN

- (a) Care shall be exercised by the staff of a residential child-care facility in allowing children to use matches or to handle combustible materials.
- (b) A written fire evacuation plan (including a diagrammed drawing) that has the approval of the local code enforcement official shall be prepared with a minimum of 1/8 inch high

- letters and posted in a central location on each floor of the building.
- (c) A written disaster plan shall be prepared and updated at least annually and shall be maintained in the facility.
- (d) Fire drills shall be held monthly at different times during the day and quarterly at night for both children and staff. A residential child-care facility shall document fire drills including the date and time of the rehearsals, staff members present and a short description of what the rehearsal involved.
- (e) The executive director of a residential child-care facility, or his/her designee, shall instruct staff and children residing in a residential child-care facility and shall train the staff and children in the proper reporting of a fire and the ways of escaping from a fire. New residents shall be instructed within the first day upon admittance.
- (f) Fire extinguishers shall be provided in a residential child-care facility that meets the following minimum requirements:
 - (1) one five pound or larger (net charge) "A-B-C" type centrally located.
 - (2) one-five pound or larger "A-B-C" or "CO/2" type located in the kitchen.
 - (3) any other location as determined by the code enforcement official.
- (g) When there are seven or more children residing in the residential child-care facility, and it is classified as a residential occupancy by the Division of Health Service Regulation, each floor level shall be separated from other floors in accordance with the requirements of the applicable building code, and by not less than walls and a solid core, self-closing, 20 minute fire-rated door.
- (h) Fire exits and all exit-access paths including doors, hallways and stairs shall be well lighted and kept clear of obstructions.
- (i) The building shall be provided with the smoke detectors as required by the North Carolina State Building Code in effect at the time of initial licensing or renovations.
- (j) Heat detectors shall be located in the attic and connected to a dedicated sounding device. This Paragraph shall not apply to existing licensed facilities that have had no additions or renovations.
- (k) Smoking is not permitted in a residential child-care facility.
- (l) Any fire safety requirements required by city ordinances or county building inspectors shall be met.
- (m) This Rule shall apply to new and existing licensed facilities except where otherwise specified.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0916 BUILDING SERVICE EQUIPMENT

- (a) The building and all fire safety, electrical, mechanical and plumbing equipment in a residential child-care facility shall be maintained in a safe and operating condition.
- (b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected to avoid hazards to the children and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.

(c) Air conditioning or at least one fan per resident bedroom, living and dining areas shall be provided when the temperature in the facility exceeds 80 degrees F (26.7 degrees C).

(d) The hot water tank shall provide hot water to the kitchen, bathrooms and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:

- (1) 30 foot-candle of light for reading; and
- (2) 10 foot-candle of light for general lighting.

(f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed to avoid a burn hazard to children. Solid fuel burning fireplace inserts and wood stoves shall be labeled and approved by a third party testing agency accredited by the North Carolina Building Code Council for solid fuel heating equipment.

(g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent children and furnishings from burns.

(h) This Rule shall apply to new and existing licensed facilities.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0917 OUTSIDE PREMISES

(a) Outdoor recreational space shall be provided and maintained in a clean and safe condition.

(b) The grounds and all structures on the grounds of the residential child-care facility shall be maintained to minimize hazards to the health or safety of the children.

(c) Play and recreational equipment shall be located, installed and maintained to ensure the safety of children.

(d) Garbage and rubbish that is stored outside shall be stored securely in covered containers and shall be removed on a regular basis.

(e) Trash collection receptacles and incinerators shall be kept separate from play areas and must be located to avoid being a nuisance to neighbors.

(f) Fences shall be kept in good repair and shall not prevent adult staff from exiting or entering freely or be hazardous.

(g) Areas determined by the Division of Health Service Regulation to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, and high-speed roads, shall be fenced off or have natural barriers to protect children.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70I .0918 VEHICLES USED FOR TRANSPORTATION OF CHILDREN

(a) Vehicle Requirements for Transporting Children.

- (1) Vehicles shall comply with all motor vehicle laws and regulations for the State of North Carolina.
- (2) Motor vehicles shall be maintained in a safe operating condition, shall be properly

registered, and shall have current, valid inspection stickers for the State of North Carolina.

(3) A first-aid kit shall be in all motor vehicles.

(4) The bed of an open body or a stake bed vehicle shall not be used for transporting children.

(b) Driver Requirements. The name of and a copy of a valid driver's license for each person transporting children shall be maintained in a separate file at the facility.

(c) Safety Practices for Transporting Children.

(1) The interior of each vehicle shall be maintained in a clean and safe condition with clear passage to operable doors.

(2) The driver shall assure that all passengers follow North Carolina laws regarding seat belt usage and shall adhere to child passenger restraint laws when transporting children.

(3) The driver shall not transport more persons, including children and adults, than allowed by the design capacity of the vehicle.

(4) Children shall have at least one 30 minute rest stop for every four hours of continuous travel.

(5) Children shall not be transported for more than 10 hours in any 24-hour period.

(d) Transportation Records. Insurance verification and the vehicle identification certificate shall be kept in the vehicle in accordance with State law. Emergency medical information shall be kept in the vehicle for each child occupying the vehicle.

(e) Insurance. If a residential child-care facility's transportation services are provided by a private individual, a firm under contract, or by another arrangement, the facility shall maintain a file copy of the individual's or firm's insurance coverage.

(f) Emergency Transportation. A residential child-care facility shall have a plan for transporting children when emergency situations arise that includes:

- (1) the need for immediate medical care;
- (2) picking a child up at school before the end of the school day; and
- (3) transporting the child during adverse weather conditions.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008.

10A NCAC 70J .0101 APPLICABILITY

In addition to the rules in 10A NCAC 70I .0100 through .0501, the rules in this Section apply to all persons licensed or seeking licensure for a children's foster care camp as defined in 10A NCAC 70I .0201.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s.1130); Amended Eff. October 1, 2008.

10A NCAC 70J .0103 PERSONNEL

(a) Direct service personnel and supervisory personnel, in addition to supervision and training specified in 10A NCAC 70I .0405(f)(2)(B), (C) and (4)(C), shall be provided supervision and training in the following areas:

- (1) rescue evacuation, updated every three years; and
- (2) basic emergency water safety course, with certification documented in the camp files and updated every three years.

(b) There shall be a minimum of two counselors for each 10 children participating in activities involving water, including swimming, boating, canoeing, and rafting.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s.11.30). Amended Eff. October 1, 2008.

10A NCAC 70J .0201 APPLICABILITY

In addition to the rules in 10A NCAC 70I .0100, .0200, .0300, .0400, .0501, .0600 and .0900, the rules in this Section apply to all persons licensed or seeking licensure for an emergency shelter care program as defined in 10A NCAC 70I .0201.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. October 1, 2008; July 18, 2002.

10A NCAC 70J .0202 ADMISSION PROCEDURES

(a) At the time of admission, a residential child care facility shall obtain the following information:

- (1) the name, sex, race, birth date and birth place of the child;
- (2) when available, the parents' names, addresses, telephone numbers, birth dates, races, religion and marital status;
- (3) when available, the names, addresses and telephone numbers of siblings and other relatives; a record of the child's prior placements with names of care givers, addresses and dates of care; and
- (4) if the child has had prior placements, the names of care-givers, addresses and dates of prior placements.

(b) Within 72 hours of admission, the facility shall obtain the following:

- (1) a written agreement for admission from the parents, guardian or legal custodian;
- (2) consent for release of information;
- (3) consent for emergency medical treatment; and
- (4) consent for family time/visitation.

(c) Within two weeks of admission, the facility shall obtain the following:

- (1) a medical examination report from a licensed medical provider which includes a signed statement by the licensed medical provider specifying the child's medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a risk of transmission in the facility; and
- (2) a social summary from the agency placing the child which includes background information

on the child, his/her family, his/her presenting problems, and current circumstances.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s.11.30); Amended Eff. October 1, 2008.

10A NCAC 70J .0203 ADMISSION CRITERIA

A residential child care facility shall enter into and obtain a written agreement from the child's parents or guardian, or legal custodian within 72 hours of the child's admission which contains the following:

- (1) a statement documenting the parent's, guardian's or legal custodian's authority to place the child and designating the parent's, guardian's or legal custodian's consent for the child's admission;
- (2) completed application for services that includes demographic information on the child and the child's parents or guardian;
- (3) information which sets forth the role and responsibilities to be performed by the staff in the facility during the child's stay in the program;
- (4) information that specifies the expectations of the parents, guardian or legal custodian during the child's stay in the program;
- (5) specification of the anticipated length of the child's stay; and
- (6) specification of the projected goals for the child's parents or guardian during the child's stay in the program.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s.11.30); Amended Eff. October 1, 2008.

10A NCAC 70J .0204 RECORDKEEPING

Client case record. An individual case record shall be maintained on each child that contains the following:

- (1) written consent for placement;
- (2) documentation of placement authority;
- (3) completed application for services that includes demographic information on the child and the child's family;
- (4) consents for release of information, emergency medical treatment, family time/visitation;
- (5) a medical examination report completed within two weeks after admission unless the child's health status indicates the completion of a medical examination report sooner and copies of subsequent medical examination reports;
- (6) medical records and immunization records;
- (7) intake study and related documents;
- (8) out-of-home family services agreement and biweekly reviews;
- (9) family contact and visitation plan, including type, duration, location both on-site and off-

site and frequency, as well as any rationale for restrictions on family involvement. The facility shall maintain documentation of all family time;

- (10) birth certificate or other documentation that verifies the child's birth;
- (11) court orders;
- (12) documentation of medical insurance;
- (13) consents for time-limited, audio-visual recording signed by both the child and parent or guardian, or legal custodian;
- (14) progress notes; and
- (15) discharge summary including date of discharge, time of discharge and the name, address, telephone number, and relationship of the person or agency to whom the child was discharged, a summary of services provided during care, needs which remain to be met and plans for the services needed to meet these goals.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70J .0205 SERVICE PLANNING

Within one week of admission, an out-of-home family services agreement shall be developed and reviewed every other week, thereafter, by the shelter home staff, parents, guardian, or legal custodian of the child. The out-of-home family services agreement shall include:

- (1) the expectation and goals to be reached by the child while in care;
- (2) the tasks and activities of the shelter home staff to meet the needs of the child while in care;
- (3) the tasks and activities of the parents, guardian or legal custodian to meet the needs of the child while in care;
- (4) the projected discharge plan;
- (5) the projected length of stay; and
- (6) the signatures of the shelter home staff, the child's parents, guardian or legal custodian and child, if 12 years of age and older.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s. 11.30); Amended Eff. October 1, 2008.

10A NCAC 70J .0206 DISCHARGE SERVICES

- (a) A residential child-care facility shall establish a policy which specifies that no child shall remain in care longer than 90 days. An exception may be made to this policy if the facility has a policy which specifies the length of time and the circumstances by which a child will remain in shelter care longer than 90 days.
- (b) Prior to discharge, the staff of the residential child-care facility shall develop a plan with the child to determine if follow-up services will be provided, the type of services to be provided and the timeframe for conducting these services.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c.237, s.11.30); Amended Eff. October 1, 2008.

10A NCAC 70K .0101 DEFINITION

For the purposes of the rules in this Subchapter, "residential maternity home" means a child-caring institution which provides continuing full time care for adolescent women during pregnancy and after delivery when delivery takes place in a licensed hospital, and a facility for adult women during pregnancy and after delivery when delivery takes place in a licensed hospital. The rules in this Subchapter apply to persons intending to organize, develop, or operate a residential maternity home. Residential maternity homes shall not hold dual licensure under G.S. 131D and G.S. 122C. The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority for residential maternity homes.

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008; June 1, 1990.

10A NCAC 70K .0102 ORGANIZATION AND ADMINISTRATION

Persons licensed or seeking licensure to provide residential maternity home care shall comply with requirements as specified in 10A NCAC 70F and 10A NCAC 70K.

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008.

10A NCAC 70K .0103 LICENSING ACTIONS

- (a) License. The Department of Health and Human Services, Division of Social Services, as licensing authority shall issue a license when it determines that the residential maternity home is in compliance with rules in Subchapters 70F and 70K of this Chapter.
- (b) Changes in any information on the license.
 - (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70F and 70K of this Chapter.
 - (2) A residential maternity home shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70F and 70K of this Chapter.
- (c) Termination.
 - (1) When a residential maternity home voluntarily discontinues operations, either temporarily or permanently, the residential maternity home shall notify the licensing authority in writing of the date, reason and anticipated length of closing.

- (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
- (3) When the license of any existing residential maternity home is terminated for more than 60 days, the home shall meet all requirements of a new facility prior to being relicensed.
- (4) Any existing licensed residential maternity home that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(d) Adverse licensure action.

- (1) The licensing authority shall deny, suspend or revoke a license when a residential maternity home is not in compliance with the rules in Subchapters 70F and 70K of this Chapter unless the residential maternity home within 10 working days from the date the maternity home initially received the deficiency report from the licensing authority submits a plan of correction. The plan of correction shall specify the following:

- (A) the measures that will be put in place to correct the deficiency;
- (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
- (C) the individual or individuals who will monitor the corrective action; and
- (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.

- (2) The licensing authority shall notify a residential maternity home in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0301 shall be applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.

(e) Licensure shall be denied when it is determined that an applicant meets any of the following conditions:

- (1) 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
- (2) 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;
- (3) 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;

- (4) 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;

- (5) 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

- (6) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0201 PERSONNEL

(a) Staff Qualifications and Functions.

- (1) Executive Director. There shall be an executive director employed for the general management and supervision of the maternity home. The executive director shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory, which can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. The executive director shall have the following responsibilities:

- (A) direct the maternity home's program of care and services in accordance with policies established by the governing board and within license standards;
- (B) recruit, employ, supervise and discharge staff;
- (C) assure a training program for staff;
- (D) prepare the annual budget, supervise expenditures, and operate within the budget established;
- (E) establish and maintain good working relationships with other human service agencies and represent the agency in the community; and
- (F) delegate authority to a staff member meeting the qualifications described in Subparagraph (a)(1) of this Rule, during his or her absence.

- (2) Professional Services Staff. The maternity home shall have available professional services personnel to assure appropriate services are provided for each resident in accordance with her case plan or out-of-home family services agreement.

- (3) Social Work Supervisor. If the maternity home employs staff to provide social work services, it shall employ a person who is responsible for supervising, evaluating, and

monitoring the work and progress of the social work staff. The social work supervisor shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory.

- (4) **Social Worker.** If the maternity home employs social workers to be responsible for intake services, providing social work services to the residents and their families, coordinating the services and resources affecting the client and their families, the social worker shall have a bachelor's degree from a college or university listed in the most current edition of the Higher Education Directory.
- (5) **Direct Care Staff.** All direct care staff hired shall have a high-school diploma or GED.
- (6) **Direct Care Supervisory Staff.** All direct care supervisory staff shall have a high-school diploma or GED.
- (7) **Staff members of the maternity home** may maintain dual employment or serve as volunteers with adoption agencies or crisis pregnancy centers as long as the maternity home does not provide services to the clients of the adoption agency or crisis pregnancy center. Staff members of the maternity home may serve on the board of directors of adoption agencies or crisis pregnancy centers as long as the adoption agency or crisis pregnancy center does not provide services to the clients of the maternity home.

(b) **Staffing Requirements.** For maternity homes that employ staff as social workers and social work supervisors, there shall be at least one social worker assigned for every 15 residents. Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
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.	

(c) **Direct Care Staff.** Direct care staff shall be employed for direct care of maternity home residents (residents include mothers and infants). Effective July 1, 2009 there shall be at least one direct care staff member assigned for every eight residents during waking hours and one direct care staff member for every 12 residents during sleeping hours. Additional direct care staff or other personnel shall be available to assist with emergency situations or special needs of the residents.

(d) **Direct Care Supervisory Staff.** Effective July 1, 2009 there shall be at least one direct care supervisor for every 15 direct care staff members.

(e) **Volunteers and Interns.** If the maternity home uses volunteers or interns to work directly with residents, the requirements of 10A NCAC 70F .0207 apply.

(f) **Additional Personnel Requirements.** In addition to those requirements specified in 10A NCAC 70F .0207, the following rules are applicable to maternity home programs:

- (1) **Health Examinations.** All direct care staff, food service staff and anyone serving in the capacity of direct care staff and food service staff shall have a medical examination completed by a physician, physician's assistant, or nurse practitioner, hereafter referred to as "licensed medical provider," within at least 12 months before beginning employment and biennially thereafter. The agency shall maintain documentation that all direct care staff and food service staff or anyone serving in the capacity of direct care staff and food service staff have had a TB skin test or chest x-ray prior to employment unless contraindicated by a licensed medical provider. A medical history form shall be completed by all direct care staff and food service staff. Examinations must include tests necessary to determine that the staff member is able to carry out assigned duties and does not have any communicable disease or condition which poses risk of transmission in the facility. A report of each examination shall be made a part of the employee's personnel file. A medical examination report shall be completed on any adopted children or relative children of direct care staff residing in the maternity home within 12 months prior to the license date. The birth children of direct care staff who reside in the maternity home shall be tested for TB only if one or more of the parents tests positive for TB. There shall be documentation that adopted children or other relative children residing in the maternity home have had a TB skin test or chest x-ray prior to initial licensure unless contraindicated by a licensed medical provider. A medical examination and TB test, if required, shall be completed on any children or relative children of direct care staff who subsequently begin residing in the maternity home. Examinations shall include tests necessary to determine that the children or relative children of staff members who reside in the maternity home do not have any communicable diseases or conditions which poses risk of transmission in the facility. A medical history form shall be completed on any children or relative children of direct care staff who reside in the living unit. Medical examination reports and medical history forms

- of children of the residents residing the maternity home shall be maintained in the personnel file of their parent or relative.
- (2) Staff Development. The maternity home staff shall have a written staff development plan which provides staff training in the following areas:
- (A) medical, physical, and psychological aspects of pregnancy;
 - (B) prenatal and postnatal care;
 - (C) developmental needs of adolescents and young adults;
 - (D) developmental needs of infants and children;
 - (E) parenting preparation classes;
 - (F) stages of growth in infants;
 - (G) day-to-day care of infants; discipline;
 - (H) education planning;
 - (I) job seeking skills;
 - (J) locating housing;
 - (K) money management;
 - (L) food management;
 - (M) child care;
 - (N) health education;
 - (O) stress management;
 - (P) life skills;
 - (Q) decision making;
 - (R) substance abuse;
 - (S) pregnancy prevention;
 - (T) counseling skills;
 - (U) emergency medical care; and
 - (V) nutrition and food preparation.

Social workers, social work supervisors, direct care staff and direct care staff supervisors shall receive 24 hours of continuing education annually.

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. June 1, 1990; RRC Objection Eff. April 15, 1993 Due to Lack of Statutory Authority; Amended Eff. October 1, 2008; July 2, 1993.

10A NCAC 70K .0202 SERVICES

(a) A maternity home shall have a written statement of purpose and objectives, services offered, eligibility requirements, application procedures, and procedures for implementing all services. This information shall be available to persons or agencies making inquiries.

(b) Social Services. The maternity home shall provide admission, residential, and discharge services to applicants, residents in care, and their families or legal custodians, as follows:

- (1) Admission services shall include an assessment of the need for maternity home care, for specific services for the applicant's individual needs, and shall include information to determine if the maternity home's program of care and services can meet these needs.

- (2) When an applicant who lives out of state is being considered for admission and the applicant is under the age of eighteen years, the provisions of the North Carolina interstate placement laws (G.S. 7B-3800 et. seq.) shall be met.
- (3) Staff responsibility shall be established for decisions on admissions.
- (4) Applicants or legal custodians shall complete a written application before or upon admission. Written agreements shall be made concerning release of information, medical care, and fees for care and services.
- (5) An applicant accepted for care shall be referred to and have a working agreement with a licensed child-placing agency or county department of social services of the applicant's choice for planning and decision making in relation to her baby. No maternity home staff member shall directly or indirectly assume responsibility for placement of children for adoption.
- (6) Residential services throughout the period of care shall include counseling for each resident and her family.
- (7) Each resident shall have the opportunity to talk privately with staff, family members, friends and social workers from child-placing agencies or county departments of social services and to express grievance.
- (8) Each resident shall have assistance as requested in making the best use of her time in the maternity home, adjusting to the living situation, accessing all services needed, resolving personal and family problems, and planning for discharge.
- (9) Discharge services for residents shall include planning for living arrangements, employment or education, and for those residents planning to keep their babies, preparation for parenthood and support services for single parents.

(c) Psychological and Psychiatric Services. Arrangements shall be made for a resident to have the services of a psychologist or a psychiatrist, if necessary, as well as for consultation for the staff providing care and services to the resident.

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008.

10A NCAC 70K .0203 CASE RECORD

A confidential case record shall be maintained for each resident which includes:

- (1) a completed application for admission and services with identifying information about the resident;

- (2) a summary of the referral source, background information about the resident, and an assessment of the services needed;
- (3) a complete medical and obstetrical history and examination before or within one week after admission to the home;
- (4) record of medical and dental services received;
- (5) authorization for medical care for minors;
- (6) authorization for receiving or sending information concerning the resident;
- (7) copy of financial agreements;
- (8) a copy of the agreement with the licensed child placing agency or county department of social services providing services to the resident;
- (9) case plan or out-of-home family services agreement;
- (10) visitation and contact plan including type, duration, location both on-site and off-site, and frequency, as well as any rationale for restrictions on family involvement; the facility shall maintain documentation of all family time;
- (11) date of admission to the maternity home and documentation of services provided including hospital care and delivery dates;
- (12) date, time and circumstances of discharge from the maternity home and the resident's plans for herself and baby; and in the case of minors the name, relationship and signature of the individual the resident was released to;
- (13) correspondence and contacts with other persons or agencies concerning the resident; and
- (14) signed acknowledgement of client rights.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. February 1, 1986;
Amended Eff. October 1, 2008.*

10A NCAC 70K .0204 PROGRAM OF CARE

- (a) The program of care shall be suited to the needs of adolescent and adult women experiencing an unplanned pregnancy. There shall be opportunity provided for private time, for family contacts, and for group fellowship.
- (b) The residents shall be free from duress to make their own decisions about releasing or keeping their babies.
- (c) The residents shall be provided confidentiality concerning their situations and protection from harm insofar as possible.
- (d) Educational opportunities shall be provided or arranged by the residential maternity home in accordance with the needs of individual residents and resources available in the community. For those residents who are required to attend school under the compulsory school attendance laws of North Carolina, the maternity home shall arrange for attendance in a public or a nonpublic school which is operated in accordance with the laws of North Carolina. If a school or educational program is maintained and operated by the maternity home which residents attend in lieu of attending public schools, the maternity home shall comply with the North Carolina General Statutes governing

nonpublic schools. Opportunity shall be offered to residents who wish to participate in educational courses available in the community.

(e) Health education including information about pregnancy, delivery, and family planning services shall be provided residents. Information about the care of infants shall be made available to the residents who want this information.

(f) Recreational activities shall be provided which meet the needs of residents. Suitable space shall be provided at the maternity home for both indoor and outdoor activities. Participation in community activities shall be provided.

(g) Work assignments in the maternity home shall be geared to the physical health and emotional well-being of the residents in care. Residents shall be given the opportunity to voluntarily seek paid employment when employment is in accordance with the recommendation of their licensed medical provider and other professional staff of the maternity home. No resident shall be required to work for the purpose of paying the maternity home for her care.

(h) The maternity home shall define in writing and make available to applicants and residents those rules and regulations which the residents shall be expected to follow. These Rules and regulations shall respect the personal freedom of the residents. These Rules and regulations shall not infringe on the residents' rights to send and receive uncensored mail and for planned visits with their families and others. Visitors shall not be allowed to visit minors without prior consent of the parents or guardian, or legal custodian.

(i) Nutritious, foods shall be provided in the variety and amounts necessary to meet the National Research Council's Recommended Daily Dietary Allowances (USDA Center for Nutrition Policy and Promotion, 1120 20th Street, NW, Suite 200N, Washington, DC 20036). Special diets shall be planned to meet the modified needs of individual residents as prescribed by a licensed medical provider. Menus shall be planned and written by, or in consultation with, a licensed dietician/nutritionist. Menus shall be planned and written at least one week in advance. Snacks shall be recorded on the regular menu.

(j) Each resident shall be provided prenatal care and general health care by a licensed medical provider which includes:

- (1) a complete medical and obstetrical history and examination before or within one week after admission to the home;
- (2) periodic examinations during pregnancy as outlined by the licensed medical provider;
- (3) dental services as needed; and
- (4) medical services as needed.

(k) Each resident shall be provided delivery care in a licensed hospital or any facility licensed as a place for delivery of babies.

(l) The agency shall have written policies and procedures regarding staff administering medications to residents that shall be discussed with each resident and their parents or guardian, or legal custodians (if resident is a minor) prior to or upon placement. These policies and procedures shall address:

- (1) medication administration;
- (2) medication dispensing,
- (3) packaging, labeling,
- (4) storage and disposal;

- (5) review;
- (6) education and training; and
- (7) documentation, including medication orders, Medication Administration Record (MAR); orders and copies of lab tests; and, if applicable, administration errors and adverse drug reactions. The residential maternity home shall maintain a MAR for each resident that documents all medications administered. Upon discharge of a resident, the residential maternity home shall return prescription medications to the resident or person or agency legally authorized to remove the minor from residential maternity care. The residential maternity home shall provide oral or written education to the resident or person or agency legally authorized to remove the minor from residential maternity care regarding the medications. Unwanted, outdated, improperly labeled, damaged, adulterated or discontinued prescription medications shall be returned to a pharmacy for disposal.

(m) When residents return to the maternity home, post delivery care shall be available to the residents in accordance with the recommendations of the resident's licensed medical provider and the professional staff of the maternity home. A resident shall not be required to remain in the maternity home after medical discharge. Referral to a licensed medical provider or medical clinic or community family planning resource shall be made if requested by the resident.

(n) A resident and her infant may be considered for aftercare if the resident was in residential care prior to delivery.

(o) The period of aftercare for the resident and her child shall not exceed 12 consecutive months, during which time a plan for independent living shall be developed with the resident and assistance provided in achieving the goal of the plan within the designated time frame.

(p) Services provided for the plan of independent living shall include:

- (1) parenting preparation classes;
- (2) stages of growth in infants;
- (3) day-to-day care of infants;
- (4) discipline, education planning;
- (5) job seeking skills;
- (6) locating housing;
- (7) money management;
- (8) food management;
- (9) child-care;
- (10) health education;
- (11) stress management;
- (12) life skills;
- (13) decision making;
- (14) substance abuse; and
- (15) pregnancy prevention, as well as other services based on the individual needs of the resident.

(q) A case record shall be maintained at the maternity home for each resident which includes documents concerning all social

work, counseling, medical, psychological, and dental services, as well as any other services provided to each resident.

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. October 1, 2008; June 1, 1990.

10A NCAC 70K .0205 PHYSICAL FACILITIES

History Note: Authority G.S. 131D-1; 143B-153; Eff. February 1, 1986; Amended Eff. June 1, 1990; Repealed Eff. October 1, 2008.

10A NCAC 70K .0206 CASE PLAN OR OUT-OF-HOME FAMILY SERVICES AGREEMENT

(a) A residential maternity home shall develop a written case plan or out of home family services agreement within 30 days of a resident's admission to the maternity home. The case plan or out of home family services agreement shall be developed in cooperation with the resident, her parents or guardian or the legal custodian. The case plan or out-of-home family services agreement shall be based upon an assessment of the needs of the resident. The case plan or out-of-home family services agreement shall include:

- (1) goals stated in specific, realistic, and measurable terms; and
- (2) plans that are action oriented, including specific responsibilities of the resident, the residential maternity home, the parents or guardians, other family members, legal custodians and other agencies that are providing services to the resident.

(b) The case plan or out-of-home family services agreement shall be reviewed within 60 days of placement, the second case plan or out-of-home family services agreement review shall occur within 90 days of the first review and subsequent reviews shall be held every six months. The resident, parents or guardians or legal custodians as well as any individual or agency providing services shall participate in the reviews to determine the resident's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the case plan or out-of-home family services agreement.

(c) If the legal custodian is a county department of social services, the residential maternity home, the department of social services, parents or guardian, and resident shall develop a single out-of-home family services agreement. The residential maternity home shall attend court reviews, child and family team meetings, agency reviews and permanency planning action team meetings. The Out-of-Home Family Services Agreement (DSS-5240 or DSS-5241) and the Transitional Living Plan (CARS Plan Review) may serve as the out-of-home family services agreement for the maternity home if the documents reflect input and participation by the maternity home. Maternity homes shall follow the same timeframes for completing these documents as described in Paragraph (b) of this Rule.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0207 CLIENT RIGHTS

(a) A residential maternity home shall develop and implement policies and procedures to protect the individual rights and dignity of residents and family members who are provided services by the agency.

(b) A residential maternity home shall have a client's rights policy, which includes that each resident has the right to:

- (1) be treated with dignity and respect;
- (2) be free from coercion and influence in deciding to parent her baby or release for adoption;
- (3) privacy;
- (4) be provided adequate food, clothing and shelter;
- (5) have access to family time and have telephone conversations with family members and other individuals, when not contraindicated in the visitation and contact plan;
- (6) have personal property and a space for storage;
- (7) express opinions on issues concerning the resident's care or treatment;
- (8) receive care in a manner that recognizes variations in cultural values and traditions;
- (9) be free from coercion by agency staff with regard to religious or cultural decisions. The agency shall have a process to assure that, whenever practical, the wishes of the resident and the parents of minors with regard to religious and cultural participation are ascertained and followed;
- (10) not be identified in connection with publicity for the agency which shall bring the resident, or resident's family embarrassment;
- (11) give written permission before pictures or other means of identifying residents are used in publicity or public relations for the maternity home (if the resident is a minor, written permission shall be obtained from the parents, guardian or the legal custodian); and
- (12) not be forced to acknowledge dependency on or gratitude to the agency.

(c) A residential maternity home shall have a policy that prohibits direct involvement by a resident in funds solicitation for the agency.

(d) A residential maternity home shall have a policy, which prohibits the resident's participation in any activities involving audio or visual recording and research without the voluntary signed, time-limited consent of the resident and, if applicable, the resident's parents, guardian or legal custodian.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0208 GRIEVANCE PROCEDURES

(a) A residential maternity home shall provide to each resident, parents, guardians or legal custodians of minors, upon placement:

- (1) a written description of policies and procedures that the resident her parents,

guardian or legal custodian follows to register complaints;

- (2) information about resident's and family's rights;
- (3) the process for appealing a decision or action of the agency; and
- (4) the process of resolution of a complaint.

(b) Upon resolution of a grievance, the agency shall maintain a copy of the complaint and the resolution in the resident's case record.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0209 SEARCHES

(a) A residential maternity home shall have written policies and procedures regarding staff conducting searches of resident's rooms and possessions that shall be discussed with each resident and, if applicable, their parents, guardians or legal custodians prior to or upon placement.

(b) The search policies and procedures shall include:

- (1) circumstances under which searches are conducted;
- (2) persons who are allowed to conduct searches;
- (3) provision for removing and disposing of items seized as a result of searches; and
- (4) provision for documenting searches.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0210 CRITICAL INCIDENTS AND CRITICAL INCIDENT REPORTS

(a) A maternity home shall have written policies and procedures for handling and reporting critical incidents.

(b) The maternity home shall have and follow policies and procedures for handling any suspected incidents of abuse or neglect of a resident involving staff, subcontractors, volunteers or interns in a facility supervised by the maternity home. The policies and procedures shall include:

- (1) a provision for reporting any suspicions of abuse or neglect to the appropriate county department of social services for investigation;
- (2) a provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body;
- (3) a provision for notifying the parents, guardian, or legal custodian, if applicable;
- (4) a provision for preventing a recurrence of the alleged incident pending the investigative assessment;
- (5) a policy concerning personnel action to be taken when the incident involves a staff member, subcontractor, volunteer or intern;
- (6) a provision for submitting a critical incident report to the licensing authority within 72 hours of the incident being accepted for an

- (7) investigative assessment by a county department of social services; and a provision for submitting written notification to the licensing authority within 72 hours of the case decision by the county department of social services conducting the investigative assessment.

(c) Critical incident reports shall be submitted to the licensing authority by the executive director or his/her designee on a form developed by the licensing authority within 72 hours of the critical incident. Critical incidents include the following of a resident in placement:

- (1) a death of a resident;
- (2) reports of abuse and neglect;
- (3) admission to a hospital as a result of injury or serious medical condition;
- (4) suicide attempt;
- (5) runaway lasting more than 24 hours; and
- (6) arrest for violations of state, municipal, county or federal laws.

(d) Documentation of the critical incident shall include:

- (1) name of resident or residents involved;
- (2) date and time of incident;
- (3) brief description of incident;
- (4) action taken by staff;
- (5) need for medical attention;
- (6) name of staff involved and person completing the report;
- (7) name of resident's parents, guardian or legal custodian, if applicable, notified and date and time of notification; and
- (8) approval of supervisory or administrative staff reviewing the report.

(e) When there is a death of a resident in placement the executive director or his/her designee shall notify the parents, guardian, or legal custodian, if applicable, and the licensing authority with 72 hours.

(f) Critical incident reports shall be maintained in a manner consistent with the agency's risk management policies that include clinical decisions and activities undertaken to identify, evaluate and reduce the risk of injury to residents, staff and visitors and reduce the risk of loss to the agency and shall be made available to the licensing authority upon request..

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0301 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

(a) New construction and existing buildings proposed for use as a residential maternity home shall comply with the requirements of this Section.

(b) Except when otherwise specified, existing licensed homes or portions of existing licensed homes shall meet licensure and code requirements in effect at the time of construction, initial licensure, change in service, change in resident capacity or evacuation capability of the residents, addition, renovation or alteration.

(c) New additions, alterations, modifications and repairs made to the building shall meet the requirements of this Section.

(d) A residential maternity home shall not have two different types of occupancies, as defined in the State Building Code in the same building.

(e) Rules contained in this Section are the Physical Plant requirements and do not prohibit buildings, systems or operational conditions that exceed these requirements.

(f) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant requirements shall be approved by the Division of Health Service Regulation when the facility can demonstrate to the Division of Health Service Regulation's satisfaction, that the intent of the physical plant requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

(g) The facility must comply with all applicable local, state and federal regulations.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0302 DESIGN AND CONSTRUCTION

(a) Any building licensed for the first time as a residential maternity home shall meet the applicable requirements of the North Carolina State Building Code. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for One- and Two-Family Dwellings and Licensed Residential Care Facilities or other classifications as determined by the Division of Health Service Regulation, Construction Section based on the number and age of the mothers, the number of infants and any other dependents of either the expecting mothers or the live-in staff. The North Carolina State Building Code, which is incorporated by reference, including all subsequent amendments can be purchased for one hundred six dollars and twenty-five cents (\$106.25) at the following web site: (http://www.ncdoi.com/OSFM/Engineering/CodeServices/engineering_codeservices_sales.asp) or calling 919-681-6550.

(b) Mobile homes, whether mobile or permanently situated, shall not be used for residential maternity home facilities.

(c) Each residential maternity home shall be planned, constructed, equipped and maintained to provide the services offered in the home.

(d) Any existing building converted from another use to a residential maternity home shall meet all the requirements of a new facility.

(e) Any existing licensed residential maternity home when the license is terminated for more than 60 days shall meet all requirements of a new home prior to being relicensed.

(f) Any existing licensed residential maternity home that is closed or vacant for more than one year shall meet all requirements of a new facility prior to being relicensed.

(g) Any existing licensed residential maternity home that plans to have new construction, remodeling or physical changes done to the facility shall have drawings submitted by the owner or his appointed representative to the Division of Health Service Regulation for review and approval prior to commencement of the work.

(h) The applicant for a residential maternity home shall consult the local code enforcement official for information on required permits and building code requirements before starting any construction or renovations.

(i) If the building is two stories in height, it shall meet the following requirements:

- (1) Infants or children less than six years old shall not be housed on any floor other than the level of exit discharge.
- (2) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection.

(j) The basement and the attic shall not to be used for storage or sleeping.

(k) The ceiling shall be at least seven and one-half feet from the floor.

(l) All windows shall be maintained operable.

(m) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the North Carolina Commission for Public Health which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing Homes, Adult Care Homes and Other Institutions", 15A NCAC 18A .1300 and the "Rules Governing Sanitation of Residential Care Facilities" 15A NCAC 18A .1600 are available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632 at no cost.

(n) The residential maternity home shall request and obtain current inspections from the local sanitarian and the local fire inspector. Reports of such inspections shall be maintained in the facility and available for review and shall be submitted to the licensing authority with the licensure renewal application.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0303 LOCATION

(a) A residential maternity home shall be in a location approved by local zoning boards.

(b) The home shall be located so that hazards to the residents are minimized.

(c) The site of the home shall:

- (1) be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;
- (2) be accessible to fire fighting and other emergency services;
- (3) have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;

(4) meet all local ordinances; and

(5) be free from exposure to pollutants known to the applicant or licensee.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0304 LIVING ARRANGEMENT

A residential maternity home shall provide living arrangements to meet the individual needs of the residents, the live-in staff and their children or relative children. There shall be a designated room for residents to talk privately with staff and to receive visitors.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0305 LIVING ROOM

(a) Residential maternity homes shall have a living room area of a minimum of 200 square feet for a capacity of six or fewer residents and 15 square feet per additional resident.

(b) All living rooms shall have operable windows that meet the North Carolina State Building Code and be lighted to provide 30 foot candles of light at floor level.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0306 DINING ROOM

(a) Residential maternity homes shall have a dining room or area of a minimum of 120 square feet for a capacity of six or fewer residents and 10 square feet per additional resident. The dining room may be used for other activities during the day.

(b) When the dining area is used in combination with a kitchen, an area five feet wide shall be allowed as work space in front of the kitchen work areas and shall not be included in the required square footage.

(c) The dining room shall have operable windows and be lighted to provide 30 foot candles of light at the floor level.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0307 KITCHEN

(a) The kitchen in a residential maternity home shall be large enough to provide for the preparation and preservation of food and the washing of dishes.

(b) The kitchen floor shall have a non-slippery, water-resistant covering.

(c) The kitchen shall be approved by the local sanitarian for the total number of residents (mothers, infants and any other children), as well as any direct care staff and their dependents.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0308 BEDROOMS

(a) There shall be bedrooms sufficient in number and size to meet the individual needs of the maternity home residents

(residents include mothers and their children), the live-in staff and their children or relative children residing in the home. Residents shall not share bedrooms with staff or the staff's children or relative children.

(b) Only rooms authorized by the Division of Health Service Regulation, Construction Section by plan review or field inspection, shall be used for bedrooms.

(c) A room where access is through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.

(d) There shall be a minimum area of 100 square feet, excluding vestibule, closet or wardrobe space, in rooms occupied by one mother and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two mothers. There shall be additional square footage of 40 square feet for each infant and toddler, 60 square feet for each pre-school aged child and 80 square feet for each school aged child.

(e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation, Construction Section, by plan review or field inspection, for that particular bedroom.

(f) A bedroom shall not be occupied by more than two mothers along with any children or infants of those mothers.

(g) Each resident bedroom shall have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height. Each bedroom shall be provided with a window that meets the North Carolina State Building Code for emergency egress. These windows shall be openable without the use of keys or tools.

(h) Bedroom closets or wardrobes shall be large enough to provide each mother with a minimum of 48 cubic feet of separate clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar. Additional closet or wardrobe space shall be provided for the children of mothers at the rate of 10 cubic feet per child.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0309 BATHROOMS

(a) Residential maternity homes shall have one full bathroom for each five or fewer mothers and children, not including infants. Live-in staff shall have a separate bathroom from residents in care.

(b) The bathrooms shall be designed to provide privacy. A bathroom with two or more water closets (commodes) shall have privacy partitions for each water closet. Each tub or shower shall have privacy partitions or curtains.

(c) Entrance to the bathroom shall not be through a kitchen, another person's bedroom or another bathroom.

(d) The required bathrooms of residents shall be located so there is no more than 40 feet from any resident's bedroom door.

(e) Hand grips shall be installed at all commodes, tubs and showers used by the residents.

(f) Non-skid surfacing or strips shall be installed in showers and bath areas.

(g) The bathrooms shall be lighted to provide 30 foot candles of light at floor level and have mechanical ventilation at the rate of two cubic feet per minute for each square foot of floor area. These vents shall be vented directly to the outdoors.

(h) The bathroom floor shall have a non-slippery, water-resistant covering.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0310 CORRIDORS

(a) Corridors shall be a minimum clear width of three feet.

(b) Corridors shall be lighted with night lights providing one foot candle of light at the floor.

(c) Corridors shall be free of all equipment and other obstructions.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0311 OUTSIDE ENTRANCES AND EXITS

(a) In residential maternity homes, all floor levels shall have at least two exits. If there are only two, the exit or exit access doors shall be so located and constructed to minimize the possibility that both may be blocked by any one fire or other emergency condition.

(b) At least one entrance and exit door shall be a minimum width of three feet and another shall be a minimum width of two feet and eight inches.

(c) If the home has any resident who requires physical assistance with evacuation, the home shall have at least one principal outside entrance and exit for the resident's use which shall be at grade level or accessible by ramp with a one inch rise for each 12 inches of length of the ramp. For the purposes of this Rule, a principal outside entrance or exit is one that is most often used by residents for vehicular access.

(d) All exit door locks and latches shall be easily operable from the inside at all times without keys.

(e) All entrances and exits shall be free of all obstructions or impediments to allow for full instant use in case of fire or other emergency.

(f) All steps, porches, stoops and ramps shall be provided with handrails and guardrails.

(g) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0312 LAUNDRY ROOM

Laundry facilities shall be provided. The laundry equipment shall be located out of the living, dining and bedroom areas.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0313 FLOORS

- (a) All floors shall be of smooth, non-skid material and constructed to be easily cleanable.
- (b) All floors shall be kept in good repair.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0314 HOUSEKEEPING AND FURNISHINGS

(a) Each residential maternity home shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
- (2) have no chronic unpleasant odors;
- (3) have furniture clean and in good repair;
- (4) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
- (5) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets and additional coverings adequate for resident use on hand at all times;
- (6) have television and radio, each in good working order;
- (7) have curtains, draperies or blinds at windows in resident use areas to provide for resident privacy;
- (8) have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and
- (9) have at least one telephone that does not depend on electricity or cellular service to operate. Emergency telephone numbers shall be posted at the telephone.

(b) Each bedroom shall have the following furnishings in good repair and clean for each mother:

- (1) a bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. No day-bed, convertible sofa or other bedding of temporary nature shall be used. A water bed is allowed if requested by a resident and permitted by the home. Each bed is to have the following:
 - (A) at least one pillow with clean pillow case;
 - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
 - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside type table and lamp;
- (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
- (4) a wall or dresser mirror that can be used by each resident;

- (5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident);
- (6) additional chairs available, as needed, for use by visitors;
- (7) a light overhead of each bed or a lamp. The light shall provide a minimum of 30 foot-candle power of illumination for reading; and
- (8) cribs for each infant; children's beds for other children of the mothers.

(c) The living room shall have functional living room furnishings for the comfort of maternity home residents, with coverings that are easily cleanable.

(d) The dining room shall have the following furnishings:

- (1) tables and chairs to seat all residents eating in the dining room; and
- (2) high chairs and booster seats for all infants and children in the home.

(e) This Rule shall apply to new and existing homes.

History Note: Authority G.S. 131D-1; 143B-153; Eff. October 1, 2008.

10A NCAC 70K .0315 FIRE SAFETY AND DISASTER PLAN

(a) Fire extinguishers shall be provided which meet these requirements in a residential maternity home:

- (1) one five-pound or larger (net charge) "A-B-C" type centrally located;
- (2) one five-pound or larger "A-B-C" or "CO/2" type located in the kitchen; and
- (3) any other location as determined by the code enforcement official.

(b) The building shall be provided with smoke detectors as required by the North Carolina State Building Code and heat detectors located in the attic and connected to a dedicated sounding device.

(c) Any fire safety requirements required by city ordinances or county building inspectors shall be met.

(d) A written fire evacuation plan (including a diagrammed drawing) which has the approval of the local code enforcement official shall be prepared with a minimum of 1/8 inch high letters and posted in a central location on each floor. The plan shall be reviewed with each resident on admission and shall be a part of the orientation for all new staff.

(e) There shall be at least four rehearsals of the fire evacuation plan each year. A residential maternity home shall maintain records of rehearsals and copies furnished to the licensing authority upon request. The records shall include the date and time of the rehearsals, staff members present and a short description of what the rehearsal involved.

(f) Smoking is not be permitted in the residential maternity home.

(g) A written disaster plan shall be prepared and updated at least annually and shall be maintained in the home. This written disaster plan requirement shall apply to new and existing homes.

History Note: Authority G.S. 131D-1; 143B-153;

Eff. October 1, 2008.

10A NCAC 70K .0316 BUILDING SERVICE EQUIPMENT

- (a) The building and all fire safety, electrical, mechanical and plumbing equipment in a residential maternity home shall be maintained in a safe and operating condition.
- (b) There shall be a central heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. Built-in electric heaters, if used, shall be installed or protected to avoid hazards to residents (mothers and children) and room furnishings. Unvented fuel burning room heaters and portable electric heaters are prohibited.
- (c) Air conditioning or at least one fan per resident bedroom, living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).
- (d) The hot water tank shall be of such size to provide hot water to the kitchen, bathrooms and laundry. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).
- (e) All resident areas shall be well lighted for the safety and comfort of the residents. The minimum lighting required is:
 - (1) 30 foot candle of light for reading;
 - (2) 10 foot candle of light for general lighting; and
 - (3) one foot candle of light at the floor for corridors at night.
- (f) Fireplaces, fireplace inserts and wood stoves shall be designed or installed to avoid a burn hazard to residents (mothers and children). Solid fuel burning fireplace inserts and wood stoves shall be labeled and approved by a third party testing agency accredited by the North Carolina Building Code Council for solid fuel heating equipment.
- (g) Gas logs may be installed if they are of the vented type, installed according to the manufacturers' installation instructions, approved through the local building department and protected by a guard or screen to prevent residents and furnishings from burns.
- (h) This rule shall apply to new and existing residential maternity homes.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70K .0317 OUTSIDE PREMISES

- (a) The outside grounds of new and existing residential maternity homes shall be maintained in a clean and safe condition.
- (b) Fences shall be kept in good repair and shall not prevent residents or adult staff from exiting or entering freely or be hazardous.
- (c) Outdoor stairways and ramps shall be illuminated by no less than five foot candles of light at grade level.

*History Note: Authority G.S. 131D-1; 143B-153;
Eff. October 1, 2008.*

10A NCAC 70L .0101 USE OF VOLUNTEERS IN CHILDREN'S SERVICES CASE

*History Note: Authority G.S. 7A-657; 7A-675; 108A-80; 143B-153; 143B-154; 143B-155; 143B-156;
Eff. October 15, 1980;
Amended Eff. May 1, 1990; January 1, 1983;
Repealed Eff. October 1, 2008.*

10A NCAC 70L .0102 WAIVER OF LICENSING RULES

The North Carolina Department of Health and Human Services, Division of Social Services is the licensing authority and shall allow a waiver to a licensing rule or rules to persons subject to licensure pursuant to G.S. 131D, Article 1A in accordance with the following criteria:

- (1) Persons seeking a waiver shall submit a written request on a form developed by the licensing authority, to the licensing authority showing that another way of meeting a rule maintains the health, safety, and well-being of individuals being served at or above the level required by the rule.
- (2) No waiver shall be allowed by the licensing authority to any rule based on a standard adopted by the Building Code Council and subject to the general supervision and enforcement of the Commissioner of Insurance.
- (3) No waiver shall be allowed by the licensing authority to any rule governing fire safety.
- (4) No waiver shall be allowed by the licensing authority to any rule based upon a standard adopted by the Commission for Public Health.
- (5) The waiver when allowed remains in effect for the term of the license and may be renewed if the licensing authority determines that the health, safety and well-being of individuals being served are not threatened.
- (6) Upon receipt of the waiver request form, a decision to grant or deny the waiver shall be made by the licensing authority within 10 business days of its receipt.

*History Note: Authority G.S. 131D-10.5; 131D-10.6; 150B-22; 150B-23;
Eff. April 1, 1984;
ARRC Objection March 16, 1988;
Amended Eff. May 1, 1990; August 1, 1988;
Temporary Amendment Eff. October 28, 1997;
Amended Eff. October 1, 2008; April 1, 1999.*

10A NCAC 70L .0201 DENIAL, AMENDMENT, SUSPENSION AND REVOCATION

- (a) Denial: The North Carolina Department of Health and Human Services, Division of Social Services, is the licensing authority and shall deny a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health,

safety or well being of individuals in the facility or served by the agency. In addition, the licensing authority may deny an application based on a determination that:

- (1) the applicant is not in compliance with rules promulgated under G.S. 131D for the facility or agency which the applicant is seeking licensure;
- (2) the licensing authority has initiated revocation or summary suspension proceedings against any facility or agency 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;
- (3) there is a pending appeal of a denial, revocation or summary suspension of any facility or agency 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;
- (4) the applicant has an individual as part of their 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
- (5) the applicant is an individual who has a finding or pending investigation by the Health Care Professional Registry in accordance with G.S. 131E-256.

(b) Notice: When an application for license of a new facility or agency is denied the following applies:

- (1) Pursuant to G.S. 150B-22, the applicant shall be given an informal opportunity to provide reasons why the license should be issued.
- (2) The licensing authority shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B.
- (3) The facility or agency shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: The licensing authority may amend a license to indicate a provisional status whenever the licensing authority determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:

- (1) Provisional status shall be approved for not less than 30 days and not more than six months.
- (2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.
- (3) The facility shall inform each client residing or receiving services from the facility or their

legally responsible person concerning the facility's provisional status.

- (4) A regular license shall be issued when a facility is determined by the licensing authority to be in compliance with applicable rules.
- (5) If a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status.
- (6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless the licensing authority determines that the violations have been corrected.
- (7) A decision to issue a provisional status shall be stayed during the period of an appeal as specified in 10A NCAC 70L .0301 and the licensee may continue to display its license during the appeal.

(d) Summary Suspension: The following applies to summary suspension:

- (1) The licensing authority shall issue an order of summary suspension and include the findings in its order if it finds that the public health, safety or welfare considerations require emergency action.
- (2) The licensing authority shall suspend only those services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later.
- (3) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B and 10A NCAC 70L .0301. The order for summary suspension shall be in full force and effect during any contested case hearing.
- (4) The order may set a date by which the licensee shall remove the cause for emergency action. If the licensee fails to meet that deadline, the licensing authority may revoke or amend the facility's license.

(e) Revocation: The licensing authority shall revoke a license at any time for failure to comply with rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well being of individuals in the facility or served by the agency. Revocation of licensure by the licensing authority shall be affected by mailing to the applicant or license holder, by certified mail, a notice setting forth the particular reasons for such action. A revocation shall become effective 60 days after the mailing of the notice absent a petition as specified in 10A NCAC 70L .0301. In the event of a petition for a contested case hearing a revocation shall not become effective until a final decision is made in the contested case hearing.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 150B-22; 150B-23;
Eff. October 1, 2008.

10A NCAC 70L .0301 APPEAL PROCEDURES

- (a) Within 60 days of the decision to deny, suspend or revoke a license the applicant or license holder may petition for a determination of his/her legal rights, privileges or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the licensing authority.
- (b) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the licensing authority. A list of registered agents may be obtained from the Office of Legal Affairs.
- (c) Procedures for the processing of an appeal of an adverse licensing action and for the final decision are specified in G.S. 150B, Article 3 and 10A NCAC 1A.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 131D-10.9; 143B-153; 150B-22; 150B-23;
Eff. October 1, 2008.

10A NCAC 70M .0101 SCOPE

Rules in this Subchapter contain adoption standards for county departments of social services, which are the public agencies in North Carolina mandated by law to provide adoption services. Included are requirements which shall be met by county departments of social services in carrying out their responsibilities under Chapter 48 of the General Statutes and in the administration of the Adoption Assistance Program under G.S. 108A-49 and 108A-50, a funding program to facilitate the adoption of certain children with special needs.

History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 2008; June 1, 1990; February 1, 1986.

10A NCAC 70M .0201 PUBLIC AGENCIES

- (a) 10A NCAC 70H .0401 governs the policies for public agencies providing adoption services in determining the qualifications for personnel and in the recruitment, retention, and effective performance of qualified personnel.
- (b) 10A NCAC 70F .0207 governs the policies for public agencies in the hiring of staff, use of clerical staff, and use of volunteers.
- (c) The caseload size of social workers providing adoption services shall be in compliance with requirements set forth in 10A NCAC 70H .0401.

History Note: Authority G.S. 48-1-101; 48-1-109.; 143B-153;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 2008; September 1, 1986.

10A NCAC 70M .0302 SERVICES TO ADOPTIVE APPLICANTS

- (a) 10A NCAC 70H .0404, .0405, .0406, .0407, .0408 and .0409 shall govern the policies for public agencies providing adoption services in determining the procedures for, the application process, preplacement assessment, notification to adoptive applicants of acceptance or denial of application, services to adoptive applicants and families, legal process and record retention.
- (b) A county department of social services shall prepare or contract for the preparation of a preplacement assessment for an adoptive applicant who has identified a prospective adoptive child and has been unable to obtain a preplacement assessment. An applicant is deemed unable to obtain a preplacement assessment if the applicant is unable to obtain an assessment at the fee the county department of social services is permitted to charge under 10A NCAC 70M .0303. Except as provided in this Subchapter, no county department of social services is required to conduct a preplacement assessment unless it agrees to do so.

History Note: Authority G.S. 48-1-100; 48-1-101; 48-1-102; 48-1-103; 48-1-106; 48-1-109; 48-2-205; 48-2-301; 48-2-302; 48-2-304; 48-2-305; 48-2-501; 48-2-502; 48-2-503; 48-2-504; 48-2-601; 48-2-602; 48-2-603; 48-2-604; 48-2-605; 48-2-606; 48-2-607; 48-3-100; 48-3-201; 48-3-202; 48-3-203; 48-3-204; 48-3-205; 48-3-301; 48-3-302; 48-3-303; 48-3-304; 48-3-305; 48-3-306; 48-3-307; 48-3-308; 48-3-30; 48-3-501; 48-4-100; 48-4-101; 48-4-102; 48-4-103; 48-5-100; 48-5-101; 48-6-100; 48-6-102; 48-9-101; 48-9-102; 48-10-104; 48-10-105; 131D-10.5; 143B-153;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 2008; July 17, 2000; September 1, 1986.

10A NCAC 70M .0304 ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for on-going recruitment of adoptive homes for the children it places or plans to place for adoption. The plan shall adhere to the provisions of the Multiethnic Placement Act of 1994 as amended by the Interethnic Adoption Provisions of 1996 and shall be submitted to the Division of Social Services, Adoption Unit, to ensure compliance with the Act. If the plan is found to be out of compliance, it shall be returned to the agency for corrections. A copy of the Multiethnic Placement Act of 1994 as amended may be obtained from the U. S. Department of Health and Human Services, Children's Bureau, 300 C Street SW, Washington, D.C. 20447.

History Note: Authority G.S. 48-3-204; 131D-10.5; 143B-153;
Eff. October 1, 2008.

10A NCAC 70M .0502 GENERAL ELIGIBILITY REQUIREMENTS

- (a) The county department of social services having legal placement responsibility for a child shall submit an application for payment of service fees to the Division of Social Services. .

(b) The application shall provide documentation of the following:

- (1) that the agency making application has legal placement and consenting authority for the child;
- (2) that the child is legally cleared for adoption;
- (3) that the child is one who is considered hard to place due to such factors as:
 - (A) age;
 - (B) race;
 - (C) physical, mental, or emotional handicap; and
 - (D) being a member of a sibling group; and
- (4) that the child is registered on the North Carolina Adoption Resource Exchange.

(c) To the extent funds are available, the Division of Social Services shall approve the payment of an adoption service fee and shall notify the county in writing of this approval.

(d) The county department of social services shall send the Division of Social Services a copy of the purchase of service agreement negotiated with the out-of-state provider and shall notify the Division of the dates payments are due.

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

Eff. March 23, 1981;

Amended Eff. October 1, 2008; July 1, 1991; June 1, 1990.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 16 .0403 CALCULATION PROCEDURE AND DATA REQUIREMENTS FOR RATE DEVIATIONS

An insurer requesting a rate deviation shall submit to the Department of Insurance the following information, the results of each calculation as follows and the corresponding data required to perform each calculation in accordance with this Rule, identified for each case for which the insurer is requesting a rate deviation:

- (1) Identification of the class of business and plan of insurance associated with the case;
- (2) Identification of the single or multiple account case. For a multiple account case, identification of each case;
- (3) For the case, calculate the incurred loss ratio at the current North Carolina approved rate as defined in Rule .0401(15) of this Section;
- (4) For the case, calculate the credibility factor using the credibility formula as defined in 11 NCAC 16 .0401(6);
- (5) Multiply Item (3) of this Rule by Item (4) of this Rule;
- (6) For the class of business, calculate the class of business incurred loss ratio at current North Carolina approved rate as defined in 11 NCAC 16. 0401(16);

- (7) For the class of business, calculate the credibility factor using the credibility formula as defined in 11 NCAC 16.0401(6);
- (8) Multiply Item (7) of this Rule by the quantity one minus Item (4) of this Rule, i.e. Item (7) of this Rule x [1 - Item (4) of this Rule];
- (9) Multiply Item (6) of this Rule by Item (8) of this Rule;
- (10) Multiply the quantity one minus Item (4) of this Rule by the quantity one minus Item (7) of this Rule, i.e. [1 - Item (4) of this Rule] x [1 - Item (7) of this Rule];
- (11) Multiply .60 by Item (10) of this Rule;
- (12) Add Items (5), (9) and (11) of this Rule;
- (13) Calculate the expense ratio as defined in 11 NCAC 16. 0401(9);
- (14) Calculate the benchmark loss ratio as defined in 11 NCAC 16. 0401(11);
- (15) The rate adjustment factor is equal to Item (12) of this Rule divided by Item (14) of this Rule; however, if the rate adjustment factor is greater than or equal to 0.95 and less than or equal to 1.05, then the rate adjustment factor shall be set equal to the number one; and
- (16) The maximum approved rate in effect for a period of 12 months is equal to the current North Carolina approved rate for the case multiplied by Item (15) of this Rule.

History Note Authority G.S. 58-2-40; 58-57-35(a); 58-57-70;

Eff. January 1, 1994;

Amended Eff. October 1, 2008.

11 NCAC 18 .0118 MAXIMUM NET RETENTION STANDARD

(a) The specific maximum net retention limit for any MEWA, associated with the period of time that the excess insurance coverage is in force, shall be calculated in the following manner:

- (1) Determine the total expected dollar value of claims;
- (2) Determine the total surplus at the beginning of the period of time that the excess insurance coverage is scheduled to be in force;
- (3) Multiply Subparagraph (a)(1) of this Rule by one percent and add that product to Subparagraph (a)(2) of this Rule;
- (4) Multiply the result of the calculation in Subparagraph (a)(3) of this Rule times itself;
- (5) Multiply Subparagraph (a)(1) of this Rule by the number 3.4; and
- (6) Divide the product of the calculation in Subparagraph (a)(4) of this Rule by the product of the calculation in Subparagraph (a)(5) of this Rule.

(b) The specific maximum net retention limit shall not exceed the lesser of:

- (1) The amount in Subparagraph (a)(6) of this Rule;

- (2) Twenty-five thousand dollars (\$25,000); or
 - (3) The specific maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.
- (c) The aggregate maximum net retention shall not exceed the lesser of:
- (1) One hundred twenty-five percent of Subparagraph (a)(1) of this Rule; or
 - (2) The aggregate maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.
- (d) The Commissioner may approve a specific maximum net retention limit or an aggregate maximum net retention limit or both in excess of those calculated pursuant to this Rule, upon application to the Commissioner and the Commissioner's determination that the increase would not inhibit the ability of the MEWA to perform its present and future contractual obligations to policyholders and participants under the MEWA's plan.

History Note Authority G.S. 58-2-40; 58-49-40(c);
Eff. July 1, 1992;
Amended Eff. October 1, 2008.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 13 .0210 SHOP INSPECTIONS AND NATIONAL BOARD R STAMP QUALIFICATION REVIEWS

- (a) Shop Inspections.
- (1) Manufacturers or repair firms seeking to employ the Boiler Safety Bureau to act as their Authorized Inspection Agency pursuant to the ASME Code or National Board Inspection Code, shall enter into a written agreement with the North Carolina Department of Labor, Boiler Safety Bureau for this purpose.
 - (2) An audit of the Deputy Inspector serving as the Authorized Inspector pursuant to Subparagraph (a)(1), of this Rule, and the contracting company in which he/she is working shall be conducted on an annual basis for non-nuclear companies and twice each year for nuclear companies. The contracting company is required to pay the audit fees required in Rule .0213 of this Section.
- (b) National Board R Stamp Qualification Reviews
- (1) The Chief Inspector or his designee shall conduct the qualification reviews for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in Subparagraph (b)(2) of this Rule.
 - (2) The Chief Inspector or his designee shall not conduct the qualification reviews of those companies for which the Boiler Safety Bureau provides inspection services, or those

- (3) companies which specifically request the review be conducted by the National Board.
- (3) A review to be conducted by the Boiler Safety Bureau shall be scheduled upon receipt of request by the National Board. A deposit of twelve hundred dollars (\$1,200.00) shall be made by the applying company to cover the fees and expenses incurred and shall be received by the Boiler Safety Bureau no less than 30 days prior to the subject review. This deposit will be applied to the cost of the review. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the company being reviewed. Should an applicant not be successful in obtaining accreditation, the applicable deposit shall be paid before a new review is conducted.

History Note: Authority G.S. 95-69.11; 95-69.14;
Eff. May 29, 1981;
Amended Eff. October 1, 2008; July 1, 2006; January 1, 1995.

13 NCAC 13 .0701 STANDARDS

- (a) Nuclear power components and systems covered under the scope of Section III of the ASME Code shall be designed, constructed, reworked, stamped, and installed in accordance with Section III of the ASME Code. Balance of plant items may be constructed under other ASME Code sections as appropriate.
- (b) All nuclear power systems falling under the scope of the ASME Code, Section III, are inspected in service under the requirements of Section XI of the ASME Code. The equipment is not required to be inspected under this Chapter. Balance of plant pressure equipment not covered by Section XI are required to be registered with a North Carolina identification number and inspected in accordance with this Chapter.
- (c) A vessel composed of two or more pressure retaining compartments shall constitute one complete unit for the purpose of assigning the North Carolina identification number.
- (d) The design criteria for nuclear power systems shall be certified as to compliance with Section III of the ASME Code by a registered professional engineer with at least one year of experience in nuclear pressure vessel design.

History Note: Authority G.S. 95-69.9; 95-69.11; 95-69.14;
Eff. May 29, 1981;
Amended Eff. October 1, 2008; July 1, 2006; June 1, 1982.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 010 .0101 SCOPE OF DELEGATED AUTHORITY

No person shall act as an authorized agent of the state in enforcing the provisions of G.S. 130A and the rules of the Commission for Public Health, and the rules of the Environmental Management Commission, who is not a current employee of a local health department or the North Carolina

Alliance of Public Health Agencies, registered with the North Carolina State Board of Sanitarian Examiners as a Registered Sanitarian or Sanitarian Intern and authorized pursuant to these Rules. Except as provided in Rule .0105 of this Section, an authorization shall be valid only in the county or district served by the local health department which employs the agent. There shall be eight areas of authorization to enforce the provisions of G.S. 130A and the rules of the Commission for Public Health found in 15A NCAC 18A and the rules of the Environmental Management Commission found in 15A NCAC 02C as follows:

- (1) Food, Lodging, and Institution Sanitation including the following:
 - (a) .1000 Sanitation of Summer Camps;
 - (b) .1300 Sanitation of Hospitals; Nursing and Rest Homes; Sanitariums, Sanatoriums; Educational and other Institutions;
 - (c) .1500 Sanitation of Local Confinement Facilities;
 - (d) .1600 Sanitation of Residential Care Facilities;
 - (e) .1800 Sanitation of Lodging Establishments;
 - (f) .2100 Rules Governing the Sanitation & Safety of Migrant Housing;
 - (g) .2200 Sanitation of Bed and Breakfast Homes;
 - (h) .2400 Sanitation of Public, Private, and Religious Schools;
 - (i) .2600 Sanitation of Restaurants and Other Foodhandling Establishments;
 - (j) .2700 Sanitation of Meat Markets; and
 - (k) .3000 Bed and Breakfast Inns.
- (2) On-Site Wastewater, including the following:
 - (a) .1900 Sewage Treatment and Disposal Systems;
 - (b) .1603 and .1606, 1611(a) and (b) and .1613 Sanitation of Residential Care Facilities (Family Foster Homes); and
 - (c) .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (3) .2800 Sanitation of Child Care Centers.
- (4) .3100 Lead Poisoning Prevention in Children Program.
- (5) .2500 Public Swimming Pools.
- (6) .3200 Tattooing.
- (7) .1603, .1606, .1611(a) and (b), .1613 Sanitation of Residential Care Facilities (Family Foster Homes) and .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (8) G.S. 87-97 and 15A NCAC 02C .0100 Standards of Construction: Water-Supply Wells.

*Temporary Amendment Eff. March 28, 2006;
Amended Eff. October 1, 2008; August 1, 2006.*

15A NCAC 010 .0102 ELIGIBILITY FOR DELEGATION OF AUTHORITY

- (a) The applicant for authorization shall successfully complete the centralized training course provided by the Division.
- (b) The applicant shall successfully complete field practice by evaluating sites and establishments with an authorized environmental health specialist to assure that the applicant knows the rules of the Commission for Public Health and the Environmental Management Commission, as applicable, and how to properly enforce them.
- (c) When the supervisor determines that the applicant has progressed sufficiently to work independently, the applicant may request to be evaluated for authorization. Documentation of the satisfactory completion of all required orientation activities and field practice, including any inspection or evaluation forms completed by the applicant and comments of the supervisor shall be forwarded to the regional specialist.
- (d) If, upon reviewing the file, the regional specialist finds that the applicant needs additional study or field practice, the evaluation for authorization may be postponed until that study or practice has been completed.
- (e) Upon satisfactory completion of the requirements in Paragraphs (a) through (d) of this Rule, the regional specialist shall coordinate the administration of a written test which the applicant must pass by a score of 70 percent or more. The test may be repeated if necessary.
- (f) An applicant requesting authorization for 15A NCAC 18A .3100 Lead Poisoning Prevention in Children Program shall take and successfully complete the North Carolina State of Practice course entitled "Lead Investigation and Abatement" and shall pass the written test provided by that course. An applicant requesting authorization for only 15A NCAC 18A Lead Poisoning Prevention in Children Program shall not be required to take the exam required in Paragraph (e) of this Rule.
- (g) An applicant requesting authorization for 15A NCAC 02C .0100 to enforce the private well construction rules of the Environmental Management Commission shall take and successfully complete the North Carolina State of Practice course entitled Basic Private Wells Authorization Training: Groundwater Protection and Public Health or the Private Well portion of Centralized Intern Training, including any written test(s) associated with the course he or she takes. An applicant requesting authorization for 15A NCAC 02C .0100 Standards of Construction: Water-Supply Wells who has more than 18 months of experience in a well inspection program approved by the Department shall be required to take only the exam required in Paragraph (e) of this Rule.
- (h) After the applicant has successfully completed the written test, the regional specialist shall conduct a field evaluation of the applicant's knowledge, skills, and ability to enforce the provisions of G.S. 130A and the rules of the Commission. Following the field evaluation, the regional specialist shall make a recommendation to the Director of the Division of Environmental Health regarding issuance or denial of authorization.

*History Note: Authority G.S. 87-87; 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;*

*History Note: Authority G.S. 87-87; 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Amended Eff. October 1, 2008.*

15A NCAC 010 .0103 DELEGATION OF AUTHORITY

Upon determination that the criteria in Rules .0101 and .0102 of this Section have been met and none of the reasons for denial listed in Rule .0107 of this Section exist, and upon a review of the recommendation of the regional specialist, the Director, Division of Environmental Health, shall issue or deny authorization. An Identification Card shall be issued by the Division to each person authorized to enforce provisions of G.S. 130A and the rules of the Commission for Public Health and G.S. 87-87, G.S. 87-97 and the rules of the Environmental Management Commission. The card shall be carried by the agent at all times when on duty. The card is the property of the Division and shall be returned to the Division upon separation of employment, suspension, or revocation of authorization or failure to maintain registration with the N.C. Board of Sanitarian Examiners.

*History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Amended Eff. October 1, 2008.*

15A NCAC 031 .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms apply to this Chapter:

- (1) Enforcement and management terms:
 - (a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.
 - (c) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
 - (d) Length of finfish.
 - (i) Curved fork length. A length determined by measuring along a line, tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) Fork length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in

the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

- (iii) Total length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) Recreational Possession Limit. Restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (f) Recreational Quota. Total quantity of fish allocated for harvest for a recreational purpose.
- (g) Regular Closed Oyster Season. March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (h) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.
- (2) Fishing Activities:
 - (a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from permitted sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food,
 - (ii) predator protection,
 - (iii) salinity,
 - (iv) temperature controls, or
 - (v) water circulation,
 utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
 - (b) Attended. Being in a vessel, in the water or on the shore and immediately available to work the

- gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (c) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
- (i) food,
 - (ii) predator protection,
 - (iii) salinity,
 - (iv) temperature controls, or
 - (v) water circulation,
- utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (d) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (e) Long Haul Operations. Fishing a seine towed between two boats.
- (f) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
- (g) Possess. Any actual or constructive holding whether under claim of ownership or not.
- (h) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
- (i) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (j) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (k) Shellfish production on leases and franchises:
- (i) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) The transplanting (relay) of oysters, clams, scallops and mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (l) Swipe Net Operations. Fishing a seine towed by one boat.
- (m) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (n) Use. Employ, set, operate, or permit to be operated or employed.
- (3) Gear:
- (a) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
 - (c) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (i) Cast nets;
 - (ii) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (iii) Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (iv) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand;
 - (v) Hand operated rakes no more than 12 inches wide

- and weighing no more than six pounds and hand operated tongs;
 - (vi) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (vii) Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (viii) Minnow traps when no more than two are in use;
 - (ix) Seines less than 30 feet in length;
 - (x) Spears, Hawaiian slings or similar devices, which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means.
 - (d) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (e) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (f) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (g) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
 - (h) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (i) Mechanical methods for clamming. Includes dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (j) Mechanical methods for oystering. Includes dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
 - (k) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
 - (l) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
 - (m) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (n) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (4) Habitat:
- (a) Coral:
 - (i) Fire corals and hydrocorals (Class Hydrozoa);
 - (ii) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).

- (b) Fish habitat areas. The estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all coastal fishing waters, as determined through marine and estuarine survey sampling, include:
- (i) Anadromous fish nursery areas. Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (ii) Anadromous fish spawning areas. Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (iii) Beds of submerged aquatic vegetation. Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.
- (iv) Nursery areas. Nursery areas are those areas in which for reasons such as food, cover, bottom type, salinity, temperature and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (v) Shellfish producing habitats. Shellfish producing habitats are those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (vi) Strategic Habitat Areas. Strategic Habitat Areas are locations of individual fish habitats or systems of habitats that provide exceptional habitat functions

- or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (c) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (d) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., mermaid's fan and cups (Udotea sp.), watercress (Halimeda sp.), green feather, green grape algae (Caulerpa sp.) (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta);
 - (iv) Sponges (Phylum Porifera);
 - (v) Hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
 - (vi) Bryozoans (Phylum Bryozoa);
 - (vii) Tube worms (Phylum Annelida), fan worms (Sabellidae); feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
 - (viii) Mussel banks (Phylum Mollusca: Gastropoda);
 - (ix) Acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- (5) Licenses, permits, leases and franchises, and record keeping:
 - (a) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
 - (b) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) For Hire Vessel. As defined by G.S. 113-174 when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
 - (d) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
 - (e) Land:
 - (i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - (iii) For recreational fishing operations, when fish are retained in possession by the fisherman.
 - (f) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - (g) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
 - (h) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
 - (i) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
 - (j) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational

- Commercial Gear Licenses are not considered Offices of the Division.
- (k) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable statutes and rules.
 - (l) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
 - (m) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed.
 - (n) Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

History Note: Authority G.S. 113-134; 113-174; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993; Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997; Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2000; Amended Eff. October 1, 2008; December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001.

15A NCAC 03J .0105 PURSE SEINES

- (a) It is unlawful to use purse seines except for the taking of menhaden, Atlantic thread herring, gizzard shad or pinfish, as further restricted by Paragraphs (b) and (c) of this Rule.
- (b) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish with a purse seine in violation of any of the following limitations:
 - (1) In the Atlantic Ocean during the periods and within an area described:
 - (A) In 15A NCAC 03R .0111, and
 - (B) By Session Law 2007-320.
 - (2) Except as provided in Subparagraph (5) of this Paragraph, between January 16 and May 14 in:
 - (A) Internal waters, and
 - (B) Atlantic Ocean within one mile of shore.

- (3) Between January 16 and March 31 in Core Sound.
- (4) In internal waters except in:
 - (A) Pamlico Sound,
 - (B) Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 1 at the mouth of Goose Creek,
 - (C) Neuse River east of a line from Wilkinson Point to Cherry Point,
 - (D) Adams Creek,
 - (E) Core Sound and its tributaries,
 - (F) Back Sound, the Straits, and North river,
 - (G) Newport River,
 - (H) North River, and
 - (I) Bogue Sound.
- (5) The Fisheries Director may, by proclamation, open the Atlantic Ocean within one mile of shore and the internal waters specified in Subparagraph (4) of this Paragraph between April 1 and May 14, and may impose any or all of the following restrictions:
 - (A) Specify means and methods by area which may be employed in the taking;
 - (B) Limit the quantity; and
 - (C) Require submission of statistical and biological data.

(c) Menhaden, Atlantic thread herring, gizzard shad or pinfish may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as specified by Session Law 2007-320 and except as prohibited below:

- (1) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.
- (2) It is unlawful to take menhaden, Atlantic thread herring, gizzard shad or pinfish by use of a purse seine between the hours of sunrise and sunset on the following holidays:
 - (A) Memorial Day;
 - (B) Fourth of July, when the Fourth of July falls on any calendar day Friday through Monday; and
 - (C) Labor Day.

(d) It is unlawful for the responsible party to fail to carry out the following requirements when a fish spill from a purse seine occurs:

- (1) Immediately notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries of such spill; and
- (2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing within 30 days of the completion of

spill clean-up on the circumstances associated with each spill and costs of its clean-up.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008.

15A NCAC 03J .0202 ATLANTIC OCEAN

In the Atlantic Ocean:

- (1) It is unlawful to use nets from June 15 through August 15 in the waters of Masonboro Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running southeasterly through the water tank 34° 13.1500' N - 77° 47.300' W on the northern end of Wrightsville Beach, a distance of 4400 yards parallel with the beach.
- (2) It is unlawful to use trawls within one-half mile of the beach between the Virginia line and Oregon Inlet.
- (3) It is unlawful to use a trawl with a mesh length less than four inches in the main body, three inches in the extension, and one and three-fourths inches in the cod end or tail bag inshore of a line beginning on the western side of Beaufort Inlet Channel at a point 34° 41.3000' N - 76° 40.1333' W; running westerly parallel to and one-half miles from the shore off Salter Path to a point 34° 40.5333' N - 76° 53.7500' W.
- (4) It is unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North Carolina/South Carolina line except:
 - (A) Shrimp trawls as defined in 15A NCAC 03L .0103;
 - (B) Crab trawls as defined in 15A NCAC 03L .0202; or
 - (C) Flounder trawls as defined in 15A NCAC 03M .0503.
- (5) It is unlawful to possess finfish (including pursuant to 15A NCAC 03M .0102) incidental to shrimp or crab trawl operations from December 1 through March 31 unless the weight of the combined catch of shrimp and crabs exceeds the weight of finfish, except an additional 300 pounds of kingfish (*Menticirrhus*, spp.) may be taken south of Bogue Inlet.
- (6) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.

- (7) It is unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than seven inches from April 15 through December 15.
- (8) It is unlawful to use shrimp trawls in all waters west of a line beginning at the southeastern tip of Baldhead Island at a point 33° 50.4833' N - 77° 57.4667' W; running southerly in the Atlantic Ocean to a point 33° 46.2667' N - 77° 56.4000' W; from 9:00 P.M. through 5:00 A.M.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; September 1, 1991;
Temporary Amendment Eff. December 1, 1997;
Amended Eff. October 1, 2008; August 1, 2004; August 1, 1998.

15A NCAC 03K .0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

- (a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 03K .0103, .0104, .0107, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; (252) 726-7021.
- (b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.
- (c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. October 1, 2008; April 1, 2003.

15A NCAC 03K .0102 PROHIBITED RAKES

It is unlawful to use a rake more than 12 inches wide or weighing more than six pounds to take:

- (1) oysters or scallops;
- (2) clams in any live oyster bed, in any established bed of submerged aquatic vegetation as described in 15A NCAC 03I .0101, or in any

established bed of salt water cordgrass
(*Spartina alterniflora*).

History Note: Authority G.S. 113-134; 113-182;
143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; February 1, 2008.

15A NCAC 03K .0103 SHELLFISH MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet either of the following criteria. The area has:

- (1) conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) shellfish populations or shellfish enhancement projects that may:
 - (A) produce commercial quantities of shellfish at 10 bushels or more per acre;
 - (B) produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas; or
 - (C) serve as sanctuaries to increase spawning and disease resistance or to prevent predation.

(b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Shellfish or Seed Management area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take shellfish from any Shellfish Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of shellfish and may designate time, place, character, or dimensions of any method or equipment that may be employed.

History Note: Authority G.S. 113-134; 113-182; 113-221;
113.221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. October 1, 2008; February 1, 2008; April 1, 2003.

15A NCAC 03K .0105 RECREATIONAL HARVEST OF SHELLFISH

(a) It is unlawful to take oysters or clams from public bottoms on Sundays, and scallops from public bottoms on Saturdays and Sundays except:

- (1) during open seasons, and
- (2) for recreational purposes.

(b) It is unlawful to possess, for recreational purposes, more than:

- (1) 10 conchs or whelks per person per day, not to exceed 20 conchs or whelks per vessel per day, and
- (2) 100 mussels per person per day, not to exceed 200 mussels per vessel per day, and
- (3) 100 clams per person per day, not to exceed 200 clams per vessel per day.

History Note: Authority G.S. 113-134; 113-169.2; 113-182;
143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; February 1, 1992; September 1, 1991;
Temporary Amendment Eff. October 9, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. May 1, 1997; March 1, 1996;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000.

15A NCAC 03K .0106 TAKING OR UNLOADING OYSTERS AND CLAMS ON SUNDAY OR AT NIGHT

(a) It is unlawful to take oysters or clams between the hours of sunset and sunrise on any day.

(b) It is unlawful to unload oysters or clams from any vessel or remove any vessel containing oysters or clams from the water on Sunday or between sunset and sunrise on any day except that in New Hanover, Pender and Brunswick Counties, oysters and clams may be unloaded until two hours after sunset.

(c) Oysters and clams taken on Sunday from public bottom under the provisions of 15A NCAC 03K .0105 or from shellfish leases and franchises pursuant to G.S. 113-208 are exempt from Paragraph (b) of this Rule.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000.

15A NCAC 03K .0107 DEPURATION OF SHELLFISH

(a) It is unlawful to take clams or oysters from the public or private prohibited (polluted) waters of the state for the purpose of depuration except when the harvest will utilize shellfish that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the supervision of the Division of Marine Fisheries or the Division of Environmental Health. For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.

(b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters for depuration:

- (1) Specify species;

- (2) Specify areas except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
 - (3) Specify harvest days;
 - (4) Specify time period;
 - (5) Specify quantity or size;
 - (6) Specify harvest methods;
 - (7) Specify record keeping requirements.
- (c) Depuration permits:
- (1) It is unlawful for individuals to harvest clams or oysters from prohibited (polluted) waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of Marine Fisheries and Division of Environmental Health setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina Clam or Oyster Dealers only. Permittees and designees harvesting under Depuration Permits must have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License.
 - (2) In addition to information required in 15A NCAC 03O .0501, the permit application shall provide the name, address, location and telephone number of the depuration operation where the shellfish will be depurated.
 - (3) Clam or Oyster Dealers desiring to obtain prohibited (polluted) clams or oysters for depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.
- (d) Transport of clams or oysters for depuration:
- (1) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the supervision of the Division of Marine Fisheries or the Division of Environmental Health.
 - (2) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the supervision of the Division of Marine Fisheries or the Division of Environmental Health.
- (e) It is unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.
- (f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

*Temporary Amendment Eff. October 1, 2001;
Amended Eff. October 1, 2008; April 1, 2003.*

15A NCAC 03K .0108 DREDGES/MECHANICAL METHODS PROHIBITED

- (a) It unlawful to use mechanical methods, except mechanical methods for oystering and clamming defined in 15A NCAC 03I .0101, to take shellfish.
- (b) It is unlawful to use mechanical methods for oystering or clamming to take shellfish not subject to the restrictions in 15A NCAC 03K .0201, .0204, .0302, 0304, .0404, .0501, and .0503:
- (1) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*);
 - (2) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Oysters and Clams on Shellfish Leases and Franchises;
 - (3) in areas designated in 15A NCAC 03K .0204 and 03R .0103; and
 - (4) except following restrictions for the use of mechanical methods specified pursuant to 15A NCAC 03J .0303 and 03K .0201, .0302, .0404, .0501, and .0503.

*History Note: Authority G.S. 113-134; 113-201; 143B-289.52;
Eff. October 1, 2008.*

15A NCAC 03K .0109 SHELLFISH HARVESTER AND DEALER TAGS

It is unlawful to possess or sell oysters, clams, or mussels in a commercial fishing operation without a harvest tag affixed to each container of oysters, clams or mussels. Tags shall be affixed by the harvester or dealer and shall meet the following criteria:

- (1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. A harvester or dealer tag shall be securely fastened to the outside of each container at a dealer location except, bulk shipments of shellfish in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealer tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.
- (3) Tags shall be attached to all shellfish stored at a dealer location.

*History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52;
Eff. January 1, 1991;*

- (4) Tags shall contain legible information arranged in the specific order as follows:
- (a) The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.
 - (b) The date of harvest.
 - (c) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
 - (d) Type and quantity of shellfish.
 - (e) The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52;
Eff. October 1, 2008.

15A NCAC 03K .0201 OPEN SEASON AND POSSESSION LIMIT

It is unlawful to take or possess oysters from public bottoms except from October 15 through March 31. The Fisheries Director may, by proclamation, close and open the season within the time period stated herein or close and open any of the various waters to the taking of oysters depending on the need to protect small oysters and their habitat, the amount of saleable oysters available for harvest, the number of days harvest is prevented due to unsatisfactory bacteriological samples and weather conditions, and the need to prevent loss of oysters due to parasitic infections and thereby reduce the transmission of parasites to uninfected oysters or other variable conditions and may impose any or all of the following restrictions on commercial and recreational oyster harvest:

- (1) Specify days of the week harvesting will be allowed;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period;
- (5) Specify the quantity, but shall not exceed possession of more than 50 bushels in a commercial fishing operation; and
- (6) Specify the minimum size limit by shell length, but not less than 2 1/2 inches.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; March 1, 1996; September 1, 1991.

15A NCAC 03K .0208 SEED OYSTER MANAGEMENT AREAS

- (a) It is unlawful to take oysters from Seed Oyster Management Areas designated in 15A NCAC 03R .0116 for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Oyster Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are set forth in 15A NCAC 03O .0501.
- (b) It is unlawful to use a trawl net, long haul seine, or swipe net in any designated Seed Oyster Management Area.

History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.52;
Eff. October 1, 2008.

15A NCAC 03K .0209 OYSTER SANCTUARIES

- (a) It is unlawful to use a trawl net, long haul seine, or swipe net in Oyster Sanctuaries designated in 15A NCAC 03R .0117. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any rule pertaining to any such body of water or portion thereof.
- (b) It is unlawful to use mechanical methods for oystering or clamming in, or to take oysters or clams from Oyster Sanctuaries designated in 15A NCAC 03R .0117.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52;
Eff. October 1, 2008.

15A NCAC 03K .0304 PROHIBITED TAKING

- (a) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in 15A NCAC 03K .0302 and .0303. Regardless of the areas which may be opened, it is unlawful to take clams by hand tongs in any established bed of submerged aquatic vegetation as described in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*).
- (b) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector plates normally used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 03K .0302(a). A period of 14 days before and after the season as specified by proclamation will be allowed for the installation and removal of kick/deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 03K .0104, .0107, .0303(a), and .0401 shall be exempt from this Rule during the times such activities are permitted.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008; February 1, 2008; May 1, 1997; July 1, 1993.

15A NCAC 03L .0209 RECREATIONAL HARVEST OF CRABS

It is unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day, for recreational purposes.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. October 1, 2008.

15A NCAC 03M .0102 UNMARKETABLE FINFISH

- (a) It is unlawful to land finfish if in violation of minimum size or possession limits established by rule or proclamation.
- (b) It is unlawful to land finfish taken in connection with commercial fishing operations which are unmarketable as individual finfish by reason of size, except a quantity not exceeding 5,000 pounds per vessel per day may be sold to a dealer that is licensed under G.S. 113-169.3(f)(6), (7) and (8).
- (c) Menhaden, Atlantic thread herring, gizzard shad, and pinfish are exempt from this Rule.

History Note: Authority G.S. 113-134; 113-185; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. October 1, 2008.

15A NCAC 03M .0201 GENERAL

- (a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint waters.
- (b) Hook-and-line fishing equipment is not commercial fishing equipment in the striped bass fishery. It is unlawful to sell or purchase striped bass taken by hook-and-line. Striped bass taken legally with hook-and-line may be possessed and transported.
- (c) It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).
- (d) It is unlawful to import, buy, sell, transport, offer to buy or sell, or possess striped bass except during any:
 - (1) open striped bass season established for internal coastal waters;
 - (2) open striped bass season established for the Atlantic Ocean; or
 - (3) open striped bass season of another state without possession of the following:
 - (A) A bill of lading as described in 15A NCAC 03I .0114;
 - (B) A numbered, state-issued tag from the State of origin affixed through the mouth and gill cover. This tag must remain affixed until processed for consumption by the consumer.
- (e) The management units and recreational fishery management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Temporary Amendment Eff. May 1, 2000;

Amended Eff. October 1, 2008; October 1, 2004; April 1, 2001.

15A NCAC 03M .0204 SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN

It is unlawful to possess striped bass taken from the Atlantic Ocean less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan.

History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. October 1, 1996;
Amended Eff. October 1, 2008; July 1, 1998.

15A NCAC 03M .0301 SPANISH AND KING MACKEREL

(a) Spanish Mackerel:

- (1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- (2) It is unlawful to possess more than 15 Spanish mackerel per person per day taken for recreational purposes.
- (3) It is unlawful to possess more than 15 Spanish mackerel per person per day in the Atlantic Ocean beyond three miles in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service Spanish Mackerel Commercial Vessel Permit.

(b) King mackerel:

- (1) It is unlawful to possess king mackerel less than 24 inches fork length.
- (2) It is unlawful to possess more than three king mackerel per person per day taken for recreational purposes.
- (3) It is unlawful to possess more than three king mackerel per person per day in the Atlantic Ocean:
 - (A) by hook and line except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit; or
 - (B) between three miles and 200 miles from the State's mean low water mark in a commercial fishing operation except for persons holding a valid National Marine Fisheries Service King Mackerel Commercial Vessel Permit.
- (4) It is unlawful to use gill nets in the Atlantic Ocean to take more than three king mackerel per person per day south of 34° 37.3000' N (Cape Lookout).

- (c) Charter vessels or head boats that hold a valid National Marine Fisheries Service Coastal Migratory Pelagic (Charter

Boat and Head Boat) permit must comply with the Spanish mackerel and king mackerel possession limits established in Subparagraphs (a)(2) and (b)(2) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(d) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or king mackerel, in the aggregate, in any one day.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2000; July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2002; April 1, 2001.

15A NCAC 03M .0401 SEASON AND AREAS
15A NCAC 03M .0402 FOODFISH PROHIBITED
15A NCAC 03M .0403 FISHING ON WEEKENDS AND HOLIDAYS PROHIBITED
15A NCAC 03M .0404 FISH SPILL REPORTING MANDATORY

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997;
Repealed Eff. October 1, 2008.

15A NCAC 03M .0501 RED DRUM

(a) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.
 (b) It is unlawful to possess red drum less than 18 inches total length or greater than 27 inches total length.
 (c) It is unlawful to possess more than one red drum per person per day taken-by hook-and-line or for recreational purposes.
 (d) The annual commercial harvest limit (September 1 through August 31) for red drum is 250,000 pounds. If the harvest limit is projected to be taken, the Fisheries Director shall, by proclamation, prohibit possession of red drum taken in a commercial fishing operation.

History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; October 1, 1992; September 1, 1991;
Temporary Amendment Eff. May 1, 2000; July 1, 1999; October 22, 1998;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. May 1, 2001;
Amended Eff. October 1, 2008; August 1, 2002.

15A NCAC 03M .0504 TROUT

(a) It is unlawful to possess spotted seatrout (speckled trout) less than 12 inches total length.

(b) It is unlawful to possess more than 10 spotted seatrout per person per day taken by hook-and-line or for recreational purposes.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1996; March 1, 1995; February 1, 1992;
Temporary Amendment Eff. September 9, 1996;
Temporary Amendment Eff. October 1, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. October 1, 2008; August 1, 2000.

15A NCAC 03M .0505 SHARK

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;
Eff. January 1, 1991;
Amended Eff. September 1, 1991;
Repealed Eff. October 1, 2008.

15A NCAC 03M .0506 SNAPPER-GROUPER COMPLEX

(a) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper-Grouper complex.

(b) The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.safmc.net and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991;
Temporary Amendment Eff. December 23, 1996;
Amended Eff. August 1, 1998; April 1, 1997;
Temporary Amendment Eff. January 1, 2002; August 29, 2000;
January 1, 2000; May 24, 1999;
Amended Eff. October 1, 2008; May 1, 2004; July 1, 2003; April 1, 2003; August 1, 2002.

15A NCAC 03M .0511 BLUEFISH

It is unlawful to possess more than 15 bluefish per person per day for recreational purposes. Of these 15 bluefish, it is unlawful to possess more than five bluefish that are greater than 24 inches total length.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. March 1, 1994;
Amended Eff. March 1, 1996;
Temporary Amendment Eff. September 9, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. July 1, 1999;

Amended Eff. October 1, 2008; April 1, 2003; August 1, 2000.

15A NCAC 03M .0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

(a) In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans or to implement state management measures, the Fisheries Director may, by proclamation, take any or all of the following actions for species listed in the Interjurisdictional Fisheries Management Plan:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means and methods; and
- (6) Require submission of statistical and biological data.

(b) Proclamations issued under this Rule shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221.1.

History Note: Authority G.S. 113-134; 113-182; 113-221; 113-221.1; 143B-289.4;

Eff. March 1, 1996;

Amended Eff. October 1, 2008.

15A NCAC 03M .0513 RIVER HERRING

It is unlawful to possess river herring taken from coastal fishing waters unless the river herring season is open.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;

Eff. March 1, 1995;

Amended Eff. August 1, 1998;

Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; March 1, 1999;

Amended Eff. October 1, 2008; December 1, 2007; April 1, 2001.

15A NCAC 03M .0514 SCUP

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;

Temporary Adoption Eff. December 23, 1996;

Eff. July 1, 1998;

Repealed Eff. October 1, 2008.

15A NCAC 03M .0518 KINGFISH (SEA MULLET)

The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of kingfishes:

- (1) Specify season,
- (2) Specify areas,
- (3) Specify quantity,
- (4) Specify means and methods,
- (5) Specify size.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;

Eff. October 1, 2008.

15A NCAC 03M .0519 SHAD

(a) It is unlawful to take American shad and hickory shad by any method except hook-and-line from April 15 through December 31.

(b) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.4;

Eff. October 1, 2008.

15A NCAC 03M .0520 TUNA

(a) It is unlawful to possess in a commercial fishing operation:

- (1) Yellowfin tuna less than 27 inches curved fork length.
- (2) Bigeye tuna less than 27 inches curved fork length.
- (3) Bluefin tuna less than 73 inches curved fork length.

(b) It is unlawful to possess for recreational purposes:

- (1) Yellowfin tuna less than 27 inches curved fork length.
- (2) Bigeye tuna less than 27 inches curved fork length.
- (3) More than three yellowfin tuna per person per day.

History Note: Authority G.S. 113-134; 113-182; 143B-289.4; Eff. October 1, 2008.

15A NCAC 03O .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

(a) All areas of the public bottoms underlying coastal fishing waters shall meet the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish cultivation purposes:

- (1) The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.
- (2) The lease area must not be closer than 100 feet to a developed shoreline, except no minimum setback is required when the area to be leased borders the applicant's property or the property of riparian owners who have consented in a notarized statement. In an area bordered by undeveloped shoreline, no minimum setback is required.
- (3) The proposed lease area shall not be less than one-half acre and shall not exceed five acres for all areas except those areas open to the mechanical harvest of oysters where proposed lease area shall not exceed 10 acres.

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Persons holding five or more acres under shellfish lease or franchise shall meet the standards established in Paragraph (c) of this Rule prior to acceptance of applications for additional shellfish lease acreage.

(c) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination, franchises and shellfish bottom leases shall:

- (1) Produce and market 10 bushels of shellfish per acre per year; and
- (2) Plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

(d) The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of Paragraph (c) of this Rule:

- (1) Only shellfish planted, produced or marketed according to the definitions in 15A NCAC 03I .0101 shall be submitted on production/utilization forms for shellfish leases and franchises.
- (2) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet the production requirement and the planting effort requirement within the dates set forth to be judged in compliance with these standards.
- (4) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:
 - (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
 - (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell and 90 pounds of fossil stone equal one bushel.
- (5) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of

the area of lease or franchise site obtained to the area of the originating lease or franchise.

(6) The production and marketing rates shall be averaged:

- (A) over the consecutive full calendar years remaining on the lease contract after December 31 following the second anniversary of initial bottom leases and franchises.
- (B) over the consecutive full calendar years beginning January 1 of the final year of the previous lease term and ending December 31 of the final year of the current lease contract for renewal leases.
- (C) over the first five year period for initial water column leases and over the most recent five year period thereafter for renewal water column leases.

Production and marketing rate averages shall be computed irrespective of transfer of the shellfish lease or franchise.

(7) All bushel measurements shall be in U.S. Standard Bushels.

(e) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

(f) Water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

(g) Water column leases must produce and market 40 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. The standards for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (d) of this Rule except that either the produce and market requirement or the planting requirement must be met.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991;

Temporary Amendment Eff. October 1, 2001;

Amended Eff. October 1, 2008; April 1, 2003.

15A NCAC 03O .0203 SHELLFISH LEASE APPLICATION PROCESSING

(a) Upon acceptance of a completed application, the proposed lease area shall be inspected by agents of the Division. Proposed lease areas inconsistent with applicable standards contained or referenced in 15A NCAC 3O .0201 shall result in the return of applications for amendment to remove the inconsistencies. If the boundaries of the proposed lease area are modified, the stakes identifying such areas shall be relocated accordingly by

the applicant. The failure of applicants to amend applications or modify lease area identification, when required, shall result in denial of such applications.

(b) If the initial or amended lease application is deemed consistent with all applicable requirements, the Secretary or his designee shall notify the applicant and publish notices of intention to lease in accordance with standards in G.S. 113-202(f).

(c) The Secretary shall consider the lease application, the Division's proposed lease area analysis, and public comments, and may in his discretion lease or decline to lease the proposed lease area or any part thereof. Special conditions may be imposed so that leases may be issued which would otherwise be denied. Should an applicant decide not to accept any special condition imposed on the lease by the Secretary, the application shall be considered denied.

(d) Upon approval of leases by the Secretary, applicants shall mark the shellfish bottom leases in accordance with 15A NCAC 3O .0204(a)(1), water column leases in accordance with 15A NCAC 3O .0204(a)(2), and shall within 90 days submit to the Division acceptable surveys of the areas approved for leasing except that a water column lease which entirely covers a shellfish bottom lease or franchise with an accepted survey on file does not require another survey. Such surveys shall be made at the expense of applicants and must meet the following standards:

- (1) Surveys and maps shall meet all the requirements of 21 NCAC 56 .1600, Standards of Practice for Land Surveying in North Carolina, which is hereby incorporated by reference including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Marine Fisheries Division, Marine Fisheries Building, 3441 Arendell St., P.O. Box 769, Morehead City, North Carolina 28557, at no cost.
- (2) Maps shall bear the certificate:
 "I _____ certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision); that the error of closure as calculated by latitudes and departures is 1: _____, that the area is _____ acres. Witness my hand and seal this _____ day of _____ AD _____."
 _____ Surveyor or Engineer
- (3) The phrase "other appropriate natural monuments or landmarks" in 21 NCAC 56 .1604(e)(9) shall include bridges, roads, highways, intersections, publicly maintained aids to navigation, houses and other permanent buildings, radio, telephone, TV, and water towers; docks; piers, and bulkheads; but does not include stakes marking the boundaries of adjoining leases, points of marsh, junctions of streams, or other landmarks which are

particularly subject to change through natural processes, storms, or the effect of man.

(4) A written description of the survey suitable for official documents shall be provided with the survey.

(5) Locations of all corner markers in latitude and longitude shall be provided with the survey and presented in an eight digit format. The relative accuracy of the corner marker locations shall be equal to or less than two meters. Information on the method of measurement, make and model of equipment, and coordinate system used to determine the latitude and longitude shall be included.

(e) Proposed shellfish bottom lease areas remain public bottom until a lease contract has been executed by the Secretary.

(f) Proposed water column lease areas superjacent to shellfish bottom leases and recognized perpetual franchises remain public water until a lease contract has been executed by the Secretary.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. October 1, 2008; March 1, 1994; September 1, 1991.

15A NCAC 03O .0210 SHELLFISH FRANCHISES

(a) The resolution of claims filed under G.S. 113-205 is governed by standards in Departmental Rules 15A NCAC 1G .0200 and .0300. Following receipt of notification that a claim has a valid chain of title, the owner shall provide to the Division within 90 days a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d). Failure to provide the required survey within the time period specified will result in denial of the claim.

(b) Acceptable management plans, prepared in accordance with the standards in 15A NCAC 03O .0202(b), shall be provided to the Division within 30 days following formal recognition of a valid chain of title and at ten-year intervals thereafter.

(c) The survey and management plan requirements in Paragraphs (a) and (b) of this Rule, and all other requirements and conditions of this Section affecting management of franchises, shall apply to all valid shellfish franchises recognized prior to September 1, 1989.

(d) Commercial production requirements for franchises shall be identical to that required for leases in 15A NCAC 03O .0201(c) averaged over the most recent three-year period after January 1 following the second anniversary of the dates of recognition of claims as valid shellfish franchises and continuing throughout the term of management plans required in Paragraph (b) of this Rule. Annual reporting of commercial production shall be submitted upon receipt of forms provided by the Division for that purpose.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-205; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. October 1, 2008; September 1, 1991.

15A NCAC 030 .0402 APPLICATION PROCESS

- (a) Application forms for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be available at all offices of the Division of Marine Fisheries and must be submitted to the Morehead City Office of the Division of Marine Fisheries for processing.
- (b) Only one application per individual for determination of eligibility for the Standard Commercial Fishing Licenses Eligibility Pool shall be accepted or may be pending at any one time. An applicant may have only one entry in the eligibility pool at any one time.
- (c) Individuals who currently hold or are eligible to purchase a Standard or Retired Standard Commercial Fishing License shall not be eligible to apply for additional Standard Commercial Fishing Licenses through the Standard Commercial Fishing Licenses Eligibility Pool.
- (d) If an applicant has died or becomes ineligible and is subsequently selected from the eligibility pool, that license eligibility shall automatically revert to the eligibility pool.
- (e) Persons claiming retirement from commercial fishing or transferring their Standard Commercial Fishing License may not apply for pool eligibility for two years from the date of the last transfer except as provided in 15A NCAC 030 .0404(3).
- (f) Applicants shall notify the Division of Marine Fisheries within 30 days of a change of address.

History Note: Authority G.S. 113-134; 143B-289.52; S.L. 1998-225, s. 4:24;

Temporary Adoption Eff. April 1, 1999;

Eff. August 1, 2000;

Amended Eff. October 1, 2008; February 1, 2008.

15A NCAC 030 .0404 ELIGIBILITY CRITERIA

In determining eligibility of an application for the Standard Commercial Fishing License Eligibility Pool, the Eligibility Board shall apply the following criteria:

- (1) Involvement in Commercial Fishing:
 - (a) Significant involvement in the commercial fishing industry for three of the last five years; or
 - (b) Significant involvement in commercial fishing or in the commercial fishing industry prior to the last five years; or
 - (c) In the case of an applicant who is under 16 years of age, significant involvement in commercial fishing for two out of the last five years with a parent, legal guardian, grandparent or other adult; or
 - (d) Significant involvement of the applicant's family in commercial fishing. For the purpose of this Sub-item, family shall include mother, father, brother, sister, spouse, children, grandparents or legal guardian.

For the purposes of this Rule, significant involvement means persons or corporations

who are engaged in the actual taking of fish for sale, from the waters of the State, or other states, jurisdictions, or federal waters, or any licensed dealer or the dealer's employees who purchases fish at the point of landing. Significant involvement does not include activities such as those who transport fish from the point of landing; those who sell or make commercial or recreational fishing gear; those who operate bait and tackle shops unless they are engaged in the actual taking of bait for sale; or those who work in fish markets or crab picking operations.

- (2) Compliance with Applicable Laws and Regulations:

- (a) The applicant shall not have any licenses, endorsements or commercial fishing vessel registrations issued by the Division of Marine Fisheries or the right to hold such under suspension or revocation at the time of application or during the eligibility review; or
- (b) If selected for the Standard Commercial Fishing License Eligibility Pool, the applicant shall become ineligible for the Standard Commercial Fishing License Eligibility Pool if any licenses, endorsements or registrations or the right to hold such issued by the Division of Marine Fisheries are suspended or revoked; or
- (c) Four convictions within the last three years or the number of convictions which would cause suspension or revocation of license, endorsement, or registration within the last three years shall result in the application being denied; or
- (d) A record of habitual violations evidenced by eight or more convictions in the last 10 years shall result in the application being denied.

For purposes of eligibility for the Standard Commercial Fishing License Eligibility Pool, the term convictions shall include but not be limited to any conviction for violation of any provision of Chapter 113 of the North Carolina General Statutes and any rule implementing or authorized by such statutes; any conviction for violation of G.S. 76-40 and any rule implementing or authorized by such statute; any conviction of Chapter 75A of the North Carolina General Statutes and any rule implementing or authorized by such statutes; any conviction for violation of any provision of Article 7 of Chapter 143B of the North Carolina General Statutes and any rule

implementing or authorized by such statutes; any conviction of resist, obstruct, or delay involving a Marine Patrol Officer or Wildlife Officer under G.S. 14-223; and any conviction involving assaultive behavior toward a Marine Patrol Officer or other governmental official of the Department of Environment and Natural Resources or the Wildlife Commission.

Applicants for the Standard Commercial Fishing License Eligibility Pool must provide certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years.

- (3) The responsible party shall not have transferred a Standard Commercial Fishing License granted by the Eligibility Board.
- (4) All applicants for the Standard Commercial Fishing License Eligibility Pool must meet all other statutory eligibility requirements for the Standard Commercial Fishing License.

History Note: Authority G.S. 113-134; 113-168.1; 113-168.2; 143B-289.52; S.L. 1998-225, s. 4.24; Temporary Adoption Eff. April 1, 1999; Eff. August 1, 2000; Amended Eff. October 1, 2008; February 1, 2008.

15A NCAC 03R .0116 DESIGNATED SEED OYSTER MANAGEMENT AREAS

The Seed Oyster Management Areas referenced in 15A NCAC 03K .0208 are delineated in the following coastal water areas:

- (1) Croatan Sound and tributaries: Cedar Bush Bay Seed Oyster Management Area, within the area described by a line beginning at a point 35° 50.0383' N - 75° 40.0712' W; running easterly to a point 35° 50.2328' N - 75° 39.4930' W; running southeasterly to a point 35° 49.3831' N - 75° 39.1521' W; running southwesterly to a point 35° 48.8000' N - 75° 39.5000' W; running westerly to a point 35° 48.6333' N - 75° 40.7000' W; running northerly to a point 35° 49.7000' N - 75° 40.6333' W; running northeasterly back to the point of beginning;
- (2) Croatan and Roanoke sounds and tributaries: Wanchese Marshes Seed Oyster Management Area, within an area described by a line beginning at a point 35° 49.0000' N - 75° 38.3000' W; running northerly to a point 35° 49.2243' N - 75° 38.3000' W; running easterly to a point 35° 49.0806' N - 75° 37.5293' W; running easterly to a point 35° 49.2893' N - 75° 37.0335' W; running northeasterly to point 35° 49.5541' N - 75° 36.9715' W; running southerly to a point 35° 49.0000' N - 75° 36.5500' W; running southwesterly to a point 35° 48.1500' N - 75° 36.9500' W; running

westerly to a point 35° 48.1000' N - 75° 37.6333' W; running northwesterly to the point of beginning;

- (3) Pamlico Sound and tributaries: Bay River Seed Oyster Management Area, within an area described by a line beginning at a point 35° 10.7670' N - 76° 36.7000' W off Spencer Point; running southeasterly to a point 35° 10.5330' N - 76° 36.4670' W; running westerly to a point 35° 10.4670' N - 76° 36.6500' W; running northwesterly to a point 35° 10.8000' N - 76° 36.9170' W, running easterly to the point of beginning;
- (4) White Oak River: White Oak River Seed Oyster Management Area, within an area described by a line beginning at a point 34° 43.0774' N - 77° 06.8610' W on the White Oak River/Stevens Creek polluted area line; running northeasterly to a point 34° 43.4006' N - 77° 06.1293' W on the east shore; running southerly along the shoreline to a point 34° 43.0755' N - 77° 06.1187' W; running southwesterly to a point 34° 42.8800' N - 77° 06.7975' W on the White Oak River/Stevens Creek polluted area line; running northerly to the point of beginning;
- (5) Topsail Sound and tributaries:
 - (a) Virginia Creek Seed Oyster Management Area, within an area described by a line beginning at a point 34° 25.4620' N - 77° 36.0074' W on the north shore; running southerly to a point 34° 25.1346' N - 77° 36.0640' W on the south shore; running easterly and southerly along the shoreline to a point 34° 24.9438' N - 77° 35.5325' W on Sloop Point; running northeasterly to a point 34° 25.0988' N - 77° 35.2920' W on the north shore; running northwesterly along the shoreline to the point of beginning;
 - (b) Topsail Sound Seed Oyster Management Area, within an area described by a line beginning at a point 34° 24.6555' N - 77° 35.6012' W across the IWW from Sloop Point; running southeasterly to a point 34° 24.3677' N - 77° 35.2015' W; running northeasterly to a point 34° 24.5260' N - 77° 35.1070' W; running northwesterly to a point 34° 24.8690' N - 77° 35.2872' W; running southwesterly to the point of beginning.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52; Eff. October 1, 2008.

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

- (1) Croatan Sound area: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.4575' W; running westerly to a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running easterly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to the point of beginning.
- (2) Pamlico Sound area:
 - (a) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.7500' W; running westerly to a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running easterly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to the point of beginning.
 - (b) Deep Bay: within the area described by a line beginning at a point 35° 22.9126' N - 75° 22.1612' W; running westerly to a point 35° 22.9126' N - 75° 22.3377' W; running southerly to a point 35° 22.7717' N - 75° 22.1612' W; running easterly to a point 35° 22.7717' N - 75° 22.3377' W; running northerly to the point of beginning.
 - (c) Bluff Point: within the area described by a line beginning at a point 35° 18.3000' N - 76° 10.2760' W; running westerly to a point 35° 18.3000' N - 76° 10.0890' W; running southerly to a point 35° 18.1460' N - 76° 10.0890' W; running easterly to a point 35° 18.1460' N - 76° 10.2760' W; running northerly to the point of beginning.
 - (d) Clam Shoal: within the area described by a line beginning at a point 35° 17.4784' N - 75° 37.4173' W; running westerly to a point 35° 17.4800' N - 75° 37.1800' W; running southerly to a point 35° 17.1873' N - 75° 37.1826' W; running easterly to a point 35° 17.1873' N - 75° 37.4173' W; running northerly to the point of beginning.
 - (e) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.3320' W; running westerly to a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running easterly to a

point 35° 14.1150' N - 76° 30.3320' W; running northerly to the point of beginning.

- (f) Ocracoke area: within the area described by a line beginning at a point 35° 10.8150' N - 75° 59.8530' W; running westerly to a point 35° 10.8150' N - 75° 59.6320' W; running southerly to a point 35° 10.6320' N - 75° 59.6320' W; running easterly to a point 35° 10.6320' N - 75° 59.8530' W; running northerly to the point of beginning.
 - (g) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.4735' W; running westerly to a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running easterly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to the point of beginning.
- (3) Neuse River: within the area described by a line beginning at a point 35° 00.4742' N - 76° 32.0550' W; running westerly to a point 35° 00.4742' N - 76° 31.9550' W; running southerly to a point 35° 00.3920' N - 76° 31.9550' W; running easterly to a point 35° 00.3920' N - 76° 32.0550' W; running northerly to the point of beginning.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52; Eff. October 1, 2008.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0201 APPLICATION AND SCOPE

Each applicant for a license as a massage and bodywork therapist shall complete an application form provided by the Board. This form shall be submitted to the Board and shall be accompanied by:

- (1) One original color photograph of the applicant taken within six months preceding the date of the application of sufficient quality for identification. The photograph shall be of the head and shoulders, passport type, two inches by two inches in size;
- (2) The proper fees, as required by Rule .0204 of this Section and G.S. 90-629.1(b);
- (3) Documentation that the applicant has earned a high school diploma or equivalent;

- (4) Documentation that the applicant is 18 years of age or older;
- (5) Documentation that the applicant has successfully completed a course of study at a school approved by the Board according to these Rules and consisting of a minimum of 500 classroom hours of supervised instruction. If the applicant attended a school which is not approved by the Board the Board may elect to review that applicant's school and educational credentials for approval on a case-by-case basis. The documentation of such training must come from a school which is licensed by the educational licensing authority in the state, territory or country in which it operates, or is exempt by statute. In North Carolina the documentation must come from a proprietary school approved by the Board or a college-based massage program that is exempt from Board approval. The curriculum must meet or be substantially equivalent to the standards set forth in Rule .0620(2) of this Chapter;
- (6) Documentation that the applicant has achieved a passing score on a competency assessment examination that meets generally accepted psychometric principles and standards;
- (7) Forms provided by the Board containing signed statements from two persons attesting to the applicant's good moral character and adherence to ethical standards;
- (8) Fingerprint card provided by the Board and executed by an official fingerprinting agency; and
- (9) A form provided by the Board consenting to a criminal history record check by the North Carolina Department of Justice.

History Note: Authority G.S. 90-626(2); 90-629; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. October 1, 2008.

21 NCAC 30 .0516 TREATMENT IN BODY CAVITIES

A licensee may perform massage and bodywork therapy inside the vaginal or anal cavities of a client provided the licensee complies with the following requirements:

- (1) the licensee has received a written prescription or order from a licensed medical doctor prescribing or ordering the specific massage and bodywork therapy treatment to the soft tissues inside the vaginal or anal cavity;
- (2) prior to the start of treatment, the licensee obtains written and signed consent from the client for treatment inside the client's vaginal or anal cavities stating that the client has been advised that the client has the right to have another person, provided either by the client or therapist, present in the room while the

treatment is being performed and indicating whether the client chooses treatment with a third person present or treatment with only the therapist and the client present;

- (3) consistent with Rule .0506 of this Chapter, the drape covering the client's pelvic area may be temporarily moved with the voluntary and informed consent of the client in order to perform therapeutic treatment to the structures in that area;
- (4) consistent with Rule .0507 of this Chapter, the licensee shall use a glove or finger cot made of latex or other impervious material to cover their hand or finger used for treatment within body cavities; and
- (5) the massage and bodywork therapy treatment is performed in conformance with Rule .0509 of this Chapter.

History Note: Authority G.S. 90-626(9); Eff. October 1, 2008.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 01 .0101 LOCATION

(a) The principal office of the Office of Administrative Hearings is located at 1711 New Hope Church Road, Raleigh, North Carolina. The mailing address is 6714 Mail Service Center, Raleigh, NC 27699-6714.

(b) Forms and information about the office may be obtained from the agency's website at: www.oah.state.nc.us.

History Note: Authority G.S. 7A-751(a); Eff. January 1, 1991; Amended Eff. October 1, 2008; August 1, 2000; December 1, 1999; April 1, 1991.

26 NCAC 02C .0401 SCOPE AND AVAILABILITY

(a) The rules in this Section set forth the requirements for submitting rules for inclusion in the Code. The agency shall also comply with the requirements in Sections .0100 - .0200 of this Subchapter.

(b) These Rules apply to agencies subject to G.S. 150B, Article 2A, as well as those agencies subject to G.S. 150B-21.21(a) and (b).

(c) The Official North Carolina Administrative Code is available by subscription from Thomson Reuters and may be ordered directly from a Thomson Reuters representative by calling 1-800-328-9352, online at <http://www.thomsonreuters.com>, or by writing to Thomson Reuters, 610 Opperman Drive, Eagan, MN 55123.

(d) The North Carolina Administrative Code is available on the OAH website: <http://www.oah.state.nc.us>.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19; Eff. April 1, 1996;

Amended Eff. October 1, 2008; December 1, 2002; April 1, 1997.

**26 NCAC 04 .0202 CONTENT AND FILING
PROCEDURES**

(a) Forms for filing political discrimination complaints may be obtained from the Civil Rights Division, 6714 Mail Service Center, Raleigh, NC 27699-6714 or 919-431-3036. Any person wishing to file a complaint of alleged political discrimination shall address the complaint to:

Director of Civil Rights Division
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

(b) The complainant may file a political discrimination complaint and related documents by facsimile (fax) transmission during regular office hours. The faxed complaints and documents shall be deemed a "filing" within the meaning of 26 NCAC 04 .0201(3) provided the original complaint or documents are received by the Civil Rights Division within five business days following the faxed transmission.

(c) The complaint shall include the following information:

- (1) Full name, address and telephone number (work and home) of person making the complaint;
- (2) Full name, address and telephone number of the agency against whom the complaint is made (the respondent);
- (3) The basis of the complaint (hiring or promotion);
- (4) The date the alleged discrimination occurred;
- (5) The name(s) of the individual(s) hired or promoted;
- (6) A statement disclosing the particulars of the employment decision;
- (7) The signature of the person making the complaint; and
- (8) The date the complainant signed the complaint.

*History Note: Authority G.S. 7A-751; 126-14.4;
Temporary Adoption Eff. January 1, 1998;*

Eff. August 1, 1998;

Amended Eff. October 1, 2008; December 1, 1999; August 1, 1998.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday October 16, 2008 10:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Keith O. Gregory
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn

RULES REVIEW COMMISSION MEETING DATES

November 20, 2008	December 18, 2008
January 15, 2009	February 19, 2008

AGENDA

RULES REVIEW COMMISSION
Thursday, November 20, 2008, 9:00 A.M.

- I. Introduction and swearing in of new Commissioner Venable
- II. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- III. Approval of the minutes from the last meeting
- IV. Follow-Up Matters:
 - A. Environmental Management Commission – 15A NCAC 02B .0262, .0263, .0267 (Review for technical changes only); .0265, .0266, .0311 (DeLuca)
 - B. Water Treatment Facility Operators Cert. Board – 15A NCAC 18D .0308 (Bryan)
 - C. Board of Nursing – 21 NCAC 36 .0201, .0203 (DeLuca)
- V. Review of Log of Permanent Rule filings for rules filed between September 23, 2008 and October 20, 2008 (attached)
- VI. Review of Temporary Rules
- VII. Commission Business
 - Next meeting: December 18, 2008

Commission Review

Log of Permanent Rule Filings
September 23, 2008 through October 20, 2008

TOBACCO TRUST FUND COMMISSION

The rules in Chapter 57 are from the tobacco trust fund commission and concern general provisions (.0100); compensatory program grants (.0200); and qualified agricultural program grants (.0300).

Applications for Grants
Amend/*

02 NCAC 57 .0204

<u>Out of Cycle Award of Grants</u> Repeal/*	02	NCAC	57	.0206
<u>Review of Proposals</u> Amend/*	02	NCAC	57	.0207
<u>Reporting</u> Amend/*	02	NCAC	57	.0209
<u>Applications for Grants</u> Amend/*	02	NCAC	57	.0304
<u>Out of Cycle Consideration of Grants</u> Repeal/*	02	NCAC	57	.0305
<u>Review of Proposals</u> Amend/*	02	NCAC	57	.0306
<u>Reporting</u> Amend/*	02	NCAC	57	.0308

CEMETERY COMMISSION

The rules in Subchapter 05D concern trust funds including maintenance and care of funds (perpetual care funds) (.0100); and pre-need cemetery merchandise, pre-constructed mausoleums and below ground crypts trust funds (.0200).

<u>Delivery</u> Amend/*	04	NCAC	05D	.0202
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CORRECTIONS, DEPARTMENT OF

The rules in Chapter 1 are departmental rules.

The rules in Subchapter 1F concern general administration (.0100) and petition for rulemaking (.0200).

<u>Location</u> Adopt/*	05	NCAC	01F	.0101
<u>Cost of Copies</u> Adopt/*	05	NCAC	01F	.0102
<u>Filing a Petition for Rule-making</u> Adopt/*	05	NCAC	01F	.0201

BLIND, COMMISSION FOR THE

The rules in Chapter 63 concern services for the blind.

The rules in Subchapter 63C concern business enterprises program including licensing and placement (.0200); special provisions (.0300); administrative appeal procedure (.0400); election: organization and functions of the committee on the stand program (.0500); responsibilities of licensed operators (.0600); and earnings: funds and proceeds (.0700).

<u>Licensing and Placement</u> Amend/*	10A	NCAC	63C	.0202
<u>Filling of Vacancies</u> Amend/*	10A	NCAC	63C	.0204

INSURANCE, DEPARTMENT OF

The rules in Chapter 11 are from the Department of Insurance and concern financial evaluation of insurance companies.

The rules in Subchapter 11F are actuarial rules including general provisions (.0100); health insurance minimum

reserve standards (.0200); actuarial opinion and memorandum (.0300); commissioner's reserve valuation method (.0400); new annuity valuation mortality tables (.0500); recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and non-forfeiture benefits (.0600); determining minimum reserve liabilities for credit life insurance (.0700); and preferred class structure mortality table (.0800).

<u>Definitions</u> Amend/*	11	NCAC	11F	.0601
<u>2001 CSO Mortality Table as Minimum Standard</u> Amend/*	11	NCAC	11F	.0602
<u>Conditions</u> Amend/*	11	NCAC	11F	.0603
<u>Gender-Blended Tables</u> Amend/*	11	NCAC	11F	.0605
<u>Minimum Standards for Preneed Life Insurance</u> Adopt/*	11	NCAC	11F	.0606

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

<u>Requirements for a Firearms Trainer Certificate</u> Amend/*	12	NCAC	07D	.0901
<u>Records Retention</u> Amend/*	12	NCAC	07D	.0906
<u>Post-Delivery Report for Firearms Training Courses</u> Amend/*	12	NCAC	07D	.0908

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); general permit for authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the secretary of the Department of Environment and Natural Resources for replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); general permit for construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and general permit for the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>General Use Standards for Ocean Hazard Areas</u>	15A	NCAC	07H	.0306
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Amend/*

The rules in Chapter 7 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 7J concern procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings. They include definitions (.0100); permit application and procedures (.0200); hearing procedures (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); general permit procedure (.1100); and static vegetation line exception procedures (.1200).

<u>Requesting the Static Line Exception</u> Adopt/*	15A	NCAC	07J	.1201
<u>Review of the Static Line Exception Request</u> Adopt/*	15A	NCAC	07J	.1202
<u>Procedure for Approving the Static Line Exception</u> Adopt/*	15A	NCAC	07J	.1203
<u>Review of the Large-Scale Beach-Fill Project and Approved...</u> Adopt/*	15A	NCAC	07J	.1204
<u>Revocation and Expiration of the Static Line Exception</u> Adopt/*	15A	NCAC	07J	.1205
<u>Local Government and Communities with Static Vegetation L...</u> Adopt/*	15A	NCAC	07J	.1206

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners.

The rules in Subchapter 14A are the Cosmetic Art Board of Examiners structure and organization rules. The rules in Section .0100 are the organizational rules.

<u>Definitions</u> Amend/*	21	NCAC	14A	.0101
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The rules in Subchapter 14F govern all aspects of licensing a beauty salon.

<u>Salon Renewal</u> Repeal/*	21	NCAC	14F	.0114
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The rules in Subsection 14G give the requirements for the establishment of cosmetic art schools.

<u>Forms</u> Repeal/*	21	NCAC	14G	.0102
<u>Equipment and Teachers</u> Amend/*	21	NCAC	14G	.0107

The rules in Subchapter 14H are sanitation rules for both operators and facilities.

<u>Sanitary Ratings and Posting of Ratings</u> Amend/*	21	NCAC	14H	.0105
<u>Cleanliness of Operators</u> Amend/*	21	NCAC	14H	.0111
<u>Cleanliness of Clinic Area: Supplies: Combs and Brushes</u> Amend/*	21	NCAC	14H	.0112
<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u> Amend/*	21	NCAC	14H	.0113

<u>Health of Operators</u> Repeal/*	21	NCAC	14H	.0116
<u>Animals</u> Amend/*	21	NCAC	14H	.0117
<u>Systems of Grading Beauty Establishments</u> Amend/*	21	NCAC	14H	.0118
<u>Footspa Sanitation</u> Amend/*	21	NCAC	14H	.0120

The rules in Subchapter 14I govern the operation of cosmetic art schools including record keeping (.0100); the reception area (.0200); classrooms (.0300); and licensure of convicted felons (.0400).

<u>Transfer of Credit</u> Amend/*	21	NCAC	14I	.0105
<u>Report of Enrollment</u> Amend/*	21	NCAC	14I	.0107
<u>Summary of Cosmetic Art Education</u> Amend/*	21	NCAC	14I	.0109
<u>Recitation Room</u> Amend/*	21	NCAC	14I	.0301
<u>Classroom Bulletin Board</u> Amend/*	21	NCAC	14I	.0303
<u>Application/Licensure/Individuals Who Have Been Convicted...</u> Amend/*	21	NCAC	14I	.0401
<u>Requests for Preapplication Review of Felony Convictions</u> Repeal/*	21	NCAC	14I	.0402

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Equipment</u> Amend/*	21	NCAC	14J	.0302
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The rules in Subchapter 14K deal with the manicurist curriculum.

<u>Uniforms</u> Amend/*	21	NCAC	14K	.0101
<u>Equipment and Instruments</u> Amend/*	21	NCAC	14K	.0103
<u>Identification Pins</u> Amend/*	21	NCAC	14K	.0105
<u>Live Model Performances</u> Amend/*	21	NCAC	14K	.0107

The rules in Subchapter 14L deal with teacher qualifications and examinations (.0100) and teacher program and curriculum (.0200).

<u>Application to Take Examination</u> Amend/*	21	NCAC	14L	.0106
<u>Supervision of Cosmetic Art Teacher Trainer</u> Amend/*	21	NCAC	14L	.0208
<u>Effect on Student-Teacher Ration</u> Amend/*	21	NCAC	14L	.0210
<u>Fee</u>	21	NCAC	14L	.0214

Repeal/*

The rules in Subchapter 14N deal with examinations including general provisions (.0100), cosmetologist exam (.0200), manicurist exam (.0300), cosmetologist teacher exam (.0400), and manicurist teach examination (.0500), esthetician examination (.0600), and esthetician teacher examination (.0700).

<u>Initial Application and Fees</u>	21	NCAC	14N	.0102
Amend/*				

The rules in Subchapter 14O are esthetician curriculum rules.

<u>Uniforms</u>	21	NCAC	14O	.0101
Amend/*				

<u>Course of Study</u>	21	NCAC	14O	.0102
Amend/*				

<u>Identification Pins</u>	21	NCAC	14O	.0105
Amend/*				

<u>Sanitation</u>	21	NCAC	14O	.0107
Repeal/*				

The rules in Subchapter 14P are civil penalty rules.

<u>Renewals, Expired Licenses, Licenses Required</u>	21	NCAC	14P	.0105
Amend/*				

<u>Licenses Required</u>	21	NCAC	14P	.0106
Amend/*				

<u>Licenses to be Posted</u>	21	NCAC	14P	.0107
Amend/*				

<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC	14P	.0108
Amend/*				

<u>Sanitary Ratings and Posting of Ratings - Applicable to E...</u>	21	NCAC	14P	.0112
Amend/*				

<u>Operations of Schools of Cosmetic Art</u>	21	NCAC	14P	.0113
Amend/*				

<u>Sanitary Ratings</u>	21	NCAC	14P	.0115
Amend/*				

The rules in Subchapter 14R are continuing education rules.

<u>Continuing Education Requirements</u>	21	NCAC	14R	.0101
Amend/*				

<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102
Amend/*				

<u>Criteria for Continuing Education Courses</u>	21	NCAC	14R	.0103
Amend/*				

PHARMACY, BOARD OF

The rules in Chapter 46 are from the Board of Pharmacy and cover organization of the Board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review

program (.3200); and registry of pharmacist technicians (.3300).

<u>Partial Examination</u>	21	NCAC	46	.1507
Repeal/*				

PHYSICAL THERAPY EXAMINERS, BOARD OF

The rules in Subchapter 48G concern retention of license including licensure renewal (.0100); lapsed licenses (.0200); refusal to renew or grant license suspension or revocation (.0300); probation or warning (.0400); contested case hearings (.0500); and disciplinary action (.0600).

<u>Definitions</u>	21	NCAC	48G	.0105
Adopt/*				
<u>Continuing Competence</u>	21	NCAC	48G	.0106
Adopt/*				
<u>Standards for Continuing Competence Activities</u>	21	NCAC	48G	.0107
Adopt/*				
<u>Approval of Providers and Activities</u>	21	NCAC	48G	.0108
Adopt/*				
<u>Continuing Competence Activities</u>	21	NCAC	48G	.0109
Adopt/*				
<u>Evidence of Compliance</u>	21	NCAC	48G	.0110
Adopt/*				
<u>Exemptions and Deferrals</u>	21	NCAC	48G	.0111
Adopt/*				
<u>Costs</u>	21	NCAC	48G	.0112
Adopt/*				
<u>Revival of Lapsed License</u>	21	NCAC	48G	.0203
Amend/*				

STATE PERSONNEL COMMISSION

The rules in Chapter 1 are from the State Personnel Commission.

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Separation: Payment of Vacation Leave</u>	25	NCAC	01C	.1009
Amend/*				

The rules in Subchapter 1D are the rules dealing with compensation and include administration of the pay plan (.0100); new appointments (.0200); promotion (.0300); demotions or reassignments (.0400); separation (.0500); reallocation (.0600); salary range revision (.0700); initial classification (.0800); transfer (.0900); reinstatement (.1000); performance salary increases (.1100); longevity pay (.1200); holiday premium pay (.1300); shift premium pay (.1400); emergency call-back pay (.1500); foreign service pay (.1600); employment of physicians for extended duty (.1800); hours of work and overtime compensation (.1900); unemployment insurance (.2000); special salary adjustments (.2100); payment of salary (.2200); accelerated pay plan (.2300); comprehensive compensation system (.2500); and in range salary adjustments (.2600).

<u>Leave</u>	25	NCAC	01D	.0517
Repeal/*				

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900);

Separation: Payment of Vacation Leave
Amend/*

25 NCAC 01E .0210

BUILDING CODE COUNCIL

NC Residential Code: General. Appendix Q Footing Continuity
Adopt/*

R403.1

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. 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

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
Partnership T/A C Js Lounge v. ABC Commission	07 ABC 0201	Overby	03/11/08	
ABC Commission v. Rainbow Enterprises, Inc T/A Club N Motion	07 ABC 1532	Gray	06/20/08	23:05 NCR 489
Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
N.C. Alcoholic Beverage Control Commission v. Feest Inc. T/A Spankys Sports Bar and Grill	07 ABC 2135	Gray	09/12/08	
AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission	08 ABC 0371	Lassiter	06/13/08	
Bhaves Corporation, T/A K&B Foomart v. ABC Commission	08 ABC 0508	Overby	05/19/08	
<u>CRIME VICTIMS COMPENSATION</u>				
Patricia Ginyard v. Crime Victim Compensation Commission	06 CPS 1720	Gray	05/27/08	
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Taereka S Johnson v. NC Crime Victims Compensation Commission	08 CPS 0402	Morrison	08/08/08	
Rich's Towing and Service Inc. v. NC Department of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 0698	May	08/13/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	
Randy S. Griffin v. NC Crime Victims Compensation Commission	08 CPS 0995	May	09/11/08	
Interstate Crushing Inc. v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1086	Overby	09/29/08	
Sterett Equipment Company LLC v. N.C. Dept. of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1206	Overby	09/29/08	
Bertrand E. Dupuis d/b/a New England Heavy Hauling v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1207	Overby	09/29/08	
Bulldog Erectors, Inc v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1208	Overby	09/29/08	
Continental Machinery Movers Inc. v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1209	Overby	09/29/08	
Michael Alan Moore v. Crime Victims Compensation Commission	08 CPS 1478	Lassiter	09/08/08	
SOOF Trucking, Ray Charles Solomon v. Secretary of Crime Control And Public Safety	08 CPS 1526	Overby	09/09/08	

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 0633	Lassiter	07/11/08
Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS	06 DHR 1350	Lassiter	07/11/08
Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services	07 DHR 0124	Elkins	08/07/08
Character Builders, Inc., Clavon Leonard v. DMA, Developmental Disabilities and Substance Abuse Services	07 DHR 0125	Elkins	08/07/08
Arthur Burch and Margaret and Burch v. Department of Health and Human Services	07 DHR 0242	Brooks	04/30/08
The "M" Company LLC, v. DHHS, DMA, Program Integrity	07 DHR 0429	Webster	05/29/08
Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, III, Md, Pathologist	07 DHR 0535	Webster	05/05/08
Alterra Clare Bridge of Asheville v. DHHS, DFS, Adult Care Licensure Section	07 DHR 0914	Gray	06/06/08
Shirley Brooks Dial v. Health Care Personnel Registry	07 DHR 0931	Webster	02/27/08
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel and Fesseha Zeru	07 DHR 1044	Webster	04/25/08
Midtown Food Mart III, Chenet Hailesslassi and Fesseha Zeru v. DHHS	07 DHR 1045	Webster	04/28/08
Carolyn E. Reed v. DHHS, Division of Social Services Program Integrity AFDC/Work First	07 DHR 1214	Webster	07/21/08
Mrs. Elizabeth Futrell v. Value Options	07 DHR 1331	Lassiter	06/09/08
Cornell Jones v. DHHS, Division of Health Services Regulation	07 DHR 1399	Joseph	04/22/08
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 1440	Joseph	05/07/08
Rufus Patrick Devers v. DHHS, Division of Health Service Regulation Health Care Personnel Registry	07 DHR 1442	Joseph	05/29/08
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public Health, Child and Adult Care Food Program	07 DHR 1473	Joseph	04/08/08
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service Regulation, Licensure and Certification Section and DHHS, Division of Health Service Regulation, CON Section	07 DHR 1617	Elkins	05/21/08
Janice Addison v. Value Options	07 DHR 1618	Webster	05/16/08
Donna Hicks Crocker v. DHHS/DMA	07 DHR 1629	Joseph	08/01/08
Rebecca Dehart v. DHHS, Division of Health Service Regulation Health Care Personnel Registry Section	07 DHR 1650	Elkins	05/21/08
Ellen Brown v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	07 DHR 1651	Elkins	05/21/08
Joann Lennon v. Value Options Medicaid	07 DHR 1770	Webster	05/16/08
Angeline Currie v. DHHS	07 DHR 1986	Elkins	06/04/08
Tameala Jones v. OAH	07 DHR 1993	Webster	05/16/08
Dianetta Foye v. Division of Child Development, DHHS, Services	07 DHR 2020	Joseph	05/07/08
Lashauna Reid v. CCMHC (PFCS-Service Provider)	07 DHR 2039	Elkins	08/05/08
Presbyterian Diagnostic Center at Cabarrus LLC v. N.C. Department of Health and Human Services, Division of Health Service Regulation and Southern Piedmont Imaging, LLC	07 DHR 2043	Lassiter	08/18/08
Southern Piedmont Imaging, LLC v. N.C. Department of Health and Human Services, Division of Health Service Regulation and Presbyterian Diagnostic Center at Cabarrus, LLC	07 DHR 2045	Lassiter	08/18/08
Family & Youth Services, Inc. Angela Ford, President v. DHHS, Division of Medical Assistance Provider Services	07 DHR 2057	Webster	05/16/08
Yolanda Jones v. DHHS, Adult Licensure Section	07 DHR 2081	Webster	05/16/08
Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option	07 DHR 2087	Elkins	05/23/08
Gary Carlton, Sr., v. DHHS	07 DHR 2099	Brooks	07/10/08
Alexis Ford/Linda M McLaughlin v. DHHS	07 DHR 2111	Elkins	06/04/08
Roger Houston v. DHHS, Div. of Health Service Regulation	07 DHR 2176	Gray	07/08/08
Dorothy L. Davis v. OAH	07 DHR 2179	May	07/02/08
Kevin McMillian/Linda M McLaughlin v. DHHS	07 DHR 2239	Elkins	06/04/08
Maurisha Bethea/Linda McLaughlin v. DHHS	07 DHR 2240	Elkins	06/04/08
Anna Fields v. Value Options	07 DHR 2326	Joseph	06/02/08
Larry Hopper v. DHHS	07 DHR 2356	May	06/20/08
Shelby Davis v. DHHS	08 DHR 0014	Lassiter	05/09/08
Hellon P. Johnson v. DHHS	08 DHR 0020	May	07/03/08
Lenora King v. DHHS	08 DHR 0034	Joseph	05/01/08
Forest Mewborn v. Health Care Personnel Registry	08 DHR 0043	Elkins	05/23/08
Wilma Jackson v. Value Options	08 DHR 0082	Joseph	06/02/08
Carmelita Wiggins v. Value Options	08 DHR 0198	Webster	05/16/08
Murphy's Outreach Community Developmental Services, Inc, d/b/a Outreach Home Health	08 DHR 0220	Joseph	07/22/08

CONTESTED CASE DECISIONS

Lisa Helms v. DHHS	08 DHR 0255	Overby	06/17/08
Pearlene Johnson Ivery v. DMA, Third Party Recovery (Medicaid)	08 DHR 0286	Brooks	07/07/08
Mamaue Aytch v. DHHS	08 DHR 0325	Elkins	05/23/08
Brenda McGilvary v. DHHS, Division of Social Services	08 DHR 0384	Webster	08/05/08
Fannie M. Wilson v. OAH	08 DHR 0393	Webster	06/17/08
Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford Center	08 DHR 0403	Joseph	06/09/08
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08
Focus Health Services, Inc. via Annette Johnson, Owner Operator v. North Carolina Department of Health and Human Services and Albemarle Mental Health Center for Developmental Disabilities and Substance Abuse Services	08 DHR 0442	Gray	06/12/08
Earline Ross (Quentin Galloway) v. DHHS (Medicaid)	08 DHR 0549	May	06/09/08
Frances Milligan v. DHHS	08 DHR 0566	May	06/19/08
Betty Williams v. DHHS	08 DHR 0570	Joseph	06/02/08
Susan Nelson v. Medicaid	08 DHR 0573	May	06/09/08
Brent Morris Per Dedrea Moors (Mother) v. Priscilla Valet, DMA	08 DHR 0585	May	06/09/08
Brenda M. Finney v. Medicaid	08 DHR 0586	Joseph	06/09/08
Allred & Allred Day Care Center, Inc. v. N.C. Department of Health and Human Services, Division of Public Health, Child And Adult Care Food Program	08 DHR 0617	May	06/04/08
Lakeva Robinson v. DMA/Value Options	08 DHR 0625	May	05/28/08
Ronald Lee Young v. N.C. Department of Health and Human Services	08 DHR 0631	Joseph	07/21/08
Tina Miller v. OAH, DHHS	08 DHR 0661	Lassiter	06/10/08
Doris Harris v. Division of Child Development	08 DHR 0710	May	07/02/08
Michelle D. Mills v. DHHS, Division of Health Service Regulation	08 DHR 0712	Joseph	06/09/08
Trena Ellis v. DHHS	08 DHR 0730	Lassiter	07/03/08
Faith Davis v. Pride in North Carolina Value Options	08 DHR 0746	Overby	05/28/08
Evonne Neal v. Medicaid	08 DHR 0748	May	06/20/08
Maria Dejesus Ruiz La Vaca Ramona v. N.C. Department of Health and Human Services	08 DHR 0760	Overby	07/24/08
Ray C. Price v. DHHS, Office of the Controller	08 DHR 0767	Brooks	07/07/08
Cheryl I Rice v. DHHS	08 DHR 0793	Overby	07/10/08
Destiny A Taylor v. Division of Child Development	08 DHR 0794	Gray	07/21/08
Mary Ada Mills, Mary M. Mills MSA FCH v. Adult Care Licensure	08 DHR 0808	May	08/26/08
Lula Bowden v. OAH	08 DHR 0852	May	06/20/08
Donovan Harris v. Value Options	08 DHR 0894	May	06/19/08
Gabrielle Lloyd v. DHHS, Division of Health Service Regulation	08 DHR 0905	May	09/22/08
Janice Chavis v. DHHS	08 DHR 0923	Lassiter	05/19/08
Frankie Nicole Carter v. DHHS, Division of Health Service Regulation	08 DHR 0929	Brooks	06/19/08
Christine Maria Plyer v. Medicaid Reimbursement	08 DHR 0949	Mann	06/18/08
Margaret Mubanga v. NC Department of Health and Human Services	08 DHR 0961	Gray	08/25/08
Evangeline Ingram v. Value Options	08 DHR 0997	Gray	06/10/08
Marcia Veronica Harris v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 0169	Lassiter	08/11/08
Maureen Jordan parent of Destinne Jordan v. Value Options	08 DHR 1005	Gray	06/19/08
Triangle Alternative Inc. Dorothy George v. Office of Administrative Hearings	08 DHR 1012	May	07/21/08
Terrie P Hill dba Positive Care MHL 041-595 2203 Wanda Drive v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1015	Lassiter	09/12/08
Terrie P Hill dba Positive Care II MHL 041-633 3406 Fern Place v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1016	Lassiter	09/12/08
Terrie P Hill dba Positive Care II MHL 041-765 3406 Fern Place v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1017	Lassiter	09/12/08
Mario Jackson v. DHHS	08 DHR 1024	Overby	06/19/08
Edwin F Clavijo, El Exito v. NC Department of Health and Human Services, Division of Public Health, Nutrition Services Branch	08 DHR 1034	Lassiter	09/15/08
Linda F. Ellison v. NC Department of Health and Human Services and or EDS	08 DHR 1035	Joseph	07/09/08
Doris Smith v. Health Care Personnel Registry	08 DHR 1238	Brooks	08/08/08
Martha Washington Harper v. DSS	08 DHR 1041	Brooks	06/23/08
Mary K. Tulay v. DHHS	08 DHR 1055	Joseph	07/09/08
Gwendolyn F. Gulley v. NC Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	08 DHR 1062	Overby	09/09/08
Rhonda Jones v. Value Options	08 DHR 1064	Webster	07/18/08

CONTESTED CASE DECISIONS

One Love Developmental Services v. Division of Health Service Regulation, Department of Health and Human Services	08 DHR 1068	Lassiter	07/25/08
Jona Turner v. Office of Administrative Hearings	08 DHR 1092	Webster	07/18/08
Tonia Chatman Davis v. N.C. Department of Health and Human Services	08 DHR 1141	Lassiter	07/28/08
Mary M. Branch v. North Carolina Dept of Health and Human Services, Value Options	08 DHR 1174	Elkins	08/11/08
Haywood Miller, Bobby Jean Graves Miller v. DHHS, Mental Health Licensure Certification Section	08 DHR 1181	Overby	07/01/08
Jan Williams v. Value Options, DHHS	08 DHR 1231	Overby	07/09/08
Heather Peete v. OAH	08 DHR 1281	Lassiter	07/02/08
Ann Moody v. DHHS	08 DHR 1299	Webster	07/18/08
Khahada Kirby v. Value Options	08 DHR 1310	Webster	07/18/08
Amir Abusamak v. N.C. Department of Health and Human Services	08 DHR 1325	Gray	07/16/08
Big Z Supermarket, Abdul Hamdan v. Cory Menees, NC Dept. of Health and Human Services	08 DHR 1343	Overby	08/27/08
Alesia Alwahishi dba Brotherhood Market	08 DHR 1356	Gray	07/22/08
Nigel Brown v. Value Options	08 DHR 1358	Gray	08/29/08
Michael Grondahl v. DHHS	08 DHR 1491	Gray	08/01/08
Tyechia Jones v. Value Options/DHHS	08 DHR 1492	Mann	09/18/08
Kelly A Schofield MD – Clinical Director Youth Quest Inc. v. N.C. Department of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1505	Lassiter	09/08/08
Edward Kenneth Smith v. NC Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1537	Lassiter	09/16/08
Elsie Mae Joiner v. Health Care Registry DHHS	08 DHR 1560	Lassiter	09/11/08
Margaret Brack for Elgin Brack v. Value Options Emery Milliken DHHS	08 DHR 1576	Lassiter	08/27/08
Evans Momanyi Mose v. DHHS, Division of Health Service Regulation	08 DHR 1591	Webster	10/01/08
Draughton's Supermarket, Betty Draughton v. Cumberland County Health Dept. WIC Office	08 DHR 1592	Gray	08/25/08
Tyvonnie Sheri Glenn v. Value Options	08 DHR 1628	May	09/19/08
Amanda Hennes v. N.C. Department of Health and Human Services	08 DHR 1696	Gray	09/22/08
Bobbie L Cribb v. Office of Administrative Hearings	08 DHR 1714	Gray	09/08/08
Irene McLendon/Mikala McLendon v. Value Options	08 DHR 1722	Webster	10/01/08
Keyanna Byrd v. DHHS	08 DHR 1751	Webster	10/01/08
Joshua Dmae Thompson (Consumer) Sebrena Yvett Thompson (Mother) v. Department of Mental Health	08 DHR 1844	Webster	10/01/08

DEPARTMENT OF JUSTICE

Dallas Ray Joyner v. Criminal Justice Education and Training Standards Commission	07 DOJ 0719	Overby	04/15/08
Richard Junior Hopper v. Private Protective Services Board	07 DOJ 1071	Webster	02/21/08
Sheldon Avery McCoy v. Criminal Justice Education and Training Standards Commission	07 DOJ 1162	Mann	04/07/08
David Steven Norris v. Private Protective Services Board	07 DOJ 1256	Elkins	04/16/08
Scott McLean Harrison v. North Carolina Criminal Justice Education And Training Standards Commission	07 DOJ 1330	Webster	06/24/08
Brian Campbell v. Department of Justice, Company Police Program	07 DOJ 1344	Webster	02/25/08
John Mark Goodin v. Alarm Systems Licensing Board	07 DOJ 1405	Lassiter	04/04/08
James Lee Rodenberg v. Depart. of Justice, Company Police Program	07 DOJ 1434	Webster	02/25/08
Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
Lamuel Tommy Anderson v. North Carolina Department of Justice Campus Police Program	07 DOJ 1500	Joseph	06/03/08
Roger Wayne Mungo, Jr., Sheriffs' Education and Training Standards Commission	07 DOJ 1510	Overby	05/19/08
Steven L. Haire v. North Carolina Department of Justice, Campus Police Program	07 DOJ 1558	Joseph	05/22/08
Iris Nina Bumpass v. Criminal Justice Education and Training Standards Commission	07 DOJ 2071	Webster	05/16/08
Michael Gerald Copeland v. Private Protective Services Board	07 DOJ 2286	Gray	07/17/08
Leigh Ann Branch v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0177	Gray	06/23/08
Jimmy Dean Poston v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0179	Webster	08/28/08
Katheryn Renee Johnson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 0180	Brooks	06/18/08
Gerald Boyce Bond, Jr. v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0181	Gray	07/14/08
Lamar Krider v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0183	Gray	06/20/08

CONTESTED CASE DECISIONS

John Edward Isaacks, Jr. v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 0184	May	06/18/08
Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0207	Brooks	08/06/08
Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0532	Brooks	08/06/08
Jonathan R. Elam v. Private Protective Services Board	08 DOJ 0568	Webster	05/08/08
Wilford Odell Hamlin v. Private Protective Services Board	08 DOJ 0713	Joseph	05/01/08
Stephen Joseph Ciliberti v. N.C. Private Protective Services Board	08 DOJ 0858	Gray	07/15/08
Deborah Moore Anderson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 1038	Brooks	05/28/08
Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	08 DOJ 1078	Lassiter	07/14/08
Cynthia Kay Saintsing v. Criminal Justice Education and Training Standards Commission	08 DOJ 1079	Lassiter	07/14/08
Timothy C. Darrh v. DHHS/Value Options	07 DOJ 1239	Overby	07/07/08
David Alan Moore v. North Carolina Private Protective Services Board	08 DOJ 1264	Morrison	07/21/08
Gregory Alan Hooks v. NC Alarm Systems Licensing Board	08 DOJ 1265	Morrison	07/10/08
Tina Ann Ward v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 1273	Gray	08/29/08

DEPARTMENT OF LABOR

Sandra Leroux, Leroux Entertainment Corporation d/b/a Spectacular Events! V. DOL	08 DOL 0754	May	07/08/08
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DEPARTMENT OF TRANSPORTATION

Kevin Douglas v. Dept. of Justice Criminal Justice Standards, DMV License and Theft, Holly Springs Police Department	07 DOT 2221	Webster	05/12/08
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DEPARTMENT OF STATE TREASURER

Trevor Allan Hampton v. N.C. State Retirement Systems	07 DST 1493	Overby	09/08/08
Patricia V. Leonard v. State Treasurer/Retirement Systems Division	07 DST 1928	Lassiter	03/12/08
William S. Greene v. DST, Retirement Systems Division	08 DST 0235	Gray	07/16/08
Jerry Alan Reese v. DST, State and Local Finance Division and the Local Government Commission	08 DST 0256	Morrison	07/25/08

23:05 NCR 524

EDUCATION, STATE BOARD OF

Bradford Dale Gulley v. Depart. of Education Attorney Generals Office	07 EDC 1486	Webster	05/16/08
Lucretia Burrus v. State Board of Education	07 EDC 2210	Webster	05/16/08
Gregory Bates v. DPI, Licensure Section	07 EDC 2238	Gray	04/30/08
Heather S. Brame v. State Board of Education	07 EDC 2287	Joseph	05/07/08
Sandra Chesser v. State Board of Education	08 EDC 0022	May	04/30/08
Terry L Moore v. N.C. Department of Public Instruction	08 EDC 0386	Morrison	07/22/08
Hubert Thomas Byrum v. Office of State Superintendent	08 EDC 0619	Gray	06/04/08
Gary Alan Cooper v. N.C. State Board of Education	08 EDC 0920	Gray	08/01/08
Selena Blad v. NC Board of Education	08 EDC 1316	Brooks	09/17/08

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Henry S. Cowell, III and Carolyn Dressler v. DENR, Div. of Coastal Management	06 EHR 1185	Brooks	05/30/08
Robin R. Moore v. DENR, Division of Waste Management	06 EHR 1479	Lassiter	03/24/08
NC Coastal Federation v. DENR, Division of Coastal Management and Wind over Waves, LLC	07 EHR 0345	Lassiter	04/07/08
John B. Chastain, Jr., W.B. Chastain v. N.C. Department of Environment and Natural Resources	07 EHR 0722	Brooks	06/26/08
Terry Hill DAQ 2007-015 v. DENR, Division of Air Quality	07 EHR 0937	Morrison	04/08/08
Frank Home Construction, Inc. v. Division of Water Quality	07 EHR 1061	Webster	05/12/08
Durham Land Associates LLC v. County of Durham, Engineering Department	07 EHR 1140	Overby	08/20/08
Durham Land Associates LLC v. County of Durham, Engineering Department	07 EHR 1141	Overby	08/20/08
Martha and Charles Morton v. N.C. Department of Environment And Natural Resources	07 EHR 1297	Overby	06/02/08
Kenneth & Mary Anne Sutton v. DENR, Division of Coastal Management	07 EHR 1316	Overby	05/09/08
William Lewell Huff v. N.C. Department of Environment and Natural Resources	07 EHR 1579	Overby	06/02/08

23:05 NCR 501

CONTESTED CASE DECISIONS

Stridemark, LLC v. North Carolina Department of Environment and Natural Resources, Division of Air Quality	07 EHR 1564	Webster	07/17/08
Gleason James v. Appalachian District Health Department	07 EHR 2073	Brooks	09/05/08
Frank Myers Investments, LLC v. DENR	07 EHR 2377	May	05/28/08
W Russell Overman Martin County Water & Sewer District v. DENR Public Water Supply Section	08 EHR 0345	Gray	06/10/08
Ray Poole's Park, Jean Poole v. DENR, Public Water Supply Section	08 EHR 0563	Joseph	05/16/08
Joe S. Edge Sr. v. N.C. Department of Environment and Natural Resources	08 HER 0757	Gray	09/17/08
Donald Lindsay v. Cherokee County Health Dept.	08 EHR 0764	Brooks	07/10/08
Joel M. Walker v. Division of Water Quality Well Contractors Certification Commission	08 EHR 0985	Joseph	06/11/08
Eddie Verdis Hood v. N.C. Department of Environment and Natural Resources	08 EHR 1073	Overby	07/30/08
Research Triangle Institute v. Division of Waste Management, Hazardous Waste Section, DENR	08 EHR 1100	Overby	07/11/08
Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection	08 EHR 1143	Gray	7/17/08
Donna C Garrett v. Cherokee County Health Dept., Environmental Health Division	08 EHR 1246	Brooks	09/09/08
Roray Kent Mishak, Town of China Grove v. NCDENR, Public Water Supply Section	08 EHR 1573	Brooks	09/08/08

DEPARTMENT OF INSURANCE

Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1130	Overby	03/12/08
Alesha D Carter v. State Health Plan	07 INS 1858	Lassiter	05/19/08

MISCELLANEOUS

Kevin Edral Douglas v. Wake County District Attorney, DMV	07 MIS 1976	Webster	05/12/08
Jeannie L Day v. City of Asheville Control, Brenda Sears Officer White	08 MIS 0895	Brooks	08/18/08
Promise Land Ministries Inc., Joel K. Wilson v. Mitchell County Tax Assessor and Board of Equalization	08 MIS 1447	May	09/17/08

OFFICE OF STATE PERSONNEL

Marsha A Early v. Durham County Department of Social Services	01 OSP 0279	Lassiter	04/02/08	
Scott Burgess v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	07 OSP 0052	Gray	07/16/08	
Divina P. Shields v. North Carolina State University	07 OSP 0317	Lassiter	07/11/08	
Jacqueline B. Maynard v. UNC	07 OSP 0575	Webster	04/08/08	
Warren R. Follum v. NCSU	07 OSP 0577	Webster	03/21/08	
Sharon P. House v. UNC	07 OSP 0630	Webster	04/08/08	
Pam Moses v. Macon County Health Department	07 OSP 0945	Overby	06/30/08	
Cassandra F. Barner v. Halifax County Department of Social Serv.	07 OSP 1186	Joseph	05/16/08	23:05 NCR 528
Michael Shelton Woody v. DENR, Division of Forest Resources	07 OSP 1255	Brooks	05/13/08	
Kellee M. Buck v. Dare County Department of Social Services	07 OSP 1385	Overby	05/27/08	
Dennis E. Hrynkow v. Dept. of Insurance	07 OSP 1400	Joseph	04/03/08	
Stacey M. Gasque v. N.C. Department of Corrections	07 OSP 1479	Overby	06/09/08	
James Dobaly v. North Carolina Department of Health and Human Services	07 OSP 1873	Lassiter	07/02/08	
Adley K. Prager v. Dept. of Crime Control and Public Safety and Butner Public Safety	07 OSP 2011	Webster	05/29/08	
Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution	07 OSP 2012	Joseph	04/07/08	
Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz	07 OSP 2047	Joseph	04/07/08	
Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol)	07 OSP 2222	Morrison	06/05/08	23:01 NCR 147
Norman K. Goering v. Crime Control and Public Safety, Highway Patrol	07 OSP 2256	Joseph	07/29/08	23:05 NCR 547
Kimberly James v. UNC-Charlotte	08 OSP 0146	Webster	05/08/08	
Nancy Hester v. Guilford County AOC Pretrial Services	08 OSP 0224	Overby	06/19/08	
Ray Stanford Williams Jr. v. NC Department of Cultural Resources	08 OSP 0529	Morrison	08/19/08	
Laura L. Holliman v. Caledonia Correctional Inst.	08 OSP 0591	Gray	07/08/08	
Ashley K. Severson v. Greene County	08 OSP 0611	Joseph	07/29/08	
Sharon V Blackmon v. Office of Administrative Hearings	08 OSP 0624	Gray	09/19/08	
Richard D. Lincoln v. DOT	08 OSP 0801	Gray	05/27/08	
Robert M. Hewitt v. Morrison Correctional Institute	08 OSP 0971	Gray	06/26/08	
Kenyatta Burrus v. Craven County Clerk of Superior Court	08 OSP 1089	Overby	06/12/08	
Dexter J. Hill v. Department of Agriculture and Consumer Services	08 OSP 1167	Overby	07/08/08	

CONTESTED CASE DECISIONS

Rita McKeithan v. Stanly County Department of Social Services	08 OSP 1240	May	08/26/08
Dianna Humphrey v. Caswell Center	08 OSP 1327	Lassiter	07/02/08
Charles Godwin v. NC Department of Crime Control and Public Safety	08 OSP 1463	Lassiter	07/28/08
Vincent Morton v. Cherry Hospital	08 OSP 1497	Webster	09/16/08
Kyla Solomon v. Office of Citizen Services	08 OSP 1547	Lassiter	07/22/08
Richard Manson v. NC A&T State University	08 OSP 1561	Brooks	09/25/08
Richard T Ward v. NC DOT Ferry Division	08 OSP 1617	Lassiter	08/27/08
Patrice A Bernard v. NC A&T	08 OSP 1724	Gray	09/18/08

RESPIRATORY CARE BOARD

Angelique Thompson v. Respiratory Care Board	07 RCB 1176	Gray	03/13/08	23:01 NCR 153
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DEPARTMENT OF REVENUE

Parker Bark Company Inc. v. Department of Revenue	08 REV 1228	Overby	06/17/08
Deandra A. Scott v. Department of Revenue	08 REV 1180	Overby	07/01/08
Goretty Williams v. Department of Revenue	08 REV 1227	Overby	07/08/08
Anthony Chad Bynum v. Department of Revenue	08 REV 1268	Overby	07/09/08

OFFICE OF SECRETARY OF STATE

Richard C Garrard Jr. v. NC Department of Secretary of State	07 SOS 2080	Brooks	09/12/08
Bennett Jeffrey Packer v. North Carolina Department of The Secretary of State	07 SOS 2241	May	06/09/08
Hope Taylor (formerly Taylor-Guevara) v. North Carolina Department of The Secretary of State	07 SOS 2280	Joseph	05/21/08
Robert C Garrard Jr. v. NC Department of Secretary of State	08 SOS 0523	Brooks	09/12/08
Wendy Branch Miller v. SOS	08 SOS 1018	Lassiter	07/14/08

UNC HOSPITALS

Charity Smith v. UNC Hospitals	08 UNC 0533	Gray	07/28/08
Jimmy L. Holder v. UNC Hospitals	08 UNC 0589	May	07/29/08
Barbara C. King v. UNC Hospitals	08 UNC 0805	May	07/29/08
Eva Kali Green v. UNC Hospitals	08 UNC 0841	May	09/22/08
Kaprina Wells v. UNC Hospitals	08 UNC 0860	Gray	07/28/08
Rolie Adrienne Webb "Andi" v. UNC Hospitals	08 UNC 0881	Gray	06/11/08
Marcus M. McCullers v. UNC Hospitals	08 UNC 0928	Gray	07/30/08
Satarah K. Latiker v. UNC Hospitals	08 UNC 0952	May	08/21/08
Mary C. Gessell v. UNC Hospitals	08 UNC 0981	Joseph	09/18/08
Richard and Amy Whitt v. UNC Hospitals	08 UNC 1048	May	08/15/08
John G Sell v. UNC Hospitals	08 UNC 1334	Joseph	08/26/08

WELL CONTRACTORS CERTIFICATION COMMISSION

Charles P. Pool v. Well Contractors Certification Commission	08 WCC 0514	Gray	07/15/08
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WILDLIFE RESOURCES COMMISSION

Lisa Roddy v. Wildlife Resources Commission	08 WRC 0970	Brooks	06/24/08
Rickey Dale Logan	08 WRC 1229	Lassiter	07/28/08