

NORTH CAROLINA REGISTER

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December 17, 2012

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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

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Legislative Process Concerning Rule-making

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NORTH CAROLINA REGISTER
Publication Schedule for January 2012 – December 2012

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
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rules cited as 02 NCAC 09B .0116; 09F .0101-.0103, .0201-.0204, .0305-.0306.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☒ RRC certified on: November 15, 2012
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncagr.gov/ProposedRules/index.htm>

Proposed Effective Date: April 1, 2013

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 01/02/13, to David S. McLeod, Secretary, Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action:

02 NCAC 09B .0116 - Adoption by reference of this rule will enhance the Department's ability to conduct investigations under G.S. 106-140(a) in a manner consistent with federal standards, including the Manufactured Food Regulatory Program Standards. They also harmonize existing state regulations with federal law in conformity with federal standards and resolve interpretational tension between existing state regulation and the pre-emptive federal regulation. They also support the implementation of a more efficient egg inspection program under the NC Egg Law by harmonizing state regulations with already federal requirements.

02 NCAC 09F .0101-.0103, .0201-.0204, .0305-.0306 - The proposed amendments will modernize the antifreeze analytical methods and clarify regulatory requirements for internal combustion engine antifreezes by matching analytical practices with current national standards. The proposed amendment in .0101 deletes reference to tables proposed to be deleted in .0102 and .0103 to limit confusion. Incorporating by reference ASTM standards will improve North Carolina's conformity with national standards employed by the industry. The amendments also update names, charges, and locations for obtaining the relevant standards.

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 David S.

McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)707-3010, email david.mcleod@ncagr.gov

Comment period ends: February 15, 2013

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
☐ Environmental permitting of DOT affected
☐ Analysis submitted to Board of Transportation
☐ Local funds affected
☐ Date submitted to OSBM:
☐ Substantial economic impact (≥\$500,000)
☐ Approved by OSBM
☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09B - RULES AND STANDARDS ADOPTED BY REFERENCE

02 NCAC 09B .0116 ADOPTIONS BY REFERENCE

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of six hundred thirty dollars (\$630.00).

(b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXXIII-NFXXVIII" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of ~~eight hundred dollars (\$800).~~ eight hundred fifty dollars (\$850.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, "ASTM Standards on Engine Coolants," published by ~~the American Society for Testing Materials~~ ASTM International. Copies of this document may be obtained from ~~the American Society for Testing Materials~~ ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of ~~one hundred eighty six dollars (\$186.00).~~ two hundred eleven dollars (\$211.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained online from ~~from~~ the Environmental Protection Agency National Service Center for Environmental Publications at <http://nepis.epa.gov/EXE/ZyPURL.cgi?Dockey=2000YS3Y.txt>.

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/PesticideAnalysisManualPAM/default.htm>.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManuals/default.htm> ~~http://www.fda.gov/iceci/compliancemanuals/compliancepolicyguidancemanual/default.htm~~ or from the State Information Branch (HFC-151), Division of Federal-State Relations, US Food and Drug Administration, 5600 Fishers Lane, Room 12-07, Rockville, MD 20857.

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," Lippincott, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Lippincott, Williams & Wilkins Company, P.O. Box 1620, Hagerstown, MD 21741 at a cost of ~~one hundred ten dollars (\$110.00).~~ one hundred thirty-seven dollars and ninety-nine cents (\$137.99).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Food Safety and Inspection Service, Washington, DC. Copies of this document may be obtained online from http://www.fsis.usda.gov/science/microbiological_Lab_Guidebook/ at no charge.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical

Manual," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/default.htm>.

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of eighty-five dollars (\$85.00).

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of one hundred fifty dollars (\$150.00).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Springer Publishing, New York, NY. Copies of this document may be obtained from Springer Publishing, 233 Spring Street, New York, NY, 10013 at a cost of ~~one hundred thirty nine dollars (\$139.00).~~ one hundred fifty-nine dollars (\$159.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology Press, PO Box 605, Herndon, VA 22070, at a cost of ~~two hundred nine dollars and ninety five cents (\$209.95).~~ two hundred sixty-five dollars and ninety-five cents (\$269.95).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of ~~two hundred fifty dollars (\$250.00).~~ two hundred ninety-five dollars (\$295.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts or sections of the Code of Federal Regulations, Title 21, Chapter I, as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part or Section	Subject of Part or Section
(1)	1.1	General
(2)	1.3	Labeling - Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.326	Persons Subject to this Subpart

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| <p>(7) <u>1.327 Exclusions from All or Part of Regulations in this Subpart</u></p> <p>(8) <u>1.328 Definitions for this Subpart</u></p> <p>(9) <u>1.329 Other Statutory Provisions and Regulations</u></p> <p>(10) <u>1.330 Use of Existing Records</u></p> <p>(11) <u>1.337 Information Non-transporters Must Establish and Maintain to Identify the Nontransporter and Transporter Immediate Previous Sources of Food</u></p> <p>(12) <u>1.345 Information Non-transporters Must Establish and Maintain to Identify the Nontransporter and Transporter Immediate Subsequent Recipients of Food</u></p> <p>(13) <u>1.352 Information Transporters Must Establish and Maintain</u></p> <p>(14) <u>1.360 Record Retention Requirements</u></p> <p>(15) <u>1.361 Record Availability Requirements</u></p> <p>(16) <u>1.362 Records Excluded from this Subpart</u></p> <p>(17) <u>1.363 Consequences of Failing to Establish, Maintain, or Make Available Records</u></p> <p>(18) <u>1.368 Compliance Dates</u></p> <p>(6)(19) <u>2.25 Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food</u></p> <p>(7)(20) <u>2.35 Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed</u></p> <p>(21) <u>7.1 Scope</u></p> <p>(22) <u>7.3 Definition</u></p> <p>(8)(23) <u>7.12 Guaranty</u></p> <p>(9)(24) <u>7.13 Suggested Forms of Guaranty</u></p> <p>(25) <u>7.40 Recall Policy</u></p> <p>(26) <u>7.41 Health Hazard Evaluation and Classification</u></p> <p>(27) <u>7.42 Recall Strategy</u></p> <p>(28) <u>7.45 Food and Drug Administration - Requested Recall</u></p> <p>(29) <u>7.46 Firm-initiated Recall</u></p> <p>(30) <u>7.49 Recall Communications</u></p> <p>(31) <u>7.50 Public Notification of Recall</u></p> <p>(32) <u>7.53 Recall Status Reports</u></p> <p>(33) <u>7.55 Termination of Recall</u></p> <p>(34) <u>7.59 General Industry Guidance</u></p> <p>(10)(35) <u>70 Color Additives</u></p> <p>(11)(36) <u>73 Listing of Color Additives Exempt from Certification</u></p> <p>(12)(37) <u>74 Listing of Color Additives Subject to Certification</u></p> <p>(13)(38) <u>81 General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics</u></p> <p>(14)(39) <u>82 Listing of Certified Provisionally Listed Colors and Specifications</u></p> <p>(15)(40) <u>100 General</u></p> <p>(16)(41) <u>101 Food Labeling</u></p> <p>(17)(42) <u>102 Common or Usual Name for Nonstandardized Foods</u></p> | <p>(18)(43) <u>104 Nutritional Quality Guidelines for Foods</u></p> <p>(19)(44) <u>105 Foods for Special Dietary Use</u></p> <p>(20)(45) <u>106 Infant Formula Quality Control Procedures</u></p> <p>(21)(46) <u>107 Infant Formula</u></p> <p>(22)(47) <u>108 Emergency Permit Control</u></p> <p>(23)(48) <u>109 Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material</u></p> <p>(24)(49) <u>110 Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food</u></p> <p>(50) <u>111 Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements</u></p> <p>(25)(51) <u>113 Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers</u></p> <p>(26)(52) <u>114 Acidified Foods</u></p> <p>(53) <u>115 Shell Eggs</u></p> <p>(54) <u>118 Production, Storage, and Transportation of Shell Eggs</u></p> <p>(27)(55) <u>120 Hazard Analysis and Critical Control Point (HACCP) Systems</u></p> <p>(28)(56) <u>123 Frozen Raw Breaded Shrimp</u></p> <p>(29)(57) <u>129 Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C .0700 - Bottled Water)</u></p> <p>(30)(58) <u>130 Food Standards: General</u></p> <p>(31)(59) <u>131 Milk and Cream</u></p> <p>(32)(60) <u>133 Cheeses and Related Cheese Products</u></p> <p>(33)(61) <u>135 Frozen Desserts</u></p> <p>(34)(62) <u>136 Bakery Products</u></p> <p>(35)(63) <u>137 Cereal Flours and Related Products</u></p> <p>(36)(64) <u>139 Macaroni and Noodle Products</u></p> <p>(37)(65) <u>145 Canned Fruits</u></p> <p>(38)(66) <u>146 Canned Fruit Juices</u></p> <p>(39)(67) <u>150 Fruit Butters, Jellies, Preserves, and Related Products</u></p> <p>(40)(68) <u>152 Fruit Pies</u></p> <p>(41)(69) <u>155 Canned Vegetables</u></p> <p>(42)(70) <u>156 Vegetable Juices</u></p> <p>(43)(71) <u>158 Frozen Vegetables</u></p> <p>(44)(72) <u>160 Eggs and Egg Products</u></p> <p>(45)(73) <u>161 Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)</u></p> <p>(46)(74) <u>163 Cacao Products</u></p> <p>(47)(75) <u>164 Tree Nut and Peanut Products</u></p> <p>(48)(76) <u>165 Beverages</u></p> <p>(49)(77) <u>166 Margarine</u></p> <p>(50)(78) <u>168 Sweeteners and Table Syrups</u></p> <p>(51)(79) <u>169 Food Dressings and Flavorings</u></p> <p>(52)(80) <u>170 Food Additives</u></p> <p>(53)(81) <u>172 Food Additives Permitted for Direct Addition to Food for Human Consumption</u></p> <p>(54)(82) <u>173 Secondary Direct Food Additives Permitted in Food for Human Consumption</u></p> |
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| (63) <u>(91)</u> 182 Substances Generally Recognized as Safe | (95) <u>(124)</u> 895 Banned Devices |
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| (65) <u>(93)</u> 186 Indirect Food Substances Affirmed as Generally Recognized as Safe | (97) <u>(126)</u> 501 Animal Food Labeling |
| (66) <u>(94)</u> 189 Substances Prohibited from Use in Human Food | (98) <u>(127)</u> 502 Common or Usual Names for Nonstandardized Animal Foods |
| (95) 190 <u>Dietary Supplements</u> | (99) <u>(128)</u> 509 Unavoidable Contaminants in Animal Food and Food-Packaging Material |
| (67) <u>(96)</u> 200 General | (400) <u>(129)</u> 510 New Animal Drugs |
| (68) <u>(97)</u> 201 Labeling | (401) <u>(130)</u> 511 New Animal Drugs for Investigational Use |
| (69) <u>(98)</u> 202 Prescription Drug Advertising | (402) <u>(131)</u> 514 New Animal Drug Applications |
| (70) <u>(99)</u> 210 Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General | (403) <u>(132)</u> 520 Oral Dosage Form New Animal Drugs Not Subject to Certification |
| (71) <u>(100)</u> 211 Current Good Manufacturing Practice for Finished Pharmaceuticals | (404) <u>(133)</u> 522 Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification |
| (72) <u>(101)</u> 225 Current Good Manufacturing Practice for Medicated Feeds | (405) <u>(134)</u> 524 Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification |
| (73) <u>(102)</u> 226 Current Good Manufacturing Practice for Medicated Premixes | (406) <u>(135)</u> 526 Intramammary Dosage Forms Not Subject to Certification |
| (74) <u>(103)</u> 250 Special Requirements for Specific Human Drugs | (407) <u>(136)</u> 529 Certain Other Dosage Form New Animal Drugs Not Subject to Certification |
| (75) <u>(104)</u> 290 Controlled Drugs | (408) <u>(137)</u> 556 Tolerances for Residues of New Animal Drugs in Food |
| (76) <u>(105)</u> 299 Drugs; Official Names and Established Names | (409) <u>(138)</u> 558 New Animal Drugs for Use in Animal Feeds |
| (77) <u>(106)</u> 300 General | (410) <u>(139)</u> 570 Food Additives |
| (78) <u>(107)</u> 310 New Drugs | (411) <u>(140)</u> 573 Food Additives Permitted in Feed and Drinking Water of Animals |
| (79) <u>(108)</u> 312 New Drugs for Investigational Use | (412) <u>(141)</u> 582 Substances Generally Recognized as Safe |
| (80) <u>(109)</u> 314 New Drug Applications | (413) <u>(142)</u> 584 Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking Water of Animals |
| (81) <u>(110)</u> 320 Bioavailability and Bioequivalence Requirements | (414) <u>(143)</u> 589 Substances Prohibited from Use in Animal Food or Feed |
| (82) <u>(111)</u> 330 Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded | (415) <u>(144)</u> 700 General |
| (83) <u>(112)</u> 331 Antacid Products for Over-the-Counter (OTC) Human Use | (416) <u>(145)</u> 701 Cosmetic Labeling |
| (84) <u>(113)</u> 332 Antiflatulent Products for Over-the-Counter Human Use | (417) <u>(146)</u> 720 Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements |
| (85) <u>(114)</u> 361 Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research | (418) <u>(147)</u> 740 Cosmetic Product Warning Statements |
| (86) <u>(115)</u> 369 Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale | |

- ~~(119) 111 Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements~~
- ~~(120) 190 Dietary Supplements~~
- ~~(121) 7.1 Scope~~
- ~~(122) 7.3 Definition~~
- ~~(123) 7.40 Recall Policy~~
- ~~(124) 7.41 Health Hazard Evaluation and Classification~~
- ~~(125) 7.42 Recall Strategy~~
- ~~(126) 7.45 Food and Drug Administration- Requested Recall~~
- ~~(127) 7.46 Firm-initiated Recall~~
- ~~(128) 7.49 Recall Communications~~
- ~~(129) 7.50 Public Notification of Recall~~
- ~~(131) 7.55 Termination of Recall~~
- ~~(132) 7.59 General Industry Guidance~~

Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(p) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of fifty-six dollars (\$56.00).

(q) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).

(r) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Poultry and Poultry Products," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).

(s) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 317.2(1) of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).

(t) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 381.125(b) of the Code of

Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).

(u) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Department of Health and Human Services, Food and Drug Administration.. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

(v) The Board incorporates by reference the definition of "dietary supplement" found at 21 USC 321 (ff).

Authority G.S. 106-139; 106-245.16; 106-245.22; 106-245.32; 106-267.

SUBCHAPTER 09F - INTERNAL COMBUSTION ENGINE ANTIFREEZES

SECTION .0100 - SPECIFICATIONS FOR ETHYLENE GLYCOL BASE ENGINE COOLANTS

02 NCAC 09F .0101 GENERAL

(a) Ethylene glycol base engine coolant concentrate, when used at 40 to 70 percent concentration in water, ~~shall function~~ functions effectively during both winter and summer in automotive vehicle cooling systems to provide protection against freezing, boiling and corrosion.

(b) Ethylene glycol base engine coolant concentrate shall consist ~~essentially~~ of ethylene glycol and shall contain ~~suitable~~ corrosion inhibitors, a foam suppressor, and sufficient water to dissolve the additives and to provide a packaged product that can be poured at temperatures as low as zero degrees Fahrenheit (-17.8 degrees C). Other glycols such as propylene and diethylene may be included up to a maximum of 15 percent if the chemical and physical properties ~~in Tables 1 and 2~~ referenced in Rules .0102 and .0103 of this Section, respectively, are met.

(c) The product when installed in accordance with the vehicle manufacturers' recommendations and those on the product label ~~shall be suitable for use~~ shall not adversely affect fluid flow and heat transferred where used in a properly maintained cooling system in normal passenger car service for a minimum of one ~~year without adversely affecting fluid flow and heat transfer.~~ year.

Authority G.S. 106-579.7.

02 NCAC 09F .0102 PHYSICAL AND CHEMICAL REQUIREMENTS

Ethylene glycol base engine coolant concentrate shall conform to the physical and chemical property requirements ~~prescribed as follows:~~ prescribed by ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for ethylene glycol base engine coolant concentrate which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Table 1

PROPOSED RULES

<u>Property</u>	<u>Specified Values</u>	<u>ASTM Method</u>
Specific gravity, 60/60 degrees F (15.6 degrees C)	1.110 to 1.145	D 1122
Freezing point, 50 percent by volume in distilled water	-34 degrees F (-37 degrees C) or lower	D 1177
Freezing point, 33 1/3 percent by volume in distilled water	0 degrees F (-17.8 degrees C) or lower	D 1177
Pour point, undiluted, maximum	0 degrees F (-17.8 degrees C)	D 97
Boiling point, undiluted, minimum	300 degrees F (148.9 degrees C)	D 1120
Boiling point, 50 percent by volume in distilled water, minimum	226 degrees F (108 degrees C)	D 1120
Ash content, maximum percent by weight	5	D 1119
pH, undiluted	5.5 to 11.0	D 1287
pH, 50 percent by volume in distilled water	7.5 to 11.0	D 1287
Reserve alkalinity, minimum	10	D 1121
Water, percent by weight, maximum	5	D 1123

Authority G.S. 106-579.7.

02 NCAC 09F .0103 PERFORMANCE REQUIREMENTS

Ethylene glycol base engine coolant concentrate shall conform to the laboratory test performance requirements ~~outlined below for either the Corrosion in Glassware Test (ASTM Method D 1384) or the Simulated Service Test (ASTM Method D 2570), in addition to the requirements for the Foaming Test (ASTM Method D 1881) and the Cavitation Erosion Test (ASTM Method D 2809);~~ prescribed by ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for ethylene glycol base engine coolant concentrate which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Table 2

<u>Test</u>	<u>Weight Loss milligrams/specimen, maximum (or other property described)</u>	<u>ASTM Method</u>
Corrosion in Glassware		D 1384
— Copper	10	
— Solder	30	
— Brass	10	

PROPOSED RULES

Steel	10
Cast iron	10
Aluminum	30

Simulated Service Test _____ D-2570

Copper	20
Solder	60
Brass	20
Steel	20
Cast iron	20
Aluminum	60

Foaming _____ Volume 150 m., maximum; _____ D-1881
Break time 5 seconds, maximum

Cavitation Erosion _____ There shall be no pitting, _____ D-2809
cavitation or erosion of
the water pump that will
produce a rating below 8

Authority G.S. 106-579.7.

SECTION .0200 - SPECIFICATIONS FOR ALCOHOL BASE ENGINE COOLANTS

02 NCAC 09F .0201 GENERAL

Alcohol base engine coolant concentrate shall consist essentially of methyl alcohol. Other alcohols such as ethyl and isopropyl may be included if the chemical and physical properties ~~listed in Tables 3 and 4 in Rules .0202 and .0203 of this Section, respectively, are met.~~ conform to the standards prescribed by ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants for alcohol base engine coolant which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Authority G.S. 106-579.7.

02 NCAC 09F .0202 PHYSICAL AND CHEMICAL REQUIREMENTS

Alcohol base engine coolant concentrate shall conform to the physical and chemical property requirements prescribed ~~as follows:~~ by ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for alcohol base engine coolant concentrate which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Table 3

<u>Property</u>	<u>Specified Value</u>	<u>ASTM Method</u>
Freezing Point, 50 percent by volume in distilled water	-46 degrees F	D-1177
Ash content, maximum percent by weight	3.5	D-1119
Reserve alkalinity, minimum	2.5	D-1121

PROPOSED RULES

Water, percent by _____ 5 _____ D-1123
weight, maximum

Authority G.S. 106-579.7.

02 NCAC 09F .0203 PERFORMANCE REQUIREMENTS

Alcohol base engine coolant concentrate shall conform to the laboratory test performance requirements prescribed ~~as follows: by~~ ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for alcohol base engine concentrate which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Table 4

Test	Weight Loss	ASTM Method
	milligrams/specimen, maximum (or other property described)	
Corrosion in Glassware		D-1384
— Copper	10	
— Brass	10	
— Steel	10	
— Cast iron	10	
— Solder	20	
— Aluminum	40	
Foaming	Volume 150 ml., maximum;	D-1881
	Break time 5 seconds,	
	maximum	

Authority G.S. 106-579.7.

02 NCAC 09F .0204 METHODS OF TESTING

The methods of testing to be used in determining fidelity of ethylene glycol and alcohol base engine coolant products to the physical, chemical and performance requirements are those of ~~the American Society for Testing and Materials (ASTM) as found in the 1973 Annual Book of ASTM Methods, Parts 17 and 22.~~ ASTM International Standards on Engine Coolants which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Authority G.S. 106-579.7.

SECTION .0300 - SPECIFICATIONS FOR METHOXY PROPANOL BASE ENGINE COOLANTS**2 NCAC 09F .0305 PHYSICAL AND CHEMICAL REQUIREMENTS**

Methoxy propanol base engine coolant concentrate and full-fill mixtures shall conform to the physical and chemical properties prescribed ~~as follows: by~~ ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for methoxy propanol base engine coolant concentrate and full-fill mixtures which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

Table 1

Property	Specified Value		ASTM Method
	Concentrate	Full Fill	
Specific gravity, 77/77 degrees F	0.910 to 0.935	0.970 to 0.995	D-1122

PROPOSED RULES

(25.0 degrees C)

Freezing point, 50 percent by volume in distilled water	-19 degrees F or lower	--	D 1177
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Freezing point, 33 1/3 percent by volume in distilled water	+10 degrees F or lower	--	D 1177
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Freezing point, as is	--	-19 degrees F or lower	D 1177
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Pour (slush) point, as is	--	-50 degrees F or higher	D 97
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Boiling point, undiluted minimum	230 degrees F	--	D 1120
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-Boiling point, -50 percent by -volume in distilled -water, minimum	209 degrees F	--	D 1120
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Boiling point, as is, minimum	--	209 degrees F	D 1120
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Ash content, maximum percent by weight	5	2 1/2	D 119
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pH, undiluted	5.5 to 11.0	5.5 to 11.0	D 1287
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pH, 50 percent by volume in distilled water	7.5 to 11.0	7.5 to 11.0	D 1287
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Reserve alkalinity, minimum	10	5	D 1121
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Water, percent by weight, maximum	5	50	D 1123
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Authority G.S. 106-579.7.

02 NCAC 09F .0306 PERFORMANCE REQUIREMENTS

Methoxy propanol base engine coolant concentrate and full-fill mixtures shall conform to the laboratory test performance requirements outlined below for either the Corrosion in Glassware Test (ASTM Method D 1384) or Simulated Service Test (ASTM Method D 1881) and the Cavitation Erosion Test (ASTM Method D 2809); prescribed by ASTM International (formerly the American Society for Testing Materials) Standards on Engine Coolants standards for methoxy propanol base engine coolant concentrate and full-fill mixtures which are hereby incorporated by reference including subsequent amendments and editions. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of two hundred eleven dollars (\$211.00).

PROPOSED RULES

Table 2

Weight Loss		
milligrams/specimen, maximum		
Test	(or other property described)	ASTM Method
Corrosion in Glassware		D 1384
Copper	10	
Solder	30	
Brass	10	
Steel	10	
Cast Iron	10	
Aluminum	30	
Simulated Service Test		D 2570
Copper	20	
Solder	60	
Brass	20	
Steel	20	
Cast Iron	20	
Aluminum	60	
Foaming		D 1881
Volume: 150 ml, maximum		
Break time: 5 seconds, maximum		
Cavitation Erosion		D 2809
There shall be no pitting, cavitation		
or erosion of the water pump that		
will produce a rating below 8		

Authority G.S. 106-579.7.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce, Division of Employment Security intends to adopt the rules cited as 04 NCAC 24E .0101-.0104.

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: December 3, 2012
☐ RRC certified on:
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncesc.com

Proposed Effective Date: April 1, 2013

Public Hearing:

Date: February 15, 2013

Time: 10:00 a.m.

Location: 700 Wade Avenue, Raleigh, NC Rm. GB 111, Daniels Building

Reason for Proposed Action: The former North Carolina Employment Security Commission (NCESC) adopted the proposed rules as regulations pursuant to then G.S. 96-4(b). The applicable fiscal notes were written, submitted and

approved prior to final action being taken by NCESC. Section 1.10(c), Part I, Session Law 2011-401, however, provided that "rules" previously adopted by NCESC would expire if not re-adopted as rules on or before December 31, 2012. Applying the definition of "rule" to the previously adopted regulations, the proposed subchapter 24E rules impact the public as well as governmental units and are required to be adopted.

Procedure by which a person can object to the agency on a proposed rule: Any persons desiring to object to one or more of the proposed rules for DES may do so by filing a written statement of such objection that must identify the rule objected to, and include the basis of the objection and proposed substitute text. The written statement must be received by Thelma M. Hill, Rules Coordinator, Division of Employment Security, N.C. Department of Commerce, no later than February 15, 2013. The addresses for such submission are: Thelma.hill@nccommerce.com; fax: (919)715-7193; or Division of Employment Security, Legal Services Section, 700 Wade Avenue, Post Office Box 25903, Raleigh, NC 27611.

Comments may be submitted to: Thelma M. Hill, 700 Wade Avenue, P.O. Box 25903, Legal Services Section, DES, Raleigh, NC 27611, phone (919)707-1025, fax (919)715-7193, email Thelma.hill@nccommerce.com.

Comment period ends: February 15, 2013

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☒ Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☐ Date submitted to OSBM: *November 19, 2012*
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 24 – DIVISION OF EMPLOYMENT SECURITY (DES)

SUBCHAPTER 24E - UNEMPLOYMENT INSURANCE DOCUMENTS AND RECORDS

04 NCAC 24E .0101 CONFIDENTIALITY OF UNEMPLOYMENT INSURANCE INFORMATION

Information obtained by the North Carolina Department of Commerce, Division of Employment Security (“DES”) from workers, employers, applicants, or other persons, or groups of persons in the course of administering the State Public Employment Service Program will be disclosed only pursuant to law, including by confidentiality waiver as provided in Rule 24E .0102(f).

Authority G.S. 96-4(d); 96-4(x); 150B-20.

04 NCAC 24E .0102 REQUEST FOR DOCUMENTS AND RECORDS

(a) Any person who desires to inspect or copy any record containing confidential unemployment insurance information will submit a written request to that effect to the Legal Services Section of DES or the section of DES which has custody of the record.

(b) Each request should reasonably describe the record or records sought; i.e. in sufficient detail to permit identification and location thereof with a reasonable amount of effort. The request should specify, when possible, the subject matter of the record, the date or approximate date when made, the place where made, the person or office that made it, and any other pertinent identifying details such as a form number.

(c) If the description is insufficient so that a professional employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the individual processing the request will notify the applicant and, to the extent possible, indicate the additional information required.

(d) The request will be evaluated in light of all federal regulatory and state statutory provisions that govern disclosure of the items requested. The individual responsible for determining whether a request for agency records will be complied with in whole or in part will initiate a search for the records within a reasonable time after the request is made. If it is determined that the request will be denied, a reply denying the request will be made in writing to the requester with a brief statement of the reasons for the denial.

(e) To the extent required to prevent a clearly unwarranted invasion of personal privacy or to comply with applicable law prohibiting disclosure of specific information, the individual authorized to disclose information from a record may delete identifying details when the requested record is made available. Justification for the deletion will be explained in writing upon request.

(f) Nothing in this Rule will be construed to prevent DES, upon written request and on a reimbursement basis which complies with the requirements of this Rule from disclosing any information or records obtained from and releasable to a claimant, employer, applicant, or other persons, to a third party or person clearly identified by name and address in said request and said request will contain a statement that the claimant, employer, applicant, or other person, waives confidentiality as to the information requested.

(g) When DES requests an individual or employing entity to supply information about that individual or employing entity, DES will notify the individual or employing entity of the use that will be made of the information, which persons outside of DES might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. Furthermore, the individual or employing entity will be notified that, while DES takes normal precautions to keep all such information confidential and privileged pursuant to G.S. 96-4(x), DES does not guarantee the confidentiality or privilege of any information transmitted to it by way of the Internet, as it is not possible, and does not accept liability for any loss of confidentiality or privilege resulting from the transmission of the information to DES by way of the Internet or other electronic means. This notice may be given by providing a copy of this Rule, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, or in manuals.

(h) Nothing in this Rule will be construed to prevent the DES, upon written request and on a reimbursement basis, as provided in rule 04 NCAC 24E .0103, that complies with the requirements of this Rule from releasing or disclosing to a third party or person information as to an individual's quarterly wage records, including the amount of such wages and names and addresses of the employer(s) reporting wages for said individual; provided that the third party or person is clearly identified by name and address in said request and the request contains a statement that the individual waives confidentiality as to the information

requested, and the employing entity from whom such information was collected has been properly provided notice.

Authority G.S. 96-4(d); 96-4(x); 150B-20; Title 20 Code of Federal Regulations, Part 603.

04 NCAC 24E .0103 FEES FOR COPIES AND SERVICES

(a) Search Fees -

- (1) Search of the records by DES custodial or clerical personnel carries a fee of \$4.40 for each one-quarter hour or fraction thereof of employee worktime required to reach or obtain the records to be searched or make the necessary search.
- (2) If the search for the requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of \$5.00, actual transportation costs will be added to the search time cost.
- (3) If the search for requested records requires batch processing by computer, an estimate will be provided to the requesting party as to DES's cost of producing the information to the requesting party. The requesting party will be billed for the actual cost of producing the requested information.
- (4) Any other provisions of this Rule notwithstanding, an individual receiving records or transcripts or documents under whatever name will be charged a minimum fee of no less than \$15.00.

(b) Reproduction Fees - The fees payable pursuant to this subpart for obtaining requested copies of records which have been made available for inspection pursuant to applicable law will be computed on the following basis subject to the following conditions:

- (1) Standard Copying Fee: \$0.01 per page
- (2) Standard Transcript Fee: \$3.75 per quarter hour or fraction thereof except for copies provided under G.S. 96-15(f).
- (3) Not more than 10 copies of any document will be furnished.
- (4) Standard Duplicate Tape Recording Fee: \$3.75 per tape except for copies provided under G.S. 96-15(f).
- (5) Overhead Processing Costs and Invoicing: \$4.50 per invoice.

Authority G.S. 96-4(d); 96-4(x)(4); 96-15(f); 132-1 thru 132-10; 150B-20.

04 NCAC 24E .0104 PAYMENT OF FEES

(a) Payment of fees as set forth in Rule 04 NCAC 24E .0103 will be made in cash, money order or certified check, except that an agency of state or federal government, a county or municipality may pay by its customary draft.

(b) Payment of the known and officially estimated searching and copying fees will be made or assured to the satisfaction of the individual retrieving the information prior to the performance of substantial searching or copying services.

(c) No fees will be charged for those records or documents customarily furnished to the parties in connection with a contested claim for unemployment insurance benefits or tax (contributions) liability matters except as provided by statute.

(d) No fees will be charged to the North Carolina State Bureau of Investigation for searching and copying records pursuant above when requested by the Bureau as part of an official investigation.

(e) The individual transmitting any records, transcript or document under whatever name subject to a fee charge under this Rule will notify the applicant to remit the fee to the North Carolina Department of Commerce, Division of Employment Security, ATTN: Finance and Budget, Post Office Box 25903, Raleigh, North Carolina 27611.

Authority G.S. 96-4(d); 96-4(x); 150B-20; Title 20 Code of Federal Regulations; 132-1 thru 132-10.

TITLE 09 – OFFICES OF THE GOVERNOR AND LIEUTENANT GOVERNOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Information Technology Services intends to adopt the rules cited as 09 NCAC 06B .0316, .0404-.0405, .1201-.1205; amend the rules cited as 09 NCAC 06A .0101-.0103; 06B .0101-.0103, .0201-.0202, .0204, .0301-.0309, .0313-.0315, .0401, .0501-.0505, .0601-.0603, .0701-.0703, .0801, .0901-.0902, .1001-.1006, .1101-.1112, .1114-.1115, .1117-.1118, .1120-.1121, .1206-.1207, .1301-.1305, .1402; and repeal the rules cited as 09 NCAC 06B .0203, .0205, .0206-.0207, .0310-.0312, .0402-.0403, .1008.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** November 26, 2012
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.its.state.nc.us/ITProcurement/Rules/Default.asp>

Proposed Effective Date: April 1, 2013

Public Hearing:

Date: February 15, 2013

Time: 1:00 p.m.

Location: Office of Information Technology Services, 3900 Wake Forest Road, Raleigh, NC 27619

Reason for Proposed Action:

Adoptions

09 NCAC 06B .0316 - Negotiations: Allows negotiation for bids which exceed an agency's delegation to be per terms of the

solicitation itself, rather than being restricted to particular solicitation types.

09 NCAC 06B .0404 - Notice of Rejection: After obtaining ITS approval for issuance and award, an agency will be authorized to solicit and award its own procurements, and then required to issue notice of rejection.

09 NCAC 06B .0405 - Debriefing Offerors: Allows the agency to grant requests for debriefing of bidders after award is announced and outlines requirements for the debriefing process.

09 NCAC 06B .1201 - Declaratory Rulings: This rule is required by G.S. 150B-4. Outlines procedures to be followed by the State CIO when issuing a declaratory ruling.

09 NCAC 06B .1202 - Requests for Declaratory Rulings: This rule is required by G.S. 150B-4. Outlines the requirements a petitioner must follow when making a request for a declaratory ruling.

09 NCAC 06B .1203 - Response to a Request for a Declaratory Ruling: This rule is required by G.S. 150B-4. Outlines the procedure the State CIO must follow when responding to such a request. Also lists exceptions for which the State CIO may not issue a declaratory ruling.

09 NCAC 06B .1204 - Effect of Declaratory Ruling: This rule is required by G.S. 150B-4. Outlines the situations which under which a declaratory ruling shall no longer be in effect.

09 NCAC 06B .1205 - Record of Ruling: This rule is required by G.S. 150B-4. Outlines the requirement that records of declaratory rulings must be maintained at the State CIO's office and available for public inspection.

Amendments

09 NCAC 06A .0101 - Forms, Terms and Conditions: Minor changes to text to clarify meaning. Updated statutory citations.

09 NCAC 06A .0102 - Definitions: Minor changes to text to clarify meaning. Added the following definitions: Commodity; emergency situations; general delegation; packaged software or commercial off the shelf software (COTS); pressing need; progressive award; purchasing agency; responsible offeror; responsive offer; sealed offer; small purchase; state chief information officer (CIO); state CIO approval, limitation, or determination; and tabulation. Updated statutory citations.

09 NCAC 06A .0103 - Changed title of rule from "Benchmark" to "Benchmark and the Board of Awards." Outlined the circumstances under which the Board of Awards shall review an ITS recommended purchase transaction and the circumstances under which such review is not required. Updated statutory citations.

09 NCAC 06B .0101 - Procedure: Added clarifying language regarding emergency purchases and requests for procurement actions. Updated statutory citations.

09 NCAC 06B .0102 - Verbal Requests: Added clarifying language regarding emergency purchases and requests for procurement actions. Updated statutory citations.

09 NCAC 06B .0103 - Changed title of Rule from "Confidentiality" to "Confidentiality of Solicitation Documents." Revised language to more specifically state that all documents, in any form (electronic, written, or verbal) may not be released to the public until the award has been announced. Updated statutory citations.

09 NCAC 06B .0201 - Changed title of rule from "Types of Specifications" to "Development of IT Solicitations and

Specifications." Language amended to allow for more than two types of IT solicitations. Added requirement that ITS shall develop and maintain current IT solicitation documents and forms and publish same on the ITS website. Updated statutory citations.

09 NCAC 06B .0202 - Need: Clarifying language added to explain that ITS may inquire into the need for and level of quality of goods or services requested by a purchasing agency in its solicitation documents. Updated statutory citations.

09 NCAC 06B .0204 - Articles for Special Purposes: Added language to clarify that this rule refers to procurement documents and solicitation specifications as well as requests for limited or waiver of competition and final award of contracts. Updated statutory citations.

09 NCAC 06B .0301 - Procurement Procedures: Added requirement that the purchasing agency is responsible for managing the procurement process of requesting or inviting an offer, including use of standard solicitation document language, terms and conditions established by ITS. This requirement is for regular, emergency, and pressing need procurement situations. Previously, the purchasing agency or ITS was responsible for this process. Allows the purchasing agency to advertise for small purchases by means other than the IT procurement website, if approved by ITS. Includes more specific details regarding the solicitation review and approval process to be conducted by ITS. Adds requirement that no contract term of more than three years may be awarded without prior approval of the State CIO to ensure it is advantageous to the State. Updated statutory citations.

09 NCAC 06B .0302 - Method of Source Selection: Clarified that this rule pertains to purchases governed by general delegation or statute. Also listed and described types of solicitations. Redefined evaluating quality factors purchasing agencies are to use when evaluating each offer. Added new section allowing negotiations for the lowest priced or highest qualified technically acceptable source selection method. Updated statutory citations.

09 NCAC 06B .0303 - Changed title of Rule from "Electronic, Facsimile, and Telephone Offers" to "Electronic Offers." Amended to allow purchasing agencies to accept electronic bids and describes standards for same. Updated statutory citations.

09 NCAC 06B .0304 - Recall of Offers: Clarified that an offeror may recall its offer by delivering a written request to the purchasing agency prior to acceptance of any offer related to that procurement. Updated statutory citations.

09 NCAC 06B .0305 - Public Opening: Amended to require that offers be tabulated when they are opened. Added requirement that only one employee need be present when opening an electronic bid. Updated statutory citations.

09 NCAC 06B .0306 - Changed title of Rule from "Late Offers, Modifications, or Withdrawals" to "Late Offers." Clarified that late offers shall not be considered. Updated statutory citations.

09 NCAC 06B .0307 - Changed title of Rule from "Error/Clarification" to "Clerical Errors and Clarifications." Added statement that clarifications shall not be used to cure material deficiencies or to negotiate. Updated statutory citations.

09 NCAC 06B .0308 - Changed title of Rule from "Extension of Acceptance Time" to "Extension of Offer Validity." Added

statement that requests by the State for time extensions of offer validity will not result in change to the prices as stated in the original offer unless so specified in the request to extend or subsequently agreed to by the purchasing agency in writing. Updated statutory citations.

09 NCAC 06B .0309 - Evaluation: Added section to specify that solicitation documents shall be made public after the award announcement. However, if the solicitation is canceled and the purchasing agency intends to reissue the solicitation, information that is confidential and solicitations received prior to cancellation shall be withheld from public inspection until the re-issued solicitation results in a contract or termination of the procurement. Updated statutory citations.

09 NCAC 06B .0313 - Changed title of Rule from "Division of Requirements" to "Division of Commodities and Service Needs." Added language to more specifically explain that commodities and service needs may not be divided to keep the expenditure under the purchasing agency's delegation. Updated statutory citations.

09 NCAC 06B .0314 - Changed title of rule from "Advertisement Requirements" to "Advertisement and Notice." Amended with more specific language outlining the requirements a purchasing agency must follow when advertising solicitations, publishing addenda to solicitations, and publishing notice of award. Also outlined the conditions under which the State CIO may waive the requirement to advertise solicitations and publish notice of award. Updated statutory citations.

09 NCAC 06B .0315 - Mandatory Conference Site Visits: Added requirement that agency shall document details of the conference or site visit as part of the official records. Updated statutory citations.

09 NCAC 06B .0401 - Changed title of rule from "Basis for Rejection" to "Rejection of Offers." Amended to more clearly explain under what conditions an offer shall be rejected. Updated statutory citations.

09 NCAC 06B .0501 - Responsibility: Added requirement that the purchasing agency is responsible for ensuring that the provided services are in compliance with the terms of the contract. Updated statutory citations.

09 NCAC 06B .0502 - Changed title of Rule from "Selection" to "Inspection." Added clarification that ITS may periodically inspect items or deliverables or monitor performance to ensure that contractor compliance with contract specifications and terms are met. Updated statutory citations.

09 NCAC 06B .0503 - Samples: Clarified that when samples are required in response to a solicitation document, that it is the responsibility of the purchasing agency, and not ITS, to test the samples or have them tested. Updated statutory citations.

09 NCAC 06B .0504 - Changed title of rule from "Specifications" to "Modifications to Contract Specifications." Amended to specify that a purchasing agency has the authority to make revisions to a contract specification. Updated statutory citations.

09 NCAC 06B .0505 - Report of Discrepancy: Specified that when goods or services delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the purchasing agency. Updated statutory citations.

09 NCAC 06B .0601 - Enforcement: Clarified that the purchasing agency shall enforce the contractual guarantee or

warranty applying to the goods or services purchased. Updated statutory citations.

09 NCAC 06B .0602 - Changed title of rule from "Report to Purchasing" to "Report to ITS." Clarified that the purchasing must report to ITS any difficulties in obtaining satisfactory performance or service as described in a guarantee or warranty. Updated statutory citations.

09 NCAC 06B .0603 - Changed title of rule from "Responsibility of Using Agency" to "Responsibility of Purchasing Agency." Clarified that it is the responsibility of the purchasing agency to notify the vendor when latent or other defects are discovered. The purchasing agency must report the situation to ITS if unable to resolve the issue with the vendor. Updated statutory citations.

09 NCAC 06B .0701 - Use and Description: Clarified descriptions of term and convenience contracts and added description of master agreements. Described the process for each type of contract. Updated statutory citations.

09 NCAC 06B .0702 - Determining Factors: Clarified the criteria to be used when determining whether a good or service may be included in a term or convenience contract. Updated statutory citations.

09 NCAC 06B .0703 - Extension of Contract Termination Dates: Added language stating that if a contract period is extended, the prices stated in the original contract shall not be modified without the written agreement of the agency. If the increased price results in an amount over the purchasing agency's delegation, the agency must receive approval for such action from ITS. Updated statutory citations.

09 NCAC 06B .0801 - Use: Added statement that quantities shall not be divided among offerors on definite quantity requirements unless and except as provided in the solicitation and unless such division is determined to be in the best interest of the State. Updated statutory citations.

09 NCAC 06B .0901 - Policy Conditions for Limited or Waived Competition: Removed the word "policy" from the title. Amended to clarify that a limitation of competition, in addition to a waiver of competition, is allowed under specific conditions. Updated statutory citations.

09 NCAC 06B .0902 - Approval and Documentation: Amended to clarify that a limitation of competition, in addition to a waiver of competition, is allowed. Updated statutory citations.

09 NCAC 06B .1001 - Confidentiality: Amended to clarify how an offeror may designate information in an offer to be confidential. Updated statutory citations.

09 NCAC 06B .1002 - Payment Plans: Amended to clarify that payment plans must be consistent with State fiscal requirements. Updated statutory citations.

09 NCAC 06B .1003 - Changed title of rule from "Change in Corporate Structure" to "Change in Corporate Structure or Assignment." Included allowance of contractor assignment of a State contract to a new vendor, as applicable. Updated statutory citations.

09 NCAC 06B .1004 - Purchasing From or Through Agency Employees: Added clarifying language regarding the State CIO. Updated statutory citations.

09 NCAC 06B .1005 - Changed title of rule from "Antitrust Violations" to "Anticompetitive, Deceptive, and Fraudulent Practices." Described purchasing agency's responsibility to prevent anticompetitive, deceptive or fraudulent practices and

defines same. Required agency to report violations to the Attorney General's Office. Updated statutory citations.

09 NCAC 06B .1006 - Cooperative Purchasing: Amended to allow purchases to be made via the U.S. General Services Administration Supply Schedule 70 and Consolidated Schedule for Information Technology. Updated statutory citations.

09 NCAC 06B .1101 - Right to Hearing: Clarified that if a party believes that ITS has acted in such a way as to affect the rights, duties, or privileges of that party, the party may request a hearing in accordance with this Section of the Rules and G.S. 150B, Article 3A.

09 NCAC 06B .1102 - Changed title of rule from "Protest Procedures" to "Protest Procedures for Award of Contracts." Added section which describes possible outcomes when a protest is found to be valid by the State CIO. Added section which describes the procedure to be followed by ITS and an offeror when an offeror wants to protest a statewide term or convenience contract or a master agreement. Updated statutory citations.

09 NCAC 06B .1103 - Requests for Hearing: Updated the mailing address for a request for hearing. Updated statutory citations.

09 NCAC 06B .1104 - Definitions: Clarified the definition of a hearing officer. Updated statutory citations.

09 NCAC 06B .1105 - General Provisions: Added requirement that in any proceeding referred to the Office of Administrative Hearings pursuant to G.S. 150B-40, parties shall deliver a copy of each document filed with the OAH to the State CIO. Added section outlining authority of State CIO to schedule a hearing even if one has not been requested. Added section authorizing the hearing officer to designate an administrative law counsel as an advisor to the hearing officer during the proceedings. Updated statutory citations.

09 NCAC 06B .1106 - Order for Prehearing Statements: Amended to clarify that the prehearing statement shall not be used to amend the original protest or to establish jurisdiction not previously established by the protest or request for hearing. Updated statutory citations.

09 NCAC 06B .1107 - Duties of the Hearing Officer: Described what action the hearing officer may take if the hearing officer is not the State CIO. Described the procedure to be followed for a final agency decision. Described procedures to be followed if the State CIO is the hearing officer. Updated statutory citations.

09 NCAC 06B .1108 - Consent Order: Settlement: Stipulation: Added requirement that any such disposition must be approved in writing by the State CIO. Updated statutory citations.

09 NCAC 06B .1109 - Settlement Conference: Added section which explains the purpose of a settlement conference. Updated statutory citations.

09 NCAC 06B .1110 - Prehearing Conference: Specified that "deadlines" means dates or schedules. Updated statutory citations.

09 NCAC 06B .1111 - Discovery: Amended to clarify process. Updated statutory citations.

09 NCAC 06B .1112 - Consolidation of Cases: Amended to clarify process. Updated statutory citations.

09 NCAC 06B .1114 - Sanctions: Added section which states that if a witness fails to comply with a subpoena, the hearing officer may enter a show cause order returnable in Superior

Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

09 NCAC 06B .1115 - Motions: Described the procedure to be followed when filing motions.

09 NCAC 06B .1117 - Continuances: Replaced "final decision maker" with "hearing officer."

09 NCAC 06B .1118 - Rights and Responsibilities of Parties: Clarified that recommended decisions must be issued to the State CIO. Clarified the procedures to be followed before issuing a final decision in a contested case.

09 NCAC 06B .1120 - Evidence: Added section outlining the hearing officer's responsibilities which have been established by ITS pursuant to Article 3D of Chapter 147 of the General Statutes. Added section to explain that when the State CIO takes official notice of evidence not in the record when making a final decision, the parties shall be afforded notice and a hearing to present arguments against the consideration of such evidence before a final decision is made.

09 NCAC 06B .1121 - Changed title of rule from "Official Record" to "Final Agency Decision; Official Record." Added sections regarding procedures for handling copies of any decision or order. Added section stating that the official record of a contested case is available for public inspection during specified times and conditions.

09 NCAC 06B .1206 - Changed title of rule from "Default Proceedings; Debarment" to "Default Proceedings; Disqualification; and Debarment." Amended to clarify the meaning of the rule. Updated statutory citations.

09 NCAC 06B .1207 - Faithful Performance: Clarified that the conditions set forth in this rule are designed to ensure a vendor's faithful performance. Updated statutory citations.

09 NCAC 06B .1301 - Exemptions: Added definition of direct employment contract.

09 NCAC 06B .1302 - Changed title from "Emergencies" to "Emergency Situations or Pressing Need." Removed definition of pressing need as it is now defined in 06A .0102 Definitions. Removed reference that an agency may negotiate and issue a solicitation in an emergency. Updated statutory citations.

09 NCAC 06B .1303 - Special Delegations: Clarified definition of special delegation.

09 NCAC 06B .1304 - General Delegations: Clarified that the State CIO determines the amount of the general delegation for State agencies. Updated statutory citations.

09 NCAC 06B .1305 - Compliance Review: Clarified ITS and purchasing agency responsibilities during a compliance review. Updated statutory citations.

09 NCAC 06B .1402 - Changed title of Rule from "Records" to "Procurement File Records." Specified that the purchasing agency is responsible for maintaining procurement file records and documenting all purchase transactions. Outlined what types of records must be maintained in each procurement file.

Repeals

09 NCAC 06B .0203 - Development of Specifications: The text of this rule has been incorporated into 09B .0201.

09 NCAC 06B .0205 - Submission for Adoption: Eliminated unnecessary language, as other rules direct review and approval of specifications and IT solicitation documents.

09 NCAC 06B .0206 - Copies of Specifications: Incorporated into 06B .0201 and 06B .0202. Also eliminated repetitive language.

09 NCAC 06B .0207 - Confidentiality: Eliminated repetitive language, as confidentiality of solicitation documents is addressed in 06B .0103 Confidentiality of Solicitation Documents.

09 NCAC 06B .0310 - Notification of Award: Incorporated into 06B .0314 Advertisement and Notice. Also eliminated repetitive language.

09 NCAC 06B .0311 - Lack of Competition: Incorporated into 06B .0316 Negotiation. Eliminated repetitive language.

09 NCAC 06B .0312 - Solicitation Documents: Incorporated into 06B .0301. Eliminated repetitive language.

09 NCAC 06B .0402 - Public Record: Eliminated repetitive language. 06B .1402 Procurement File Records already requires that all agency purchasing documents be made a matter of record.

09 NCAC 06B .0403 - Negotiation: Incorporated into 06B .0316 Negotiations. Eliminated repetitive language.

09 NCAC 06B .1008 - Board of Awards: Incorporated into 06A .0103 Benchmark and Board of Awards.

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 M. Bank, NC Office of Information Technology Services, P.O. Box 17209, Raleigh, NC 27619-7209.*

Comments may be submitted to: *Teresa M. Bank, NC Office of Information Technology Services, P.O. Box 17209, Raleigh, NC 27619-7209; phone (919) 754-6285; email teresa.bank@nc.gov*

Comment period ends: *February 15, 2013*

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected



Date submitted to OSBM: *October 28, 2012*

Substantial economic impact (≥\$500,000)

Approved by OSBM

No fiscal note required by G.S. 150B-21.4

CHAPTER 06 – OFFICE OF INFORMATION TECHNOLOGY SERVICES

SUBCHAPTER 06A - INFORMATION TECHNOLOGY PROCUREMENT

SECTION .0100 - FORMS, TERMS AND CONDITIONS AND DEFINITIONS

09 NCAC 06A .0101 FORMS, TERMS AND CONDITIONS

The Office of Information Technology Services (ITS) shall prescribe forms, terms and conditions and advertisement requirements for acquiring goods and services related to information technology for ~~agencies~~ use by purchasing agencies. The forms, terms and conditions, and advertisement requirements shall be established taking into consideration market volatility, trends and conditions, legal requirements, and any other factors determined to be in the ~~state's~~ State's best interest. These shall be made available to all agencies via the State's designated ~~ITS~~ IT procurement website.

Authority G.S. 147-33.76(b)(1); 147-33.82; 147-33.95(f).

09 NCAC 06A .0102 DEFINITIONS

For the purpose of this Chapter,

- (1) ~~Agency~~ Agency/Agencies is defined as an entity enumerated in ~~G.S. 143B-3(1)~~ G.S. 147-33.81(6).
- (2) ~~Best value procurement~~ Value Procurement is defined as a procurement process ~~that has as a~~ with the fundamental objective ~~the reduction~~ of reducing the total cost of ownership. The particular procurement methods used are selected so as to result in the best ~~buy value~~ value for the ~~state~~ State in terms of the function to be ~~performed~~ performed or delivered. Competitive best value procurement allows for the use of alternate competitive purchasing techniques in addition to low price analysis in the selection of supply ~~sources~~ sources determined to represent best value.
- (3) Clarification is defined as ~~limited exchanges~~ communication between the ~~state~~ State and ~~an offeror~~ offeror that may occur after receipt of offer ~~when negotiation is not contemplated~~ for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an offer. A clarification may also be used to allow the State's reasonable interpretation of an offer or offers or to facilitate the State's evaluation of all offers. Offerors may be given the opportunity to resolve minor clerical errors. No change in price offer is permitted.

- Clarification shall not be used to cure material deficiencies or to negotiate.
- ~~(4)~~ Communications are exchanges between the state and offerors after receipt of offers to address issues of past performance, to enhance the state's understanding of offers, to allow reasonable interpretation of the offer, or to facilitate the state's evaluation process. Communications shall not be used to cure deficiencies or material omissions in the offer or to alter technical or cost elements of the offer.
- (4) Commodity is defined as tangible or moveable goods, equipment, materials or supplies.
- (5) Competition in purchasing exists when the available market for the goods or services to be acquired consists of more than one supplier that who is technically qualified and willing to submit an offer. The public competitive process is the process followed by a public agency to solicit offers from multiple suppliers to provide the specified goods or services. The process must be conducted in a manner that attempts to ensure that all qualified suppliers who are willing to submit offers are treated equitably and are not placed at a disadvantage with respect to the process outcome.
- (6) Competitive Range is defined as the range of all of the most highly rated ranked offers, as established in the solicitation, and as determined by the evaluation committee. purchasing agency during evaluation of offers. The range shall be used to determine the optimal best value solutions to address requirements of the solicitation document.
- (7) Deficiency is defined as either a failure to meet a stated requirement or a combination of weaknesses in an offer that increases the risk of unsuccessful contract performance.
- (8) Emergency Situations are defined as circumstances that endanger lives, property, or the continuation of a vital program, as determined by the purchasing agency head, and that can be rectified only by immediate purchases or rental of goods or services.
- (9) General Delegation is defined as the authority delegated to the purchasing agency for the procurement of IT goods and services.
- ~~(8)~~(10) Goods are defined as any information technology commodities including equipment, materials, or supplies.
- ~~(9)~~(11) Negotiation is defined as exchanges oral or written communications in either a waived, limited, or open competitive procurement or sole source environment between the state State and offerors that are offeror(s) undertaken with the intent of allowing offerors to revise their offers. revision of the respective offer(s). Revisions Revisions may apply to price, schedule, technical requirements, or other terms of the proposed contract. Negotiations are specific to each offer and shall be conducted to maximize the state's State's ability to obtain best value based on the evaluation factors set forth in the solicitation. The state State may also give evaluation credit for technical solutions exceeding mandatory minimums or negotiate with offerors for increased performance beyond mandatory minimums.
- ~~(40)~~(12) Offer is defined as a bid or proposal submitted in response to any solicitation document utilizing "Best Value" procurement methodology including Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotations (RFQ), negotiation, or other acquisition processes, as well as responses to Solution-Based Solicitations and Government-Vendor Partnerships.
- (13) Packaged Software, or Commercial Off the Shelf Software (COTS) is an information technology commodity and is defined as software used regularly for other than government purposes and is sold, licensed, or leased in significant quantities to the general public or commercial enterprises at a vendor's catalog prices.
- (14) Pressing Need is defined as a need arising from unforeseen causes including, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, and which can be satisfied only by immediate purchase (or rental) of equipment, supplies, materials, or contractual services.
- ~~(44)~~(15) Price is defined as the amount paid by the state State to a vendor for a good or service.
- ~~(42)~~(16) Procurement is defined as acquisition the process of acquiring goods and or services.
- (17) Progressive Award is defined as an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A progressive award may be in the purchasing agency's best interest when the awards to more than one offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.
- (18) Purchasing Agency, or purchaser, is defined as the agency that issues the purchase order and thereby awards a contract.
- (19) Responsible Offeror means an offeror who demonstrates in its offer that it has the capability to perform fully the requirements of the solicitation in good faith.
- (20) Responsive Offer means an offer that conforms substantially in all material respects to the solicitation.

- (21) Sealed Offer is defined as an offer that remains unopened until the public opening time stated in the solicitation. Offers are typically submitted sealed to meet this requirement, but electronic submission is permitted if the purchasing agency has the capability to maintain the confidentiality of the offer until the scheduled public opening time.
- (13)(22) Services Service is defined as any process of providing services work performed to meet any demand or need for information technology requiring specialized knowledge, experience, expertise, professional qualifications, or similar capabilities for any aspect of information technology technology, including, This includes: but not limited to, work or task performance, review, analysis, performance; review; analysis; development; integration; installation; or and advice in formulating or implementing improvements in programs or services.
- (23) Small Purchase is defined as the purchase of goods and services where the expenditure of public funds is within the purchasing agency's delegated authority.
- (14)(24) Solicitation document Document is defined as a written or electronic IFB, RFQ, RFP, Solution Based Solicitation, Government Vendor Partnership, Request for Information Invitation for Bid (IFB), Request for Quote (RFQ), Request for Proposal (RFQ), or Request for Information (RFI) document or other acquisition ITS approved documents expressly used to solicit, invite offers offers, or to request information regarding the acquisition of goods and services.
- (25) State Chief Information Officer (State CIO) is the person appointed by the Governor, and as used herein shall include the State CIO or the State CIO's designee.
- (26) State CIO approval, limitation or determination, as used herein, is the judgment applied to the particular factual basis for the procurement decision under the rule or rules, utilizing the knowledge and qualifications of the Office, the needs of the State, and information provided by the agencies involved.
- (27) Tabulation is defined as a list of offeror(s) submitting offer(s) in response to a particular solicitation.
- (15)(28) Total Cost of Ownership is defined as a summation of all purchase, operating, and related costs for the projected lifetime of a product good or a service. It includes but is not limited to purchase price, transportation, receiving and inspection, maintenance, operating costs, downtime, energy costs, and disposal costs.

- (16)(29) Weakness is defined as a flaw in the offer that increases the risk of unsuccessful contract performance.

Authority G.S. 143-135.9; 147-33.76(b)(1); 147-33.82.

09 NCAC 06A .0103 BENCHMARK AND THE BOARD OF AWARDS

- (a) The Chief State Chief Information Officer (CIO) (State CIO), or his/her designee, establishes shall establish a benchmark of one hundred one-hundred thousand dollars (\$100,000) (benchmark).
- (b) When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (BOA or Board) shall review the ITS recommended action for the purchase transaction.
- (c) ITS shall also report to the Board emergency purchases over the established benchmark.
- (d) ITS shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the State CIO. The State CIO may do one of the following:

- (1) concur with the recommendation of the board by awarding contracts or approving other recommended action; or
- (2) take other action as the State CIO deems necessary.

- (e) The State CIO may elect to proceed with award of a contract without recommended approval by the Board in cases of emergency or in the event that the Board is not available for canvassing.
- (f) Review by the Board and approval by the State CIO is exempted for the following purchase transactions: exemption by statute, rule or special delegation; where one purchasing agency is buying from another agency; or purchasing agency is in the Department of Administration; or buying through state surplus property or federal surplus property.

Authority G.S. 147-33.76(b)(1); 147-33.101(a).

SUBCHAPTER 06B - PROCUREMENT REQUESTS

SECTION .0100 - REQUISITIONING

09 NCAC 06B .0101 PROCEDURE

Agencies The purchasing agency shall request authorization for procurement action exceeding its delegated authority from by ITS by means of electronic or written requests, requests, except in cases where a purchase is allowed by rule or other authority (e.g., emergency situations).

Authority G.S. 147-33.76(b)(1); 147-33.95(b).

09 NCAC 06B .0102 VERBAL REQUESTS

Verbal requests from a purchasing agency for authorization of procurement activities are not satisfactory substitutes for electronic or written requests except in emergencies. action exceeding delegated authority may be accepted by ITS in emergency situations. Electronic or written confirmation from

the purchasing agency must follow any such ~~request~~ request made in an emergency situation.

Authority G.S. 147-33.76(b)(1); 147-33.95(b).

09 NCAC 06B .0103 CONFIDENTIALITY OF SOLICITATION DOCUMENTS

~~All information and documentation (verbal and written) relative to development of a contractual document for a proposed procurement shall be deemed confidential in nature, except as deemed necessary by the purchaser to develop a complete contractual document. Such material shall remain confidential until successful completion of the procurement process.~~

~~(a) In order to preserve fairness and encourage competitiveness, all information and documentation in whatever form, (e.g., electronic, written, and verbal forms) relative to the development of a solicitation for a proposed procurement shall be withheld from public inspection until award from that solicitation, unless the purchasing agency abandons or cancels the solicitation and indicates in its procurement records that it does not intend to rebid the solicitation or continue the procurement action.~~

~~(b) The purchasing agency may release such portions of the material as it deems necessary in order to develop a complete solicitation or to debrief certain vendors as provided in these Rules.~~

Authority G.S. 147-33.76(b)(1); 147-33.95(a).

SECTION .0200 - SPECIFICATIONS

09 NCAC 06B .0201 DEVELOPMENT OF IT SOLICITATION DOCUMENTS AND SPECIFICATIONS

~~(a) There shall be two general one or more types of IT solicitation documents that include specifications. specifications established A standard specification shall be originated and developed by ITS or any other agency or commission, as statutorily authorized authorized, to develop standards.~~

~~(b) ITS will establish, develop, and maintain IT solicitation documents and specifications that are current and intended for general or repeated use and publish these forms on its website or other designated location available to the purchasing agency (also see 09 NCAC 06B .0302).~~

~~It shall be comprehensive in nature, intended for repeated use and may be changed, as quickly and as often necessary, to address changes in the technology marketplace. An example of this type of specification is one that complies with the required statewide Technical Architecture as developed by the Information Resource Management Commission (IRMC) for statewide use.~~

~~(c) The other Other general type types of solicitation specification specifications that manage specific business need needs shall may be originated by the user a the purchasing agency and either approved or modified as necessary by ITS to accomplish the overall efforts to manage the State's area of information technology effectively. This type of specification may include, but is not limited to, "brand name or equal" or "brand specific" technical and functional specifications. A purchasing agency submitting other types of specifications or solicitations must demonstrate how such meets its respective~~

business needs and whether other information technologies are commercially available to satisfy those needs.

Authority G.S. 147-33.76(b)(1); 147-33.95(b).

09 NCAC 06B .0202 NEED

ITS may inquire into the need for and level of quality of goods or services requested by ~~an agency~~. a purchasing agency in its solicitation document. After consultation with the ~~agency~~, purchasing agency, ITS may authorize or modify the level of specification ~~requested~~ to enhance manage overall direction of the state's program in the area of State's information technology technology programs or services, or to comply with 09 NCAC 06B .0301, Procurement Procedures, or other rules.

Authority G.S. 147-33.76(b)(1); 147-33.95(b).

09 NCAC 06B .0203 DEVELOPMENT OF SPECIFICATIONS

~~(a) A standard specification is intended for general use and kept current by ITS. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance. This type of specification may be offered also for the review and comments of manufacturers and suppliers who may participate in the procurement process on the items in question.~~

~~(b) Where competition is available and advantageous to the state, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, and that shall encourage competition in the open market and result in the best possible contract for the good or service needed.~~

Authority G.S. 147-33.95(b); 147-33.103(b).

09 NCAC 06B .0204 ARTICLES FOR SPECIAL PURPOSES

Where articles are to be used for (1) educational or training purposes, (2) by persons with disabilities, (3) for test and evaluation or research purposes, or (4) for any other special purpose deemed necessary by the ~~CIO~~ State CIO, consideration may be given to the ~~factor of~~ suitability of such articles in the preparation of procurement documents, including solicitation specifications, evaluation of offers, requests for limited or waiver of competition, and the final award of contracts. ITS shall consult with the purchasing agency prior to making ~~modification by ITS~~ of any information or recommendation submitted by ~~the end user~~ that agency.

Authority G.S. 147-33.76(b)(1); 147-33.95(b).

09 NCAC 06B .0205 SUBMISSION FOR ADOPTION

~~Upon completion of all studies, reviews, and drafts, any proposed standard specifications shall be submitted to the CIO or his designee for consideration. A specification shall be adopted as a standard if advantageous to the state. ITS may modify a standard specification on an interim basis as deemed necessary or advantageous to the state.~~

Authority G.S. 147-33.95(b); 147-33.103(b).

09 NCAC 06B .0206 COPIES OF SPECIFICATIONS

~~ITS shall distribute copies of standard specifications to interested parties through electronic media and these shall be available for customer and public inspection at ITS and on the ITS IT procurement website.~~

Authority G.S. 147-33.95(b); 147-33.103(b).

09 NCAC 06B .0207 CONFIDENTIALITY

~~All information and documentation relative to the development of a specification/needs document shall be deemed confidential in nature until specification adoption or finalization of the procurement process for a specific contract.~~

Authority G.S. 147-33.103(b).

**SECTION .0300 - PROCUREMENT AUTHORIZATION
AND PROCEDURES**

09 NCAC 06B .0301 PROCUREMENT PROCEDURES

(a) The procurement process of requesting or inviting an offer(s) shall be managed by the purchasing agency, including use of standard solicitation document language and terms and conditions established by ITS. If an emergency situation or pressing need exists, the procurement process requesting or inviting an offer(s) shall also be managed by the purchasing agency, including the standard terms and conditions issued by ITS, unless circumstances prohibit their use.

(b) All technology purchases involving the expenditure of public funds by ~~agencies or ITS~~ the purchasing agency shall be competed in conformity with the "Best Value" information technology procurement requirements in G.S. 143-135.9 and Rule ~~.0308 .0302~~ of this ~~Section~~ Subchapter. Exemptions may be granted by ~~ITS~~ the State CIO where a ~~waiver, limited competition, waiver of competition, special delegation, exemption~~ exemption, or an emergency purchase is permitted by rule. ~~Information technology Purchasing agency procurements not covered by~~ included in a statewide firm, convenience term, convenience, enterprise contract, or service contracts master agreement established ~~issued~~ by ITS shall comply with the following delegations ~~applicable general delegations and procedures~~ procedures (06B .1304):

- (1) ~~Small Purchases: A small purchase is defined as the purchase of goods and services, where the expenditure of public funds is five thousand dollars (\$5,000) or less. The executive officer agency head, of each agency or ITS, or his designee, shall set forth in writing purchasing procedures for making small purchases. The using agency or ITS shall award contracts for small purchases.~~

(A) The purchasing agency may advertise solicitations for offers to provide small purchases through the State's designated IT procurement website(s) or by an alternate method of

advertising, as may be approved by ITS.

(B) The purchasing agency shall award contracts for small purchases.

(2) Purchases governed by ~~General Delegation or statute:~~

~~(a) For purchases made by an agency or ITS involving an expenditure of public funds over five thousand dollars (\$5,000) or less up to the general delegation limit established by the CIO, the agencies or ITS shall use the following methodologies to encourage competition:~~

~~(i) The agency or ITS shall issue solicitation documents requesting or inviting offers;~~

~~(ii) The agency or ITS shall include in solicitation documents standard language, including terms and conditions as published by ITS on its IT procurement website. If additional terms and conditions are used, they shall not conflict with ITS' standard terms and conditions unless prior written approval is obtained from ITS for unusual requirements; and~~

~~(iii) The agency may request distribution lists, if available from ITS, and use them in addition to distribution lists maintained by the agency for the purpose of soliciting competition.~~

~~(b) Agencies shall advertise their solicitations through ITS for purchases exceeding ten thousand dollars (\$10,000) up to the general delegation established by the CIO. Agencies may advertise smaller dollar purchases through ITS.~~

~~(c) The agencies may award contracts under their general delegation.~~

(3)(A) Procurement Procedure: Where the total requirements for goods or and services involve an expenditure of public State funds that exceed exceeds the purchasing agency's general or special delegation established by the State CIO, offers in conformity with G.S. 143-135.9 shall be solicited as follows: follows to encourage competition:

(a) Competitive offers for goods, excluding services, shall be solicited

by ITS via advertisement, unless the advertising requirement is waived by the CIO or his designee subject to the provisions of Rule .0314 of this Section. This shall include offers for statewide term or convenience contracts.

- (b) ~~For service contracts exceeding twenty-five thousand dollars (\$25,000), an agency or ITS shall solicit offers in accordance with the rules established for Sub-items (2)(a) and (2)(b) of this Rule. For agency solicitations, ITS shall engage in a review and approval process to ensure that proposed and actual acquisitions are advantageous to the state.~~

(i) The purchasing agency shall issue documents soliciting, requesting or inviting offers, as approved by ITS;

(ii) The purchasing agency shall include in solicitation documents standard language, including general or standard terms and conditions for technology purchases as published by ITS and in conformance with Rule .0316 of this Subchapter. If additional terms and conditions are used, they shall not conflict with ITS' standard terms and conditions unless prior written approval is obtained from ITS; and

(iii) The purchasing Agency may also request from ITS known vendor sources amenable to competing for award of various State procurements.

- (3) ~~Agencies~~ The Purchasing agency shall submit drafts of acquisition solicitation documents to ITS for approval prior to proceeding with the acquisition procurement process. ITS shall then engage in a review and approval process of such solicitation documents to ensure that proposed and actual IT procurements are advantageous to the State.

(A) ~~After completing the review and evaluation of offers received, the agency purchasing agency shall may prepare and submit to ITS for review a written draft recommendation for award, award, and if over the general delegation established by the CIO, shall submit a copy of all offers received and their award~~

~~recommendation or other action to ITS for approval or other action deemed necessary by the CIO or his designee (Examples: cancellation, negotiation, etc.). ITS shall send a notice of the ITS decision to the agency. The agency shall then award contracts for services. The contract shall not be for more than three years including extensions and renewals, without the prior approval of the CIO or his designee based on a determination that it is advantageous to the state.~~

(B) After completing review and evaluation of offers received, the purchasing agency shall submit to ITS a written, final recommendation for award, including a copy of all offers received and all supporting documentation with its recommendation.

(C) ITS will then review and either approve the recommendation or direct modification to the recommended procurement action as deemed in the best interest of the State or as directed by the State CIO, (e.g., award, cancellation, rebid, negotiation with known sources of supply, etc.);

(D) ITS shall notify the purchasing agency of the ITS decision regarding that recommended procurement action; and

(E) Upon receipt of ITS notification, the purchasing agency shall proceed with the respective procurement action as directed. The purchasing agency shall not award contracts governed by general delegation or statute without receiving prior approval from ITS.

- (4) ~~Notwithstanding any waiver, general delegation, or exemption rules; all telecommunications goods and services shall be procured by ITS. A contract term shall not be awarded for more than three years including extensions and renewals, without the prior approval of the State CIO, based on a determination that it is advantageous to the State.~~

Authority G.S. 143-135.9; 147-33.76(b)(1); 147-33.91; 147-33.95.

09 NCAC 06B .0302 METHODS OF SOURCE SELECTION

~~Competitive source selection may be conducted Purchases governed by general delegation or statute shall be solicited, and~~

offers evaluated, in accordance with the following best value methods.

- (1) The purchasing agency shall use the following steps ~~describe the process for application of the~~ best value procurement ~~procurements methodology~~:

- (a) ~~Appropriate~~ The purchasing agency determines the appropriate best value bidding method through development of one of the solicitations set in Sub-Item (1)(b)(i)-(iii) of this Rule. ~~is determined by purchasing authority.~~
- (b) Solicitation document is developed and advertised in accordance with other rules of this Chapter. The following types of solicitations are available from ITS:
 - (i) Requests for Information (RFI), used for gathering information to prepare a solicitation for offers;
 - (ii) Invitations for Bid (IFB), used when the best value recommendation for award is based on the lowest priced or highest qualified and technically acceptable selection method;
 - (iii) Requests for Proposal (RFP), used for purchases when the State needs to solicit solutions-based offers, where negotiations with one or more vendors may be needed, or when the best value recommendation for award is based on ranking all offers and will not be based solely on the lowest priced-technically acceptable source;
 - (iv) One-Step solicitation, used when both the technical step one offer and price step two offer are submitted at the same time.
 - (v) Two-Step solicitation, used when the technical step one offer and price step two offer are submitted and evaluated separately.
- (c) The purchasing agency shall develop, advertise, and publish its solicitation for offers in accordance with the rules of this Subchapter.
- ~~(e)(d)~~ Scheduled The purchasing agency shall hold any scheduled conferences or site visits ~~are held~~ in accordance

with published solicitation ~~requirements. terms.~~

- ~~(d)(e)~~ Offers are received The purchasing agency shall receive offers in response to its solicitation and it shall then conduct a public bid opening ~~is conducted.~~ and prepare a tabulation of all offers received. For solicitations that allow for negotiation after receipt of offers, only the names of ~~responding bidders~~ offerors ~~are revealed.~~ shall be disclosed at the public bid opening or on the tabulation of offers received. ~~Price information shall be made public after evaluation and award.~~

- ~~(e)(f)~~ An The purchasing agency's evaluation committee ~~evaluates~~ shall evaluate offers in accordance with the stated solicitation selection method and evaluation criteria. ~~factors.~~ For solicitations that include a best value ranking process, ~~scoring and ranking may be determined~~ the purchasing agency shall rank offers by using any consistent rating or scoring methodology, ~~including which may include~~ adjectival, numerical, or ordinal rankings. Relative The purchasing agency's evaluation shall document relative strengths, deficiencies, weaknesses, and risks supporting the evaluation ~~shall be documented in the contract file.~~ its award recommendation. Best-Value evaluation factors ~~may~~ shall include but are not limited to evaluating quality factors; ~~factors, such as:~~ delivery and implementation schedule; maximum facilitation of data exchange and systems integration; warranties, guarantees, and return policies; vendor financial stability; consistency of the proposed solution with the state's strategic program direction; effectiveness of business solution and approach; industry and program experience; prior record of vendor performance; vendor expertise with similar projects; ~~proven development methodologies and tools;~~ and innovative use of technologies.

- (i) State's total cost of ownership, meaning summation of the State's total cost for acquiring, operating, maintaining, and supporting a product or

- service over its projected lifetime, to include: competitive price data; evaluation of the offeror's cost for actual and anticipated components comprising its quotation, as applicable; value-added conditions or additional services included in the offer;
- (ii) Technical merit of the offer, including, as applicable, consideration for consistency and compatibility of the proposed solution with the State's strategic program direction; maximum facilitation of data exchange or systems integration, effectiveness of business solution and approach to solicitation's specific purpose or objective; delivery and implementation schedules; guarantees, warranties, and return policies; and
- (iii) Probability of the offeror performing the work as stated in the solicitation on time, in a manner that accomplishes the stated intent and business objectives, and that maintains compliance with industry standards including, as applicable, consideration of the offeror's: financial stability; program or industry experience; past performance with the State; expertise with similar projects, solutions, or technologies; its proven development methodologies and tools, innovative use of technologies; key personnel and depth of additional resources, compared to scope and intent of business need stated in the solicitation; etc.
- (f)(g) Clarifications, communications to establish a competitive range, or negotiations may be conducted. The purchasing agency may communicate with offerors after receipt of offers and in accordance with instructions and procedures instructions, procedures and terms set forth in the solicitation document and as well as those procedures appropriate to the designated method of source selection chosen. selection. In those cases where If negotiation is permitted by procedures set forth in the solicitation document, solicitation, the purchasing agency may also allow offerors may be allowed to submit best and final offers subsequent to negotiated changes in the initial offer or previous offer.
- (g)(h) The purchasing agency evaluation committee shall determine a final ranking of all offers under consideration using only the criteria set forth in the solicitation document. solicitation. All offerors. The purchasing agency evaluation committee shall be ranked rank all responsive and responsible offerors from most advantageous to least advantageous to the state. State, and document such in its final award recommendation.
- (h)(i) Award must be made to the responsive and responsible offeror whose offer is determined in writing to be the most advantageous and best value to the state, State, using all evaluation factors criteria set forth in the solicitation (e.g., if the lowest price or highest qualified technically acceptable method is used, designated in the solicitation, then award must be made to the responding responsive and responsible offeror with the lowest price.
- (i) The following types of solicitations may be used:
- (i) One step Invitation for Bids (IFB) or Request for Proposals (RFP) B Technical and price response is submitted at the same time.
- (A) If the lowest priced technically acceptable method of source selection is used, only clarifications are allowed.
- (B) If the trade off or ranking method of source selection is used,

- ~~communications to establish competitive ranges or negotiations may be used.~~
- (ii) ~~Two step IFB or RFP B Technical responses (step one) and price responses (step two) to solicitation are submitted separately.~~
- (A) ~~If the lowest priced technically acceptable method is used, technical responses (step one) are evaluated for acceptability only. Only clarifications with offerors are allowed. Price offers are opened (step two) for only those offerors who submitted technically acceptable responses. Selection is made by low price analysis.~~
- (B) ~~If the trade off or ranking method of source selection is used, technical responses (step one) are submitted, after which clarifications, communications to establish a competitive range, and negotiations with offerors may be allowed as specified in the solicitation document. Price responses (step two) are requested only from offerors placed in the competitive range after the technical evaluation and discussion phase has concluded. Subsequent negotiations may be~~
- ~~conducted with offerors after receipt of price responses. Final price adjustments or best and final offers may be allowed.~~
- (2) A trade off method of source selection may be utilized when it is in the best interest of the ~~state~~ State to consider an award to other than the lowest priced ~~offer~~ or ~~other than the~~ highest ~~technically~~ qualified ~~offer~~, offeror. For a solicitation that designates using a trade off trade-off source selection method, the following shall apply:
- (a) All ~~evaluation~~ factors that will affect the contract award ~~decision~~ recommendation and ~~their~~ the relative importance of each shall be stated as evaluation criteria in the published solicitation.
- (b) ~~Price must be considered as an evaluation factor in the selection process.~~ The solicitation shall state the importance or numerical weight of all evaluation ~~factors~~ criteria including price, consideration of price and total cost of ownership.
- (c) Offers ~~are~~ shall be ranked using according to the evaluation factors ~~and their relative importance or weight as defined in the solicitation document.~~ criteria stated in the solicitation. The relative overall ranking of any offer may be adjusted up or down when considered with, or traded-off against, other non-price factors. For example, an offer with the lowest price when compared to other offers would normally receive the best ranking in the price evaluation category. However, if other non-price evaluation factors received low rankings, the overall ranking of the offer would be reduced.
- (d) Clarifications are permitted.
- (e) If ~~specified~~ permitted in the ~~solicitation,~~ solicitation terms, the purchasing agency may also use ~~communications and negotiations negotiations, or other communications, may be permitted~~ after receipt of an offer.
- (3) The lowest ~~price~~ priced or highest qualified technically acceptable source selection method may be used when best value is expected to result from selection of the highest qualified or

technically acceptable offer with the lowest evaluated price. When ~~using the lowest price technically acceptable method~~, this method is designated in a solicitation, the following shall apply:

- (a) ~~The evaluation factors that establish the requirements of for technical acceptability shall be set forth in the solicitation.~~ solicitation's evaluation criteria. Solicitations Evaluation criteria shall specify that the award will be made on the basis of the lowest evaluated price or most highly qualified of those proposals offers that meet or exceed the acceptability requirements for non-price factors.
 - (b) ~~Trade-offs~~ Trade-offs between price and non-price factors are not permitted.
 - (c) Proposals are evaluated for acceptability but are not ranked using the non-price factors.
 - (d) ~~Only clarifications~~ Clarifications are permitted.
 - (e) Negotiations are permitted with this selection method for purchases over the purchasing agency's general delegation, when so specified in the published solicitation. The purchasing agency may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, or terms and conditions.
- (4) Other competitive best value source selection methodologies may be used if they are determined to be advantageous to the state and are approved for use by the ~~CIO or his designee~~. State CIO.

Authority G.S. 143-135.9; 147-33.76(b)(1); 147-33.91; 147-33.95; 147-33.101.

09 NCAC 06B .0303 ELECTRONIC OFFERS

~~ITS and agencies shall not accept electronic, facsimile, and telephone offers in response to solicitation documents that are required to be sealed, unless specifically approved by ITS procurement based on a determination that it is advantageous to the state. The purchasing agency may accept offers submitted electronically in response to solicitation documents if such offers comply with these Rules and applicable laws. The purchasing agency's use of digital or electronic signatures must be consistent with applicable statutes and rules. The purchasing agency must authorize but may limit the use of electronic methods of conducting a procurement based on the State's best interests, as determined by the Purchasing agency and approved by the State CIO.~~

Authority G.S. 66-58.5; 66-325; 147-33.95.

09 NCAC 06B .0304 RECALL OF OFFERS

~~An authorized agent of a company offeror may recall an its offer prior to opening, through by delivering a signed request. written request to withdraw prior to acceptance of any offer related to that procurement.~~

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0305 PUBLIC OPENING

~~(a) ITS and agencies shall publicly open advertised sealed procurements using the lowest price technically acceptable source selection method at the time, date, and place identified in the solicitation document. At the time of opening, the names of the bidders shall become public record after compliance with all the requirements of the ITS sealed procurement process as in Rule .0302 of this Section.~~

~~(b) Under a two step process, only those offerors that the agency that issued the solicitation determines to have acceptable technical offers shall be invited to submit price offers. The price offers shall be publicly opened and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. After opening, the price offer(s) shall become public record if no negotiation is permitted. At least two agency working days shall be given prior to the opening. There shall be at least two agency employees present at the opening.~~

~~(c) Under a two step process where negotiations are anticipated, only those offerors determined by the agency that issued the solicitation to have acceptable technical offers shall be invited to submit price offer(s). The price offers shall be publicly opened and the offeror(s) with the acceptable technical offer(s) notified of the time and place for the opening. The price offer(s) shall become public record upon point of award. At least two agency working days shall be given prior to the opening. There shall be at least two agency employees present at the opening.~~

~~The purchasing agency shall publicly open and tabulate all offers at the time, date and place identified in the solicitation. The tabulation shall be made public at the time it is created unless otherwise provided by these Rules.~~

~~(a) At the time of opening, only the names of offerors and the goods or services offered shall be tabulated when negotiation after receipt of offers is authorized by the solicitation terms, unless otherwise provided by these Rules. The price offer(s) shall become available for public inspection at the time of the award.~~

~~(b) There shall be at least two purchasing agency employees present at the opening when "sealed offers" are required, and at least one purchasing agency employee present when electronic offers are required.~~

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0306 OFFERS

~~The agency or ITS shall not consider late offers, modifications, or withdrawals unless these would have been timely except for the action or inaction of agency or ITS personnel directly serving the procurement process. Offerors shall deliver all offers on time, regardless of the mode of delivery used. Offers not~~

received by the due date and time as specified in the solicitation shall not be considered; or regardless of offeror's mode of delivery or any other reason.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0307 CLERICAL ERRORS AND CLARIFICATIONS

When the purchasing agency ~~or ITS~~ determines that an offer appears to contain an obvious error or ~~otherwise~~ where ~~an a~~ clerical error is suspected, the purchasing agency ~~or ITS~~ may investigate or act upon the circumstances. Any action taken shall not prejudice the rights of the public or other ~~offering companies, offerors.~~ Where offers are submitted substantially in accordance with the solicitation ~~document terms~~ but are not entirely clear as to intent or ~~to~~ some particular fact or where there are other ambiguities, the purchasing agency ~~or ITS~~ may seek and accept clarifications or may open communications provided that, in doing so, no change is permitted in prices. as permitted by Rule .0302 of this Subchapter. Clarifications shall not be utilized to cure material deficiencies or to negotiate.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0308 EXTENSION OF OFFER VALIDITY

When the purchasing agency ~~or ITS~~ determines it is in the public State's best interest, the purchasing agency ~~or ITS~~ may request that ~~the offerors extend the time offered for the acceptance of offers; date through which the offers are valid. Requests by the State for time extensions of offer validity will not result in change to the prices as stated in the original offer unless so specified in the request to extend or subsequently agreed to by the purchasing agency in writing.~~

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0309 EVALUATION

(a) In determining the award of contracts, the purchasing agency ~~or ITS~~ shall consider and evaluate bona-fide responsive and responsible offers as provided by statute and applicable rules. ~~The agency or ITS shall identify in the solicitation document the evaluation criteria to be used in determining the award of contract.~~

(b) Unsigned offers shall be rejected by the awarding agency.

(c) During the period of evaluation and prior to award, only the information provided in the tabulation is public record.

(b) Only persons in the purchasing agency who are responsible for handling assigned to evaluate the offers and accompanying information, or who are otherwise assigned to participate in the procurement process, or and others whose participation may be determined necessary by the agency that issued the solicitation document, State CIO in the procurement process shall possess offers, including any accompanying information submitted with the offers or any information related to evaluation of offers, for the purpose of evaluation and concluding the award of contract process. Any communication with an offeror that may be necessary for purpose of clarification

(c) Clarification of offers or negotiation(s) with offerors, if desired, ~~of its offer shall be conducted requested by the purchasing agency that issued the solicitation document. in writing. Further offeror~~ An offeror's further participation in the evaluation process shall not be is not permitted except as deemed necessary approved by the State CIO or his designee to effectively conclude for the purpose of concluding the evaluation or the award process.

(d) After award of the contract or when the need for the ~~item~~ good or service is canceled, the complete file shall be available ~~to any interested party with the exception of trade secrets subject to the provisions G.S. 132-1.2(1)d. for public inspection except as set forth in Rule .1403 of this Subchapter and except as provided by law; provided however, that when a solicitation document is canceled and the purchasing agency intends to reissue the solicitation, information that is confidential under Rule .0103 of this Subchapter and offers received prior to cancellation shall be withheld from public inspection until the re-issued solicitation results in a contract or termination of the procurement.~~

Authority G.S. 147-33.76(b)(1); 147-33.95(a).

09 NCAC 06B .0310 NOTIFICATION OF AWARD

~~If a solicitation is required to be advertised through ITS, then notice of the resulting contract award shall be posted via the ITS IT procurement website by the agency issuing the solicitation document. After contract award, successful companies shall be notified in writing or electronically by the agency issuing the solicitation document.~~

Authority G.S. 147-33.103(b).

09 NCAC 06B .0311 LACK OF COMPETITION

~~Where only a single offer or a single acceptable offer is received, the agency or ITS shall ascertain the reason and make it a matter of record.~~

Authority G.S. 147-33.103(b).

09 NCAC 06B .0312 SOLICITATION DOCUMENTS

~~An agency or ITS shall use a solicitation document when soliciting offers on contracts valued over five thousand dollars (\$5,000) unless the CIO or his designee waives the requirement pursuant to rule. In their solicitation documents, the agencies and ITS shall require offerors to certify that each offer is submitted competitively and without collusion.~~

Authority G.S. 147-33.100; 147-33.103(b).

09 NCAC 06B .0313 DIVISION OF COMMODITIES AND SERVICE NEEDS

~~An agency or ITS shall not divide requirements~~ Commodities and service needs shall not be divided to keep the expenditure under its the purchasing agency's delegation and thereby to avoid following the appropriate contracting requirement procurement processes and applicable rules. In the case of similar and related items and groups of items, the dollar limits of

delegated authority apply to the total cost of ownership rather than the cost of any single item.

Authority G.S. 147-33.76(b)(1); 147-33.101; 147-135.9;

09 NCAC 06B .0314 ADVERTISEMENT AND NOTICE

(a) All advertisements required by rule shall be through the ITS IT procurement website. Solicitations required by rule shall be advertised at least once and at least 10 days prior to the date designated for opening unless the CIO or his designee waives advertising requirements. Conditions permitting waiver of advertising requirements shall include, but not be limited to the following:

- (1) Acquisition of goods or services subject to rapid price fluctuations or immediate acceptance;
- (2) Emergency situations (pressing need);
- (3) Acquisition of goods or services needed for any ongoing job, task, or project;
- (4) Acquisition of goods or services where performance or price competition is not available; and
- (5) Any determination that no useful purpose would be served by requiring advertisement.

(b) This Rule does not prevent solicitation of offers by additional direct mailings or additional advertisement by an agency.

(c) Agencies required by rule to advertise their solicitations shall electronically transmit the required data to the ITS IT procurement website. The required data shall include the complete solicitation document (specifications, requirements, terms and conditions, etc.) with agency name, buyer name, phone number and address for accessing hard copies of the solicitation; solicitation identification number; title (a short description of the good or service); and the opening date, time and place. If the solicitation requires potential offerors to attend a mandatory conference or mandatory site visit, this information shall also be furnished with the advertisement, to include date, time, location, contact person and the contact person's phone number.

(d) Within three agency working days from the award of an advertised contract, agencies shall electronically transmit an award notice directly to the ITS IT procurement website, unless there is a valid reason for not posting such information. The award notice shall be posted for at least 30 calendar days. This award notice shall identify the contract and award information.

(e) Exceptions to this Rule are as follows:

- (1) When the agency's executive officer or his designee deems that there is a valid reason for the agency not to transmit the advertisement or award notice electronically, that agency may submit the data to ITS so ITS may transmit it electronically or the agency may place the advertisement (excluding the complete solicitation document) via newspaper. If advertised via newspaper, the agency that issued the solicitation document shall be responsible for the advertisement and the

award notice shall not be required. Some valid reasons include, but are not limited to, computer equipment failure and networking difficulties. The rationale for waiver of electronic advertising requirements shall be documented and become part of the public record.

(2) If there is an attachment to a solicitation that the agency determines will not be electronically transmitted, then the solicitation document, when it is electronically transmitted, shall include instructions to contact the agency that issued the solicitation to obtain the attachment.

(3) If an agency determines that it is not feasible to electronically transmit a particular solicitation document through the ITS IT procurement website, then the agency shall electronically transmit a summary notice in the same way as if it had electronically transmitted the solicitation document. The summary notice shall instruct anyone inquiring about the solicitation on the ITS IT procurement website to contact the agency for a hard copy.

(a) Requirement to advertise, publish and notify:

(1) Solicitations: To maintain transparency and encourage competition for award of business, the purchasing agency shall advertise and publish solicitations for purchases exceeding the general delegation as established by the State CIO for no less than 10 calendar days, unless the State CIO waives the requirement for advertising.

(2) Addenda or Changes: Any changes or addenda to a solicitation must be advertised and published with enough time to allow for reasonable consideration and possible incorporation of the change into potentially competing vendors' response offers. Any changes or addenda to a solicitation must be advertised and published for no less than two business days from the scheduled offer due and opening date, unless the State CIO waives the requirement to advertise and publish changes or addenda to a solicitation.

(3) Notices of Award: To maintain transparency and promote future competitiveness, the Notice of Award shall be advertised for no less than 30 calendar days, unless the State CIO waives the requirement to advertise, publish, and issue Notice of Award.

(4) Waiver of Requirement to Advertise and Notify:

(A) Conditions permitting State CIO to waive the requirement to advertise and notify include:

- (i) Acquisition of commodities or services that are subject to

- rapid price fluctuations or immediate acceptance;
- (ii) Emergency situations or pressing needs;
- (iii) Acquisition of goods or services needed for any ongoing job, task, or project;
- (iv) Acquisition of goods or services where performance or price competition is not available;
- (v) Any determination that no useful purpose would be served by requiring such; or
- (vi) Exceptions identified under Rule .1303 of this Subchapter.

(B) The conditions and approval for waiver to advertise, publish, and notify any part of a procurement action shall be documented and become part of the file, open for public inspection after the award.

(b) Required method for Advertising, Publishing, and Notifying: To maintain transparency and promote competitiveness:

(1) Solicitations:

(A) The purchasing agency shall electronically advertise and continually publish solicitations via posting to the State's designated IT procurement website, unless a waiver of advertisement method is granted by ITS.

(B) This Rule does not preclude a purchasing agency from soliciting offers by additional direct mailings or additional advertisement.

(C) Required Advertisement and publication data shall include all relevant information pertaining to contacts and due dates, and the complete solicitation document and any attachments (i.e., specifications; requirements; terms and conditions; price model; etc.).

(D) If a purchasing agency head (or his/her designee) determines that it is not feasible to electronically transmit (due to file size, etc.) a particular solicitation document or attachment(s) through the required method (e.g., a procurement library, architecture reference documents, price model forms, etc.), then the purchasing agency must still electronically transmit a summary notice or advertisement through the designated IT Procurement website.

In such instance, the advertisement shall include the required information with the addition of a brief explanation for why the entire solicitation is not included, and shall instruct anyone inquiring about the solicitation to contact the purchasing agency for a copy of the actual solicitation document and any respective attachments.

(E) Specifically, the required advertisement information shall include:

(i) Purchasing agency name and website reference, and designated IT procurement website reference;

(ii) Assigned purchasing agency contact's name, telephone number, and electronic mail address;

(iii) Location address for delivery/receipt of offers;

(iv) Solicitation identification number or reference;

(v) Title (i.e., scope or short description of the good or service solicited);

(vi) Due date(s) and time(s) for any conference or site visit meeting(s) scheduled, and whether attendance is mandatory or optional;

(vii) Due date and time for solicitation clarifications or questions; and

(viii) Date, time, and location for opening of offers received.

(F) In addition to the specifications, offer terms, and conditions, award terms and conditions, etc., the solicitation document must furnish the due date and time, method of request, e.g., regular mail, or electronically via e-mail or facsimile, etc., an address for receipt of requests for solicitation clarifications or questions.

(G) If the solicitation includes a conference or site visit, this information shall also be furnished within the solicitation document, to include: date; time; and location; assigned meeting contact person and that contact person's telephone number and electronic mail address; and other relevant information relating to attendance (e.g., whether potential offeror attendance is mandatory or optional, space

- limitations and number of attendees allowed per vendor, etc.). If no conference or site visit is scheduled, then this shall be stated in the advertisement and the solicitation document.
- (2) Addenda or Changes: The same advertisement method that is approved and followed for publishing a solicitation document must also be followed for publishing any respective addenda or changes to the solicitation and resulting notice of award, unless otherwise directed by ITS.
- (3) Notices of Award:
- (A) To the extent practicable, the purchasing agency shall simultaneously issue individual Notice of Award to all offerors responding to the respective solicitation and shall publish Notice of Award via the approved method of advertisement for that solicitation and addendum(a).
- (B) Notice of Award shall summarize the resulting contract award information, including identification of the advertised solicitation; the awardee name and location; scope; start and end dates; authorized value through original end date; and renewal options.
- (4) Exceptions to Required Method:
- (A) When the purchasing agency (or his/her designee) deems there is a valid reason to not publish via the State's designated IT procurement website, he/she may request from ITS a waiver to the required method for advertising, publishing, and notifying.
- (B) Valid reasons to request a waiver to the required method include, computer failure and networking difficulties, etc.
- (C) The purchasing agency's request for waiver of required method shall include the rationale for requesting, a description of a proposed alternate method, length of time proposed for advertising, and explanation if the solicitation document and any attachments or addenda will not be included or published with the advertisement.
- (D) The purchasing agency's proposed alternate method to the State's designated IT procurement website must be via other medium widely distributed or commonly available to

the public, such as publishing in a newspaper, etc.

- (E) The rational for requesting waiver of required advertising method, requested alternate method, and respective ITS approval, shall be documented and become part of the procurement file, open for public inspection after award.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0315 MANDATORY CONFERENCES/SITE VISITS

(a) When a solicitation requires potential offerors to attend a mandatory conference or ~~mandatory~~ site visit, ~~then~~ the date, time, location, and other pertinent details ~~of the conference or site visit relating to attendance~~ shall be given in the solicitation document and in the ~~advertisement (if required by rule).~~ advertisement.

(b) If only one potential offeror attends the mandatory conference or mandatory site visit, the conference or site visit may be conducted, but the purchasing agency shall investigate ~~investigate, as much as is practicable, why only one potential offeror was in attendance~~ attended, and endeavor to ascertain if ~~whether~~ there is any competition available. If it is determined that competition is available, time permitting, the purchasing agency may schedule another conference or site visit, if deemed to be to the advantage of the state. ~~State.~~ If it is determined that there is no competition available, then the procurement may be handled as a waiver as permitted by rule.

(c) The purchasing agency shall document details of the conference or site visit as part of the official records required in Rule .1402 of this Subchapter.

~~(e)(d)~~ Any and all questions or clarifications by a potential offeror regarding a solicitation document shall be addressed to the ~~purchaser named on the document.~~ purchasing agency contact so designated in the solicitation. Any and all revisions to the solicitation document shall be made only by ~~written~~ published addendum from the purchaser. purchasing agency. Verbal communications from whatever source are of no force or effect.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0316 NEGOTIATION

(a) The purchasing agency shall conduct negotiations under its general delegation. Negotiations may also be conducted to establish contracts exceeding the purchasing agency's delegation, if the purchasing agency receives prior approval to negotiate from ITS or the State CIO.

(b) If a purchasing agency deems negotiations to be advantageous to the State after receiving offers and then determines that soliciting offers again would serve no purpose, the purchasing agency may then conduct negotiations with sources of supply that appear to be capable of satisfying the purchasing agency's business needs. The purchasing agency's negotiations may be conducted by procedures approved by ITS, but shall be finalized in writing and shall include standard

language and terms and conditions issued by ITS, or such terms as may be established pursuant to Paragraphs (c) or (d) of this Rule. If the purchasing agency's negotiations are conducted with only one offeror, or if only one offeror responds to a request to negotiate, then the purchasing agency shall document the reasons for the lack of competition as part of the procurement record under Rule .1402 of this Subchapter.

(c) Purchasing agency negotiations may be conducted under Section .0900 of this Subchapter when conditions merit a limited or waiver of competition or in other situations that are advantageous to the State as determined by the State CIO.

(d) Modifications, waivers, or any other changes or amendments to a solicitation, including language and terms and conditions issued by ITS, made in the course of negotiations must be accompanied by:

- (1) Approval of the negotiating agency;
- (2) Requested approval from ITS;
- (3) Appropriate evaluation documentation reflecting trade-offs between price and non-price factors; and
- (4) Such other documentation as ITS may require.

(e) Negotiations shall not materially alter the intent or scope of the original solicitation document.

Authority G.S. 147-33.76(b)(1).

SECTION .0400 - REJECTION OF OFFERS

09 NCAC 06B .0401 REJECTION OF OFFERS

(a) In soliciting offers, the agency or ITS may reject any offer in whole or in part. Basis for rejection shall include, but not be limited to, the agency or ITS deeming late offers; the purchasing agency's determination that the offer is unsatisfactory as to quantity, quality, delivery, price or service offered; the offer not complying offeror's failure to comply with the intent or conditions of the solicitation document or with the intent of the proposed contract; document; the lack of competitiveness by reason of due to collusion or otherwise or due to the knowledge that reasonably available competition was not received; error(s) in specifications or indication that revision(s) would be to the state's State's advantage; cancellation of of, or changes in in, the intended project or other determination that the proposed requirement commodity or service is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the lowest priced or highest qualified technically acceptable offer or the best value offer; or any determination that rejection would be to the best interest of the state- State.

(b) Unsigned offers shall be rejected by the purchasing agency.

(c) The purchasing agency shall reject late offers and shall not consider modification of offers or withdrawals of offers unless these would have been timely, except for the action or inaction of the agency personnel directly serving the procurement process.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0402 PUBLIC RECORD

~~Action in rejecting offers in whole or in part shall be made a matter of record.~~

Authority G.S. 147-33.103(b).

09 NCAC 06B .0403 NEGOTIATION

~~If an agency or ITS does not receive an offer that is deemed to be advantageous to the state in response to a solicitation or all offers are rejected and if it is determined that soliciting offers again would serve no purpose, negotiations may be conducted with sources of supply that may be capable of satisfying the requirement. The negotiations shall be conducted by that agency or ITS if under their delegation. Negotiations shall be conducted in writing and shall include standard language and terms and conditions issued by ITS. If the negotiations are conducted with only one source or if only one source responds to the negotiations, the reason for lack of competition shall be documented in writing for public record. Negotiations may also be conducted under conditions that merit a waiver of competition or in other situations that are advantageous to the state as determined by the CIO or his designee.~~

Authority G.S. 147-33.103(b).

09 NCAC 06B .0404 NOTICE OF REJECTION

(a) The purchasing agency shall not be required to provide notice of rejection of offers prior to approval and award of a contract.

(b) When a competitive range is established by the purchasing agency's evaluation committee, and offers are not included in such range, the purchasing agency may provide notice to an offeror that its offer is excluded, consistent with this Rule and as established in the solicitation.

(c) The purchasing agency may grant requests for debriefings as provided herein, consistent with this Rule and as may be established in solicitation documents.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0405 DEBRIEFING OFFERORS

(a) Pre- or Post-Award Debriefings of successful and unsuccessful offerors may be completed by personal meeting, by written or electronic communication (e.g., telephone, email, etc.), or by any other method acceptable to the purchasing agency and ITS.

(b) Debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information not then available for public inspection, properly designated as confidential in accordance with Rule .1001 of this Subchapter, the N.C. Public Records Law, or any other applicable laws.

(c) If debriefing is authorized by terms of the solicitation:

- (1) The purchasing agency shall implement the debriefing process as follows:

- (A) Include an official summary of the debriefing in the record, per Rule .1402 of this Subchapter, by the protest-period due-date.

- (B) To the maximum extent practicable, schedule a debriefing within five business days after receipt of an offeror's written request for a debriefing.
- (C) If requested, grant, at its discretion, rejected offeror(s) a delayed debriefing for any good cause shown by that requesting offeror.
- (D) Accommodation of a competing offeror request for delayed debriefing does not extend the due dates for filing protests.
- (2) All competing offerors may request a debriefing by submission of a written request to the purchasing agency not more than three business days from notice of award date.
- (3) Offeror may, if notified that it is not included in the competitive range:
 - (A) Request a pre-award debriefing by delivering such request to the purchasing agency not more than three business days after the notice of rejection date; or
 - (B) Request a post-award debriefing in lieu of the pre-award debriefing by delivering request for such not more than three business days after the notice of rejection date; or
 - (C) Request a post-award debriefing by delivering request for such not more than three business days after notice of award date.
- (4) Debriefing shall include review of the committee's evaluation of vendor's proposal/offer per terms of the solicitation, including:
 - (A) Any weaknesses, deficiencies, or risks to the purchasing agency, identified in evaluation of the offeror's proposal
 - (B) Evaluated cost or price (including unit prices) and the State's total cost of ownership;
 - (C) Evaluated vendor responsibility to proposal, including past performance information, etc., as applicable;
 - (D) Evaluated vendor responsiveness and the technical merit of its proposal;
 - (E) Responses to relevant questions about whether source selection procedures, applicable regulations, or other applicable authorities, were followed;
 - (F) If debriefing is post-award, the information must include the above and may also include:
 - (i) Overall ranking of all offerors; and

- (ii) A summary of the evaluation and rationale for award to the successful offeror.

Authority G.S. 147-33.76(b)(1).

SECTION .0500 - INSPECTION AND TESTING

09 NCAC 06B .0501 RESPONSIBILITY

The ~~receiving~~ purchasing agency shall inspect all materials, supplies, and equipment upon delivery to ~~ensure~~ verify compliance with the contract requirements and specifications. The purchasing agency shall also be responsible for verifying that services as provided comply with the terms of a contract.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0502 INSPECTION

ITS may periodically inspect any ~~items~~ items, or deliverables or monitor performance to ensure that contractor compliance with contract specifications and terms are met. The purchasing agency must ensure that goods or services purchased comply with applicable codes, statutes, local ordinances, policies ~~of~~ and safety requirements.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0503 SAMPLES

When samples are required in response to a solicitation document, ~~ITS the purchasing agency~~ ITS may test those samples or have them tested at other designated facilities. Samples shall not be sent ~~directly~~ to laboratories outside the an agency or ITS unless it is determined by ~~ITS an agency~~ ITS an agency that these facilities have the capability, time, ~~of~~ and expertise needed.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0504 MODIFICATIONS TO CONTRACT SPECIFICATIONS

When the purchasing agency ~~that awarded the contract or ITS~~ determines it to be ~~advantageous to the state, in the State's best interest,~~ it may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the purchasing agency's delegation, then the purchasing agency shall obtain prior written approval from ~~ITS, regardless of what agency initially awarded the contract.~~ ITS.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0505 REPORT OF DISCREPANCY

Where goods or services delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the purchasing agency ~~that issued the solicitation document.~~ agency.

Authority G.S. 147-33.76(b)(1).

SECTION .0600 - GUARANTEES AND WARRANTIES

09 NCAC 06B .0601 ENFORCEMENT

~~Using agencies~~ The purchasing agency shall enforce the contractual guarantee or warranty applying to the goods or services purchased.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0602 REPORT TO ITS

~~If any agency has difficulty~~ The purchasing agency shall report to ITS any difficulties in obtaining satisfactory performance including service as provided for in a guarantee or warranty, under a contract handled by ITS; ~~the agency shall refer the matter to ITS.~~ warranty.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0603 RESPONSIBILITY OF PURCHASING AGENCY

The ~~using~~ purchasing agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition ~~reported and the contract was handled by ITS;~~ reported, the matter shall be ~~referred~~ reported to ITS.

Authority G.S. 147-33.76(b)(1).

SECTION .0700 - CONTRACTS

09 NCAC 06B .0701 USE AND DESCRIPTION

~~State IT contracts are binding agreements between the state and successful offerors to provide information technology goods or services in accordance with stipulated terms and conditions.~~

(1)(a) Term Contracts

~~(a)(1)~~ (1) A term contract is a binding agreement between ~~the purchaser and seller to buy and sell~~ offeror for certain goods or services for a ~~specific period of time at prices established by the contract.~~ time.

~~(2)~~ (2) A Statewide term ~~contracts~~ contract consolidates normal, anticipated requirements of all State purchasing agencies into one agreement and shall be ~~handled~~ awarded by ITS. No purchasing agency may purchase IT goods or services ~~covered by~~ included in a statewide term contract from any other source unless authorized by the ~~CIO or his designee.~~ State CIO.

~~(b)~~ (b) A term contract shall be based upon ~~competition, where available, with potential vendors being advised as to the actual business they are competing for and, if successful, the business they have earned.~~

~~(e)(3)~~ (e)(3) Agencies A purchasing agency may ~~handle~~ issue and shall award agency specific ~~term~~ term contracts for its use by their agency if the estimated expenditure ~~over during the term life~~ of the contract is under their the agency's

delegation and the good or service is not ~~covered by~~ included in a statewide term contract.

~~(4)~~ (4) If an agency documents to ITS a need to establish an agency specific ~~term~~ term contract for which the expenditure ~~over during the term~~ life of the contract exceeds the agency's general delegation and is not covered by a statewide term contract, ~~ITS the purchasing agency, with ITS approval,~~ may issue a solicitation document for the purpose of awarding an agency specific term contract for use by the requesting purchasing agency in accordance with the determining factors set forth in Rule .0702 of this Section. Subchapter.

(2)(b) Convenience Contracts

~~(a)(1)~~ (a)(1) ~~Convenience contracts are~~ A statewide IT convenience contract is an agreement awarded by ITS for an indefinite quantity contracts that are awarded by ITS of goods or services that may be used by state agencies a State purchasing agency, to purchase goods or services at the agency's discretion. Convenience contracts ~~function like statewide term contracts, but their use by agencies is are not mandatory.~~ mandatory-use agreements.

~~(b)(2)~~ (b)(2) If an agency elects not to purchase the goods or services it requires from an established convenience contract, ~~the rules of competitive bidding apply to the acquisition.~~ then that agency must comply with Rule .0301 of this Subchapter.

~~(3)(c)~~ (3)(c) ~~Master Agreements are~~ A master IT agreement is an agreement between a vendor and the state that applies to multiple contracts or purchase orders that include standard terms and conditions. ITS characterized by one or more of the following:

(1) Goods or Services are, or may be, procured from resellers, Value Added Resellers (VARs), Original Equipment Manufacturers (OEMs), or others who represent the master agreement vendor;

(2) Goods or Services are proprietary intellectual property of the master agreement vendor; and

(3) Master agreements are established without competitive bidding.

(d) Master agreements may result in agency or statewide term or convenience contracts.

(e) Solicitations and Vendor offers may modify terms of a master agreement if the State's best interests are served, if such is allowed via the terms of the solicitation.

(f) Terms and conditions, in addition to ITS standard terms and conditions, may be negotiated. Waiver of a standard term or condition must be approved by the State CIO.

(g) Pricing under a master agreement may be established for a time certain, after which periodic reviews and re-pricing may be completed and agreed by the parties.

Authority G.S. 147-33-76(b)(1).

09 NCAC 06B .0702 DETERMINING FACTORS

(a) In determining whether a good or service will be ~~on included~~ in a statewide IT term or convenience contract, ITS the State CIO shall consider such factors as volume, nature of the good or service, repetitiveness of use, relative stability of prices, and delivery or transportation costs.

(b) In determining whether a good or service will be ~~on included in an agency specific term contract~~, the agency shall consider available statewide term and convenience contracts, and it shall consider such factors as volume, nature of the product or service, repetitiveness of use, relative stability of prices, and transportation costs.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0703 EXTENSION OF CONTRACT TERMINATION DATES

When in the ~~public interest, contractors best interest of the State~~, offerors may be requested to extend the scheduled termination dates of contracts. Such extensions shall not result in a change in the prices stated in the original contract unless agreed to by the agency in writing. Extensions that result in a cumulative contract value exceeding an agency's delegation must be submitted to ITS for approval.

Authority G.S. 147-33.76(b)(1).

SECTION .0800 - PARTIAL AND MULTIPLE AWARDS

09 NCAC 06B .0801 USE

(a) Partial, progressive or multiple awards may be made ~~where~~ when it is advantageous to the state. State.

(b) Notwithstanding the necessity for awards to more than one ~~supplier in the case of some indefinite quantity contracts, supplier~~, such awards shall be limited to the number of suppliers deemed necessary to reasonably satisfy the intended requirements. Quantities shall not be divided among ~~companies offerors~~ on definite quantity requirements unless and except as provided in the solicitation ~~document, and unless such division is determined to be in the best interest of the State.~~

Authority G.S. 147-33.76(b)(1).

SECTION 0900 – WAIVER OF COMPETITION

09 NCAC 06B .0901 CONDITIONS FOR LIMITED OR WAIVED COMPETITION

(a) Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the ~~CIO or his designee, State CIO~~, competition may be ~~waived, limited or waived where a factual basis demonstrates support of one or more of the conditions set forth in Paragraph (b).~~ If the procurement is ~~under the within a purchasing agency's general delegation of the agency, delegation, then the purchasing agency may waive competition in conformance with this rule. Rule.~~ If the procurement is ~~over~~ greater than the ~~agency-agency's delegation~~, requests for ~~waiver limited or waived competition~~ shall be submitted to ~~ITS for appropriate determination. the State CIO for approval.~~

(b) Competition may be limited or waived under the following conditions:

- (1) ~~where~~ competition is not available;
- (2) ~~where~~ a needed product or service is available from only one source of supply;
- (3) ~~where~~ emergency action is indicated;
- (4) ~~where~~ competition has been solicited but no satisfactory responsive offers have been received;
- (5) ~~where~~ standardization or compatibility is the overriding consideration;
- (6) ~~where~~ a donation predicates the source of supply;
- (7) ~~where~~ personal or particular professional services are required;
- (8) ~~where~~ a product or service is needed for a person with disabilities and there are overriding considerations for its use;
- (9) ~~where~~ additional products or services are needed to complete an ongoing job or task;
- (10) ~~where~~ a particular product or service is desired for educational, training, experimental, developmental or research work;
- (11) ~~where~~ equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
- (12) ~~where~~ items are subject to rapid price fluctuation or immediate acceptance;
- (13) ~~where~~ there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of ~~companies persons or entities~~ that thwarts normal competitive procedures;
- (14) ~~where~~ a purchase is being made and a price is available from a previous contract;
- (15) ~~where~~ the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and
- (16) ~~where~~ a used item(s) is available on short notice and subject to prior sale.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .0902 APPROVAL AND DOCUMENTATION

Although competition may be waived pursuant to Rule .0901 of this ~~Section, Subchapter~~, the use of competition is required wherever ~~practicable, an exception is not approved. Where~~ After a limitation or waiver of competition is contemplated, approved as provided in Rule .0901(a), agencies may negotiate negotiations with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions, may be conducted, when the expenditure is less than their respective benchmark or delegation. Documentation justifying waiving the competitive process must be attached to the record of this type of procurement. The procurement process of requesting or inviting an offer(s) shall be handled by the agency, including standard

~~language terms and conditions issued by ITS. Under an emergency or pressing need situation, the procurement process requesting or inviting an offer(s) shall be handled by the agency, including standard language terms and conditions issued by ITS, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding the delegation if the agency has received prior approval from ITS. All actions that exceed the benchmark are subject to the conditions of Rule .1102 of this Subchapter.~~

Authority G.S. 147-33.76(b)(1).

SECTION .1000 – MISCELLANEOUS PROVISIONS

09 NCAC 06B .1001 CONFIDENTIALITY

(a) ~~The offeror may designate information as a trade secret pursuant to G.S. 132-1.2. 132-1.2 and may otherwise designate information as confidential as provided by law, citing the applicable statute on which the claim of confidentiality is made (e.g., Only documents meeting the criteria of North Carolina's Trade Secret Protection Act may be so designated where a document meets the Trade Secret Act requirements, etc.). Trade secrets that the offeror does not wish disclosed shall be identified on Offerors shall identify each page containing confidential information in boldface at the top and bottom; e.g., as "CONFIDENTIAL". Cost information Price(s) presented in response to a solicitation shall not be deemed confidential.~~

(b) ~~To promote maximum competition and to protect the public competitive procedure from being used to obtain information that would normally not be available otherwise, the purchasing agency that issued the solicitation document may maintain the confidentiality of trade secrets, as determined by North Carolina law, and like information as the CIO or his designee or the agency's executive officer or his designee may determine necessary to ensure the integrity of the public purchasing process, those portions of an offer properly designated as confidential.~~

Authority G.S. 132-1.2; 147-33.76(b)(1); 147-33.95(a).

09 NCAC 06B .1002 PAYMENT PLANS

~~Purchase contracts Contracts may provide for payment over a period of time. Such instances shall carry written prior approval of the administrative head of the agency. Administrative purchasing agency head. Agency heads and governing board boards of agencies an agency shall see ensure that the agency complies with statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document, and State fiscal requirements.~~

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .1003 CHANGE IN CORPORATE STRUCTURE OR ASSIGNMENT

~~The state's State's contracts shall not be assigned. assigned without prior written approval by the State. In cases where the vendor seeks to assign its contract, prior to the State's written approval of an assignment, the vendor assignor shall affirm in~~

writing to the State that the assignee is fully capable of performing all obligations of the vendor under the contract. In cases where contractors vendors who have been awarded contracts are involved in corporate consolidations, acquisitions, or mergers; the purchasing agency that issued the solicitation document resulting in the contract may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structures.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .1004 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the State CIO or his designee is required before doing business with such personnel. In deciding whether to grant approval, the State CIO or his designee shall consider the type of item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

Authority G.S. 147.33.76(b)(1).

09 NCAC 06B .1005 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES

~~In instances of identical offers, or where there are otherwise indications of collusion, awards may be made in a manner intended to discourage or prevent its continuance as deemed to represent the state's best interest. The agency that issued the solicitation documents shall report suspected antitrust violation to appropriate law enforcement authorities.~~

(a) A purchasing agency shall act to prevent the continuance of anticompetitive, deceptive, or fraudulent practices. Anticompetitive practices include actions involving offerors that restrain trade or commerce or eliminate competition.

(b) Anticompetitive, deceptive, or fraudulent practices may be evidenced by one or more of the following:

- (1) Conspiracy (in restraint of trade or commerce);
- (2) Combination bidding (in restraint of trade or commerce);
- (3) Price fixing (which may include reliance upon an industry price list);
- (4) Collusion;
- (5) Identical bidding;
- (6) Agreements to:
 - (A) Rotate offers;
 - (B) Share the profits with an offeror who is not the low offeror;
 - (C) Sublet work in advance of bidding as a means of preventing competition;
 - (D) Refrain from bidding;
 - (E) Submit prearranged offers;
 - (F) Submit complementary offers;
 - (G) Set up territories to restrict competition;
 - (H) Alternate bidding; or
 - (I) Any other unlawful act in restraint of trade or commerce.

(c) Agency actions to discourage or prevent the continuance of anticompetitive, deceptive, or fraudulent practices may include the following:

- (1) Rejection of the offending offeror's offer;
- (2) Award of bid to an offeror with a cost or technical proposal that is evaluated lower than the offending offeror's proposal; and
- (3) Recommend to ITS suspension of an offeror from doing business with the State;

(d) The purchasing agency shall report evidence of anticompetitive, deceptive or fraudulent practices to the Attorney General's office and any other appropriate law enforcement authority.

Authority G.S. 75-1, et seq.; 133-24, et seq.; 147-33.76(b)(1).

09 NCAC 06B .1006 COOPERATIVE PURCHASING

~~Where~~ When an agency or ITS is a participant participates in a cooperative project with another governmental entity or with a non-profit organization, goods and services necessary ~~to~~ for the project shall be ~~acquired-procured~~ according to ~~rules~~ the rules in this Chapter. ~~However, if~~ If the interest of the state State would be better served by one of the following ~~acquisition~~ procurement methods, the State CIO or his designee may authorize ~~that acquisition method to be used;~~ procurement by:

- (1) ~~by making~~ Making or authorizing acquisition on behalf of such governmental ~~activity~~ entity or non-profit organization; ~~or~~
- (2) ~~by authorizing~~ Authorizing acquisition on the ~~state's~~ State's behalf under the provisions of another state or another governmental entity, provided due consideration is given by the State CIO or his designee to the differences in purchasing rules, regulations, and procedures of the contracting ~~entity;~~ entity; ~~or~~
- (3) Authorizing acquisition on the State's behalf under provisions of the U.S. General Services Administration Supply Schedule 70 and Consolidated Schedule for Information Technology purchases.

Authority G.S. 147-33.76(b)(1); 147-33.95(b)(2)(a).

09 NCAC 06B .1008 BOARD OF AWARDS

(a) ~~When the dollar value of a contract for the purchase, lease, or lease/purchase of IT goods exceeds the benchmark, the Board of Awards (Board) shall canvass ITS' recommended action. This also includes reporting of emergency and pressing need purchases over the benchmark. The CIO may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that the Board is not available. ITS shall submit the Board's recommendation (award, cancellation, approval, negotiation, etc.) to the CIO. The CIO may either concur with the recommendation of the Board by awarding contracts or approving other recommended action or take other action as deemed necessary.~~

(b) Exemptions: Review by the Board and approval by the CIO is not required for the following purchase actions: exemption by statute, by rule, by special delegation, or where one agency is

~~buying from another agency or through the State Surplus Property Agency or the State Agency for Federal Surplus Property.~~

NOTE: This Rule has been re-codified as part of 09 NCAC 06A .0103, "Benchmark and Board of Awards."

Authority G.S. 143-52.1; 147-33.76(b)(1); 147-33.95; 147-33.101.

SECTION .1100 - BID PROTEST, CONTESTED CASE PROCEDURE

09 NCAC 06B .1101 RIGHT TO HEARING

~~Whenever the Office of Information Technology Services (ITS)~~ ITS acts in such a way as to affect the rights, duties, or privileges of a party, ~~the~~ that party may ~~appeal for a final decision by ITS in accordance~~ request a hearing in accordance with this Section and G.S. 150B, Article 3A.

Authority G.S. 150B-38.

09 NCAC 06B .1102 PROTEST PROCEDURES FOR AWARD OF CONTRACTS

(a) To ensure fairness to all offerors and to promote open competition, ~~agencies~~ the purchasing agency and ITS shall actively and consistently respond to an offeror's protest over IT contract awards.

(b) This Rule applies to IT contracts with an estimated value ~~over of~~ of twenty-five thousand dollars ~~(\$25,000). (\$25,000) or more.~~ Agencies The purchasing agency may shall establish procedures to ~~handle~~ address protests by offerors ~~with less value.~~ where the award value is less than twenty-five thousand dollars (\$25,000).

(c) When an offeror ~~wants to protest~~ protests a contract awarded by an agency ~~over of~~ of twenty-five thousand dollars (\$25,000) or more in value, the agency and the offeror shall comply with the following:

- (1) The offeror shall ~~submit~~ deliver a written request for a protest meeting to the ~~agency's executive officer~~ agency head or his designee within 15 calendar days from the date of contract award. The ~~executive officer~~ agency head shall furnish a copy of the written request to the ~~ITS Chief Procurement Officer (CPO)~~ State CIO within ~~ten~~ 10 calendar days of receipt. The offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the ~~executive officer~~ agency head determines that a meeting would serve no purpose, then the ~~executive officer~~ agency head, within ~~ten~~ 10 calendar days from the date of receipt, may respond in writing to the offeror and refuse the protest meeting request. A copy of the ~~executive officer's~~ agency head's letter shall be forwarded to the ~~CPO.~~ State CIO.

(2) If the protest meeting is granted, the ~~agency's executive officer~~ agency head shall ~~attempt to~~ give written notice to the State CIO and any awarded vendor of the date and time of the protest meeting. The agency shall give notice to the awarded vendor and the State CIO stating whether any purchase order or performance has been suspended or terminated. The agency head shall schedule the meeting within 30 calendar days after receipt of the letter, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the executive officer agency head shall respond to the offeror in writing with an agency decision. A copy of the executive officer's agency head's letter shall be forwarded to the CPO, State CIO.

(3) If a protest is determined to be valid by the State CIO then the following outcomes may occur:

- (A) The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
- (B) The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;
- (C) The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified offeror, if that offeror agrees to still honor its submitted bid.

(d) When an offeror wants to protest a contract awarded by ITS ~~or the CIO~~ that is ~~over~~ twenty- five thousand dollars (\$25,000) or more in value, ~~the CPO ITS~~ and the offeror shall comply with the following:

(1) The offeror shall ~~submit~~ deliver a written request for a protest meeting to the ~~CPO State CIO~~ within 15 calendar days from the date of contract award. The offeror's request shall contain specific reasons and any supportive ~~supportive~~ documentation regarding why there is a ~~is a~~ the offeror's concern with the award. If the request does not contain this information or the ~~CPO State CIO~~ determines that a meeting would serve no purpose, then the ~~CPO, State CIO~~, within ~~ten~~ 10 calendar days from the date of receipt of the ~~letter~~, offeror's protest, may respond in writing to the offeror and refuse the protest meeting request. A copy of the ~~CPO's State CIO's~~ letter shall be forwarded to the ITS hearing officer.

(2) If the protest meeting is granted, the ~~CPO State CIO~~ shall attempt to schedule the meeting within 30 calendar days after receipt of the ~~letter~~, offeror's protest, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the ~~CPO~~

State CIO shall respond to the offeror in writing with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

(e) When an offeror wants to protest a statewide term or convenience contract or master agreement established by ITS, ITS and the offeror shall comply with the following:

(1) The offeror shall deliver a written request for a protest meeting to the State CIO within 15 calendar days from the date of the contract award. The offeror's request shall contain specific reasons and any supporting documentation regarding the offeror's concern with the award. If the request does not contain this information or the State CIO determines that a meeting would serve no purpose, the State CIO, within 10 calendar days from the date of receipt of the offeror's request shall respond in writing to the offeror and refuse the protest meeting request. A copy of the State CIO's letter shall be forwarded to the ITS hearing officer.

(2) If the protest meeting is granted, the State CIO shall give written notice to the ITS hearing officer and any awarded vendor of the date and time of the protest meeting. Notice shall be given to the awarded vendor and ITS hearing officer stating whether any purchase order or performance has been suspended or terminated. The State CIO shall schedule the meeting within 30 calendar days after receipt of the offeror's protest, or as soon as possible thereafter. Within 10 calendar days from the date of the protest meeting, the State CIO shall respond to the protesting offeror in writing with a decision. A copy of the decision shall be forwarded to the ITS hearing officer.

~~(e)(f)~~ If ~~an offeror~~ a party desires further administrative review after receiving a decision under Paragraph ~~(e) or (d)~~ (c), (d), or (e) of this Rule, the protesting party ~~may~~ may, within 30 days from the date such decision is received, request a hearing and final decision by the State CIO in accordance with these Rules and Article 13A 3A of G.S. 150B. When further administrative review involves a contract awarded by an agency that is ~~over~~ twenty-five thousand dollars (\$25,000) or more in value, the agency shall be a party in any further review processes.

~~(f)(g)~~ The signature of an attorney or party on a request for a protest constitutes a certification by the signer that the signer has read such document; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose such as to harass, cause unnecessary delay or a needless increase in the cost of the procurement or of the litigation. If a protest is determined by the hearing officer or any subsequent appellate court proceeding to be frivolous or to have been filed without any substantial basis or reasonable expectation to believe that the protest was meritorious, the State CIO, upon motion or upon his own initiative, may impose upon the person who signed it, a represented party, or both, prohibition upon the party from

participation in any IT solicitation or award for a period of up to one year. Notification to the affected party shall be in writing.

Authority G.S. 147-33.76(b)(1); 150B-38.

09 NCAC 06B .1103 REQUEST FOR HEARING

(a) A request for an administrative hearing under Rule ~~1010~~ .1101 of this ~~Section~~ Subchapter must be in writing and shall contain the following information:

- (1) name and address of the person requesting the hearing;
- (2) a concise statement of the departmental action being challenged;
- (3) a concise statement of the manner in which the petitioner is aggrieved; and
- (4) a clear and specific demand for a public hearing.

(b) The request for hearing shall be filed ~~with~~ with and addressed to: State CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services, P.O. Box 17209, Raleigh, North Carolina 27619-7209; 27619-7209; or, if sent by United States Mail, postage prepaid to State CIO, ATTENTION: ITS Hearing Officer, N.C. Office of Information Technology Services, 3700 ~~if the request is sent registered mail, 3900 Wake Forest Road, Suite 104, Raleigh, North Carolina, 27609; 27609; if sent by certified mail, return receipt requested.~~

Authority G.S. 147-33.76(b)(1); 150B-38(a).

09 NCAC 06B .1104 DEFINITIONS

The definitions contained in G.S. 150B-2 are incorporated in this Section by reference. In addition to those definitions, the following definitions apply to this ~~Section~~ Subchapter:

- (1) "File or filing" means to place or the placing of the paper or item to be filed into the care and custody of the hearing ~~officer, officer~~ and acceptance thereof by ~~him, her/him~~. All documents filed with the hearing officer, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" ~~means shall be the State CIO, a member of the CIO's staff appointed by the CIO CIO or appointee under G.S. 150B-40; 150B-40 as the presiding officer,~~ or an administrative law judge assigned under G.S. 150B-40. The phrase "a majority of the agency," or "an agency" as specified in G.S. 150B-40 shall be interpreted in these Rules to mean the State CIO. The phrase "an agency member" or "member of an agency," if not applicable by its terms to the State CIO shall not be applicable in these Rules.
- (3) ~~"Party" means ITS, the offeror, the agency or an intervenor who qualifies under Rule 1024 of this Section.~~
- (4)(3) "Service or serve" means personal delivery or, unless otherwise provided by law or ~~rule, Rule~~ 4 of the North Carolina Rules of Civil

Procedure, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person required to be served at his or her last known address. A certificate of service by the person making the service shall be appended to every document requiring service under this Section. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service; or postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

Authority G.S. 147-33.76(b)(1); 150B-40.

09 NCAC 06B .1105 GENERAL PROVISIONS

The following general provisions apply to this Section:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1 and 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 apply in ~~contested cases~~ matters before the ~~Hearing Officer~~ hearing officer unless another specific statute or rule provides otherwise.
- (2) ITS may supply, at the cost for copies, forms for use in contested cases.
- (3) Every document filed with the hearing officer shall be signed by the author of the document, and shall contain his name, address, telephone number, and North Carolina State Bar number if the author is an attorney. An original and one copy of each document shall be filed. In any proceeding referred to the OAH pursuant to G.S. 150B-40, parties shall deliver a copy of each document filed with the OAH to the State CIO.
- (4) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (5) This Section and copies of all ~~matter~~ matters adopted by reference in this Section are available from ITS at cost.
- (6) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section. The rules contained in this Section govern the conduct of contested case hearings under Article 3A of Chapter 150B of the General Statutes.
- (7) Unless otherwise provided in a specific statute, time computations in contested cases under this Section are governed by G.S. ~~1A-1(6);~~ 1A-1, Rule 6.

- (8) If the State CIO determines that a hearing would assist him in reaching a decision, he may schedule a hearing, notwithstanding the fact that no request for a hearing has been received. In such cases the State CIO's written documentation shall be treated as a request for hearing.
- (9) The hearing officer may designate an administrative law counsel as an advisor to the hearing officer during the proceedings.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1106 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

- (1) The nature of the proceeding and the issues to be resolved;
- (2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
- (3) A list of proposed witnesses with a brief description of his or her proposed testimony;
- (4) A description of ~~what~~ the discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;
- (5) Venue considerations;
- (6) Estimation of length of the hearing;
- (7) The name, address, and telephone number of the party's attorney, if any; and
- (8) Other special matters.

The prehearing statement shall not be used to amend the original protest or to establish jurisdiction not previously established by the protest or request for hearing.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1107 DUTIES OF THE HEARING OFFICER

(a) In conjunction with the powers in this Section, in Article 3D of Chapter 147 of the General Statutes ~~G.S. 147~~, and in G.S. 150B, Article 3A the hearing officer shall perform the following duties, consistent with ~~law~~ law and as recommendations to the State CIO, if the hearing officer is not the State CIO:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;

- (5) Make preliminary, interlocutory, or other orders as deemed to be appropriate;
- (6) Recommend a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
- (7) Apply sanctions in accordance with Rule ~~4022~~ .1114 of this ~~Section~~ Subchapter.

(b) Recommended final agency decision. If an appointed hearing officer presides over any hearing, the hearing officer shall issue a written recommended final agency decision. The appointed hearing officer shall serve a copy of the recommended final agency decision upon all parties and the State CIO. Upon review of the recommended decision issued by the appointed hearing officer, the State CIO may adopt, modify or vacate the recommended decision and notify the parties. The State CIO shall make the final agency decision.

(c) Hearing conducted by the State CIO. In lieu of assigning a hearing officer to preside over any hearing, the State CIO may conduct the hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties expires, the State CIO shall issue a final agency decision.

(d) The recommended decision of the hearing officer, if any, and the decision of the State CIO shall be in writing and shall include findings of fact and conclusions of law. The report, decision or determination of the State CIO upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1108 CONSENT ORDER; SETTLEMENT; STIPULATION

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case. Any such disposition must be approved in writing by the State CIO.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1109 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing. Notice of the conference may be included in the pre-hearing conference notice or in a separate written order. The purpose of a settlement conference is to:

- (1) Explore any grounds upon which a contested case may be resolved without the need for a hearing; and
- (2) Pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.

(b) ~~Upon the request of any party, the hearing officer shall assign the case to another hearing officer appointed by the CIO under G.S. 150B-38(h) for the purpose of conducting a settlement conference.~~ Unless the parties and the other hearing officer agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule ~~1014~~ 1106 of this ~~Section~~ Subchapter.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the hearing officer presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the parties and on the hearing officer who is assigned to hear the case, case and subject to final approval by the State CIO if the hearing officer is not the State CIO.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1110 PREHEARING CONFERENCE

(a) The purpose of the prehearing conference is to simplify the issues to be determined; to obtain stipulations in regard to foundations for testimony or exhibits; to obtain stipulations ~~of agreement on undisputed or other agreements,~~ facts or the application of particular laws; to consider the proposed witnesses for each party; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine ~~deadlines~~ dates or schedules for the completion of any discovery; to establish hearing dates and locations if not previously set; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with Rule ~~1014~~ 1106 of this ~~Section~~ Subchapter. A prehearing conference on the simplification of issues, amendments, stipulations, or other matters may be entered on the record and may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1111 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening, or complicating the hearings process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties shall exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy ~~are significant enough to warrant~~ the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.

(e) ~~All~~ Unless otherwise ordered, all discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly ~~and~~ and, where necessary for a fair and impartial hearing, allow discovery during the pendency of the hearing.

(f) ~~No~~ Unless otherwise ordered, no later than 15 days after receipt of a notice requesting discovery, the receiving party shall:

- (1) ~~move~~ Move for relief from the request;
- (2) ~~provide~~ Provide the requested information, material or access; or
- (3) ~~offer~~ Offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1(37), to the extent that a hearing officer may impose such sanctions, and Rule ~~1022~~ 1114 of this ~~Section~~ Subchapter.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1112 CONSOLIDATION OF CASES

(a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings.

(b) A party requesting consolidation shall serve a ~~petition~~ motion for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer,

together with a certificate of service showing service on all parties as herein required. Any party objecting to the ~~petition~~ motion shall serve and file ~~his~~ its objections within ~~10~~ five days after service of the petition for consolidation.

(c) Upon determining whether cases ~~should~~ shall be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submittal of a written stipulation, signed by every party, to the hearing officer.

(e) Following receipt of a notice of or order for consolidation, any party may ~~petition~~ move for severance by serving ~~it~~ a motion on all other parties and filing ~~it~~ it with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

Authority G.S. 147-33.76(b)(1); 150B-38(h).

09 NCAC 06B .1114 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
- (2) Dismiss or grant the motion or petition;
- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party fails to comply with a subpoena, engages in behavior that obstructs the orderly conduct of proceedings, or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

(c) If a witness fails to comply with a subpoena, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

Authority G.S. 150B-38(h).

09 NCAC 06B .1115 MOTIONS

~~(a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the hearing officer pursuant to G.S. 150B-3A are governed by Rule 6 of the General Rules of Practice for the Superior and District Court.~~

~~(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argument is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion shall be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.~~

(a) Any party may file any motion which would be permitted under the Rules of Civil Procedure as though the contested case was a matter pending in a civil trial court. Motions practice in contested cases before the hearing officer pursuant to G.S. 150B, Article 3A, shall be governed by Rule 6 of the Rules of Civil Procedure and the General Rules of Practice for the Superior and District Courts of North Carolina.

(b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within the time permitted by the Rules of Civil Procedure.

(c) The hearing officer shall rule on any correctly filed motion. The hearing officer may rule on any motion with or without oral argument. The hearing officer shall notify the parties of the location, date, and time for oral argument if, in the hearing officer's discretion, oral argument is necessary for a full and complete record. The notice shall indicate whether the argument is to be conducted in person or by conference call.

Authority G.S. 150B-38(h).

09 NCAC 06B .1117 CONTINUANCES

(a) As used in this Rule, "good cause" includes death or incapacitating illness of a party, representative, or attorney of a ~~party, party;~~ a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is ~~clearly~~ necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the ~~final decision maker~~ hearing officer.

(b) As used in this Rule, "good cause" does not include: intentional ~~delay~~, delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(c) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to

the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

(e) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.

Authority G.S. 150B-38(h).

09 NCAC 06B .1118 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party has the right to present evidence, rebuttal testimony, and argument with respect to ~~the~~ issues of fact, law and policy, policy; and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the ~~Department~~ agency and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.

(e) ~~A party need not be represented by an attorney.~~ If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(g) Before issuing a recommended ~~decision~~, decision to the State CIO, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final ~~decision~~, decision in a contested case which has been assigned by the State CIO to a person other than the State CIO as described in G.S. 150B-40(e) and these Rules, the ~~hearing officer~~ State CIO ~~may shall~~ order any party to submit proposed findings of fact and written arguments.

Authority G.S. 150B-38(h).

09 NCAC 06B .1120 EVIDENCE

(a) The North Carolina Rules of Evidence as found in G.S. Chapter 8C govern in all contested case proceedings, except as provided otherwise in this ~~Section~~ Subchapter and G.S. 150B-41.

(b) The hearing officer ~~may~~ shall admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will require undue consumption of time or create substantial danger of undue prejudice or confusion.

(c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) ~~The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.~~ The hearing officer shall take official notice of standards and policies that have been established by ITS pursuant to Article 3D of Chapter 147 of the General Statutes. The hearing officer may take official notice of additional facts or documents as requested by a party or within the specialized knowledge of the hearing officer by entering a statement of the noticed fact or document and its source into the record. Upon a timely request, any party shall be given the opportunity to contest such additional facts or documents so noticed through submission of evidence and argument.

(g) ~~A party may call an adverse party; or an officer, director, managing agent, or employee of the state or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party, and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross examined, contradicted, and impeached by any other party adversely affected by the testimony. When the State CIO takes official notice of evidence not in the record when making a final decision, the parties shall be afforded notice and a hearing to~~

present arguments against the consideration of such evidence before a final decision is made.

Authority G.S. 150B-38(h).

**09 NCAC 06B .1121 FINAL AGENCY DECISION;
OFFICIAL RECORD**

(a) A copy of any decision or order shall be served as in the manner provided by G.S. 150B-42(a). The cost of the service, fees, and expenses for any witnesses or documents subpoenaed shall be paid in accordance with G.S. 150B-39(c) and G.S. 7A-314.

(b) The official record of a contested case is available for public inspection at reasonable times and under reasonable supervision except for those portions, if any, that the hearing officer has, consistent with law, ordered sealed.

~~(a)(c)~~ The hearing officer may, consistent with law, order part or all of an official record sealed.

~~(b)(d)~~ The official record shall be prepared in accordance with G.S. 150B-42.

~~(e)(e)~~ Contested case hearings shall be recorded either by a recording system or a professional court reporter using stenomask or stenotype.

~~(d)(f)~~ Transcript costs and other copying costs incurred by ITS shall be charged to or apportioned equally among the party or parties requesting a ~~transcript~~. transcript or copies of other records.

~~(e)(g)~~ Any other costs incurred by ITS when using a professional court reporter and other copying costs shall be charged to or apportioned equally among the ~~requesting party or parties.~~

~~(f)(h)~~ A 24-hour hearing cancellation notice is required in all cases. The party or parties responsible for the cancellation shall be liable for any cancellation fees.

~~(g)(i)~~ Transcripts of proceedings during which oral evidence is presented shall be made only upon request of a party. Transcript costs shall include the cost of an original for ITS. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer ~~who, in cases deemed to be appropriate by him, who~~ may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party that submitted it.

~~(h)(j)~~ Copies of tapes or other transcript media used (e.g., CDs) are available upon written request at a cost of five dollars (\$5.00) per ~~tape~~. tape or CD.

~~(i)(k)~~ Copies of ITS hearing ~~tapes~~ audio recordings, or ~~Non-ITS~~ non-ITS certified transcripts from those ~~tapes~~ audio recordings are not part of the official record.

Authority G.S. 150B-38(h).

**SECTION .1200 - DECLARATORY RULINGS; DEFAULT
PROCEEDINGS; DISQUALIFICATIONS; AND
DEBARMENT**

09 NCAC 06B .1201 DECLARATORY RULINGS

(a) Any request for a determination regarding the application of an ITS rule, statute or standard established by the State CIO to a specific factual situation must be directed to the State CIO. The request for a ruling will follow the Rules of this Section and applicable statutes. A declaratory ruling proceeding may include written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.

(b) Declaratory rulings pursuant to G.S. 150B-4 shall be issued by the State CIO only on the validity of an ITS rule or standard or on the applicability of a rule or order of the State CIO to stipulated facts. A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

(c) As used in this Section, "Standard" shall refer to and include such standards, policies and procedures adopted by the State CIO pursuant to authority found in Article 3D of Chapter 147 of the N.C. General Statutes.

(d) The petitioner must possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling in order to comply with statutory requirements, ITS rules, or departmental policy shall be apparent from the petition and shall be explained therein.

Authority G.S. 147, Article 3D; 150B, Article 4.

**09 NCAC 06B .1202 REQUESTS FOR
DECLARATORY RULINGS**

(a) Requests shall be in writing and dated and verified by the person submitting the same.

(b) The request shall contain:

- (1) The petitioner's name, address and telephone number;
- (2) The rule or statute, or both, referred to;
- (3) A statement of facts supporting the petitioner's request for a declaratory ruling;
- (4) The petitioner's option, a statement of any legal authorities, in support of the interpretation given the statute or rule by the petitioner;
- (5) A concise statement of the manner in which the petitioner is aggrieved by the rule, statute, or standard, or its potential application to the petitioner;
- (6) A statement of the practices or procedures likely to be affected by the requested declaratory ruling and the persons likely to be affected by the ruling;
- (7) A draft of the declaratory ruling sought by the petitioner, if a specified outcome is sought by the petitioner; and
- (8) A statement of whether the petitioner desires to present oral argument.

Authority G.S. 150B-104.

**09 NCAC 06B .1203 RESPONSE TO A REQUEST
FOR A DECLARATORY RULING**

(a) The State CIO shall consider the request within 30 days of receipt. The State CIO shall issue a ruling except:

- (1) When the State CIO finds that the person making the request is not a "person aggrieved," as defined in G.S. 150B-2(6);
- (2) When the State CIO finds, in a request concerning the validity of a rule, that the rulemaking record shows that the agency considered all factors identified by the petitioner as specific or relevant when the rule in question was adopted;
- (3) When the State CIO finds that the person requesting the ruling is not directly or indirectly affected substantially in his person, property, or public office or employment by the rule, statute, or order of the department which is the subject of the request;
- (4) When the petition does not state with enough specificity the factual situation involved, or the question is presented in such a manner that the State CIO cannot determine what the question is, or that the State CIO cannot respond with a specific ruling that will be binding on all parties;
- (5) When the State CIO has made a determination in a similar contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (6) Where the subject matter of the request is involved in pending litigation or contested case in any state or federal court in North Carolina.

(b) The State CIO shall, not later than the 60th day after receiving such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the ruling on the merits of the request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. The State CIO may rule at any meeting convened to consider the request, or defer the ruling until a later date, but not later than the 60th day after the request for a ruling is received. The State CIO may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in any notice given to the requesting party.

(c) Whenever the State CIO believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the State CIO shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(d) The State CIO shall consider a request to make a declaratory ruling on the validity of a rule only when the petitioner shows that circumstances are so changed since adoption of the rule that such a ruling would be warranted, or that the rule-making record for the rule evidences a failure by the agency to consider facts presented in the petition at the time of adoption of the rule. The

petitioner shall state in his request the consequences of a failure to issue a ruling.

Authority G.S. 150B-4.

09 NCAC 06B .1204 EFFECT OF A DECLARATORY RULING

For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) The statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
- (2) The State CIO changes the declaratory ruling prospectively for good reasons;
- (3) Any court sets aside the ruling; or
- (4) Any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

Authority G.S. 150B-4.

09 NCAC 06B .1205 RECORD OF RULING

A record of all declaratory rule making proceedings shall be maintained at the State CIO's office and shall be available for public inspection during regular office hours.

Authority G.S. 150B-4.

09 NCAC 06B .1206 DEFAULT PROCEEDINGS; DISQUALIFICATION; AND DEBARMENT

(a) DISQUALIFICATION:

The purchasing agency that issued the solicitation document resulting in the contract may find a contractor vendor in default of contract for failing to perform in accordance with the contract requirements, terms and conditions. If a contractor vendor is found in default of contract, the purchasing agency that issued the solicitation document resulting in the contract may take action, immediate if necessary, to purchase the needed goods or services on the open market and charge any additional cost for the goods or services and expense for doing so to the defaulting contractor vendor. If an agency other than ITS finds a contractor vendor in default, such action and the circumstances shall be reported by the agency to ITS in writing. This does not limit any other remedies that may be available to the state or agency.

(b) DEBARMENT:

ITS may remove the contractor vendor from any distribution lists that may be utilized utilized. ITS may and debar the contractor a vendor for cause from doing IT procurements contracting with the state for a period a period of not to exceed one year.

(c) NOTICE:

ITS shall notify any contractor vendor of the disqualification or debarment action in writing.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .1207 FAITHFUL PERFORMANCE

To ensure a vendor's faithful performance, a purchasing agency's contract may include such conditions and terms as:

- (1) A bond, or ~~other means of ensuring faithful performance~~, similar assurance, may be required of the ~~contractor~~ vendor at the ~~contractor's~~ vendor's expense; ~~expense~~;
- (2) Liquidated damages may be provided for in the contract, as a means of ensuring faithful performance from the ~~contractor~~; damages;
- (3) The agency may hold as a retainage a Δ percentage of the contract value to be remitted upon final acceptance by the agency; ~~held as a retainage~~;
- (4) The agency may withhold Withholding final payment contingent on acceptance of the final deliverable.

Authority G.S. 147-33.72C; 147-33.76(b)(1).

SECTION .1300 - EXEMPTIONS, EMERGENCIES, AND SPECIAL DELEGATIONS

09 NCAC 06B .1301 EXEMPTIONS

(a) ~~It is not mandatory for items listed in this Rule to be purchased through the ITS procurement office. The following are exemptions to ITS review and approval for purchases that exceed an agency's delegated authority.~~

- (1) ~~Packaged copyrighted software products;~~
- (2)(1) Services provided by individuals through direct employment contracts with the state;
- (3)(2) ~~Services~~ Non-severable services that are merely incidental to the purchase of supplies, materials, or equipment such as installation services;
- (4)(3) Personal services provided by a professional individual (person) on a temporary or occasional basis;
- (5)(4) Services provided directly by an agency of the state, federal or local government, or their employees when performing the service as part of their normal governmental function; and
- (6)(5) Information technology subscriptions for printed materials or online services.

(b) In addition to products and services noted in Paragraph (a) of this Rule, the State CIO or his designee may exempt other products and services from purchase through ITS provided that the State CIO or his designee determines that no price or quality advantage would be gained by handling a particular acquisition through ITS.

(c) As used in this Rule, direct employment contract means an agreement for services under (a) made by the person and an agency of the State.

Authority G.S. 147-33.95(f).

09 NCAC 06B .1302 EMERGENCY SITUATIONS OR PRESSING NEED

(a) An agency may make purchases of goods or services in the open market in cases of emergency or pressing need. ~~For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work. Emergencies are defined as situations that endanger lives, property or the continuation of a vital program, as determined by the agency executive officer, and that can be rectified only by immediate, on the spot purchases or rental of goods or services.~~

(b) ~~Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of good or service needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language terms and conditions issued by ITS, unless circumstances prohibit their use.~~

(e)(b) When emergency or pressing need action is necessary, and the estimated expenditure is over the purchasing agency's delegation, prior verbal approval shall be obtained from ITS if time permits. Subsequently, whether or not such prior approval was possible, if the expenditure is over the purchasing agency's delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to ITS. ITS shall report such purchases of goods that exceed the benchmark in 09 NCAC 06A .0103 to the Board of Awards as a matter of record.

Authority G.S. 143-52.1; 147-33.76(b)(1).

09 NCAC 06B .1303 SPECIAL DELEGATIONS

(a) The State CIO or his designee may authorize, by special delegation, any agency to purchase specific goods or services ~~even if the expenditure exceeds the benchmark. Such delegation is normally confined, but not limited, to goods or services which by their nature or circumstance, such as perishableness, transportation costs, market volatility, local conditions or local availability, would result in handling by ITS serving no practical purpose.~~ may approve an increase in an agency's general delegation. The resulting delegation shall be a special delegation. Every such delegation shall be in writing and made a matter of record.

(b) The State CIO or his designee may require that ~~offers received~~ an award recommendation under such delegations be sent to ITS for review of the purchasing agency's determination of the successful vendor.

(c) ITS shall periodically review its special delegations ~~of purchase to ascertain the availability of these goods or services and their continued suitability for delegation.~~

Authority G.S. 147-33.95(f).

09 NCAC 06B .1304 GENERAL DELEGATIONS

The general purchasing delegation for agencies the purchasing agency shall be not more than ~~twenty-five~~ twenty-five thousand dollars (\$25,000) unless specific authorization is given by the ~~CPO~~. State CIO. The ~~CPO~~ State CIO may lower or raise this general delegation for a specific agency, up to the benchmark established by the ~~CIO~~ under 09 NCAC 06A .0103 upon

consideration of the agency's overall capabilities, including staff resources, organizational structure, training, purchasing compliance reviews, electronic communication capabilities, and audit reports. If an agency wishes to obtain an increase in its general delegation, it shall submit a request in writing, outlining its overall capabilities, to the ~~CPO~~ State CIO for the ~~CPO's~~ State CIO's consideration.

Authority G.S. 147-33.76(b)(1).

09 NCAC 06B .1305 COMPLIANCE REVIEWS

(a) ITS ~~shall be responsible for~~ may conduct compliance reviews on purchasing practices at ~~all agencies~~ any purchasing agencies. The purpose of the compliance review shall be for determining if an agency is complying with ITS' ~~IT~~ IT purchasing ~~statutes~~ rules and ~~rules adopted thereunder~~ and whether it should continue having the same level of delegation, have it reduced, or if it qualifies for an increase. A copy of the compliance report shall be provided to the ~~agency's executive officer~~ agency head, the State Auditor, and the State Budget Officer.

(b) ITS staff may enter the purchasing agency's premises and obtain ~~an agency's its~~ its purchasing records for the purpose of the compliance review. The purchasing agency shall cooperate with ITS staff, providing them with requested records, adequate office space for conducting the review and agency purchasing staff for discussion of purchase transactions. ITS shall not ~~unnecessarily~~ require of the agency any more than is needed to complete the review.

(c) The State CIO may lower, or raise if requested, an agency's ~~general~~ delegation if the results of a compliance review by the compliance staff of ITS merit such action as determined by the State CIO. The State CIO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found.

(d) The State CIO ~~or his designee~~ shall provide to each agency, upon request, ITS' assistance in educational training for the agency's staff to better acquaint them with ITS' purchasing statutes and rules.

Authority G.S. 147-33.76(b)(1).

SECTION .1400 - RECORDS

09 NCAC 06B .1402 PROCUREMENT FILE RECORDS

(a) The purchasing agency ~~or ITS~~ shall identify each paper or electronic contract record individually so it can be readily located and referenced.

(b) The purchasing agency ~~or ITS~~ shall document all purchase transactions. As applicable, each paper or electronic ~~record~~ procurement file shall ~~include~~ include the following records:

- (1) Requisition;
- (2) ~~Required approval~~ Approval to proceed with acquisition;
- (3) Each Original original executed offers offer if in writing, or written documentation of verbal offers offer received;

- (4) ~~Selection justification or reason for cancellation;~~ Documentation supporting whether each offeror is responsive and responsible to terms of the solicitation, the use of a competitive range selection and rejection of offerors for negotiations, best and final offers (BAFO), award, or cancellation or other disposition of the solicitation as may be applicable;
- (5) ~~Worksheets/evaluations;~~ Worksheets/evaluations of individual offers;
- (6) ~~Distribution list, if used;~~ Vendor distribution list or proof of fulfilling advertisement requirement;
- (7) Written justification for limitation or waiver of competition, or emergency purchase, purchase, or waiver of any rule during the solicitation process;
- (8) Tabulation of offers received;
- (9) ~~Copy of purchase order(s) or certification to agency authorizing placing of order;~~ ITS approval of award recommendation;
- (10) ~~Related correspondence;~~ Purchase order or other payment verification;
- (11) Reason(s) for receiving only one offer in response to a solicitation;
- (12) ~~Negotiated contracts;~~ Summary of vendor debriefing, if any;
- (13) ~~Reasons for not accepting technical proposals; and Signed contracts or agency acceptance of offer(s);~~ and Signed contracts or agency acceptance of offer(s);
- (14) Board of Awards decision record; records; and
- (15) Protest documents.

(c) After award of ~~contract~~ contract, all material in the ~~contract record~~ procurement file, except ~~confidential non-public~~ information, shall be ~~open to interested persons during normal office hours, may be hand copied, or copies shall be furnished made available for inspection~~ in accordance with the Public Records Act, Law, G.S. 132-1 et seq.

Authority G.S. 147-33.95(f).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Home Inspector Licensure Board intends to adopt the rule cited as 11 NCAC 08 .1012 and amend the rule cited as 11 NCAC 08 .1116.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☒ RRC certified on: November 15, 2012
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncdoi.com/LS/

Proposed Effective Date: April 1, 2013

Public Hearing:

Date: January 11, 2013

Time: 9:00a.m.

Location: 322 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action:

11 NCAC 08 .1012 – is proposed for adoption because the Home Inspectors Licensure Board has an obligation to report annually upon the fiscal condition of its operations. Fees paid by licensees must sustain a viable licensing, education, investigation and disciplinary program administered by the Board to protect the public.

11 NCAC 08 .1116 – Code of Ethics is proposed for amendment because many consumer complaints against licensees allege or imply a conflict of interest exists when a home inspector is recommended by a real estate agent. This amendment proposes to eliminate direct or indirect compensation to realty agents or other parties having a financial interest in settlement of real estate transaction for referral of inspections.

Procedure by which a person can object to the agency on a proposed rule: The Home Inspectors Licensure Board will accept written objections to these rules until the expiration of the comment period on February 15, 2013.

Comments may be submitted to: Karen Waddell, Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919)733-4529, email karen.waddell@ncdoi.gov

Comment period ends: February 15, 2013

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 08 - ENGINEERING AND BUILDING CODES
DIVISION**

**SECTION .1000 - N.C. HOME INSPECTOR LICENSURE
BOARD**

**11 NCAC 08 .1012 SUSPENSION OF AUTHORITY
TO EXPEND FUNDS**

In the event that the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses, registrations, and certifications and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 93B-2(d).

11 NCAC 08 .1116 CODE OF ETHICS

- (a) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.
- (b) Opinions expressed by licensees shall ~~only~~ be based only on their education, experience, and honest convictions.
- (c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.
- (d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (e) ~~No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible. No licensee shall directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements.~~
- (f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.
- (g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.
- (h) A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee's company.
- (i) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.
- (j) Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

Authority G.S. 143-151.49.

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 adopt the rule cited as 12 NCAC 09B .0417 and amend the rules cited as 12 NCAC 09B .0202, .0304, .0414-.0415; 09H .0101-.0105.

Agency obtained G.S. 150B-19.1 certification:

- ☐ OSBM certified on:
☒ RRC certified on: September 20, 2012
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

Proposed Effective Date: May 1, 2013

Public Hearing:

Date: February 21, 2013

Time: 1:00 p.m.

Location: Wake Technical Community College Public Safety Center, 321 Chapanoke Rd, Raleigh, NC

Reason for Proposed Action:

12 NCAC 09B .0202 – Basic Law Enforcement topic name change from Electrical and Hazardous Materials to Explosives and Hazardous Materials, which is a more accurate description of the content in the block of instruction.

12 NCAC 09B .0304 – The requirements to become certified as an Explosive and Hazardous Materials Emergencies (EHME) instructor are proposed for amendment with the addition of a new Specialized Explosives and Hazardous Material Instructor Training Course.

12 NCAC 09B .0414 – Adds the requirement that at the end of the new Specialized Explosives and Hazardous Materials Instructor Training Course a written exam must be administered and passed with a score of 75% or greater.

12 NCAC 09B .0415 – Adds the requirements necessary to satisfy the minimum training standards for new Specialized Explosives and Hazardous Materials Instructor Training Course.

12 NCAC 09B .0417 – New rule outlining the curriculum for the new Specialized Explosives and Hazardous Materials Instructor Training Course.

12 NCAC 09H – As part of the federal Law Enforcement Officers Safety Act Improvements Act of 2010, Section 926C, Title 18 was amended to include officers who have separated, but not necessarily, retired, from an agency with "an aggregate 10 years or more" of service. Due to the change in federal law it is necessary to amend all of the rules in 12 NCAC 09 Subchapter H to include the word "separated."

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 Richard Squires, Department of Justice, Criminal Justice Standards Division, PO Drawer 149, Raleigh, NC 27602.

Comments may be submitted to: Richard Squires, Criminal Justice Standards Division, PO Drawer 149, Raleigh, NC 27602, phone (919) 661-5980, email rsquires@ncdoj.gov

Comment period ends: February 21, 2013

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected – All rules
☐ Environmental permitting of DOT affected
 Analysis submitted to Board of Transportation
☒ Local funds affected – 12 NCAC 09B .0202, .0304, .0414, .0415, .0417
 Date submitted to OSBM: September 18, 2012
☐ Substantial economic impact (≥\$500,000)
☒ Approved by OSBM
☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

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

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;

- (2) Select and schedule instructors who are 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;
 - (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;
 - (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
 - (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;
 - (8) If appropriate, recommend housing and dining facilities for trainees;
 - (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;
 - (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
 - (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 ~~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;
 - (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;
- (3) Schedule only those instructors 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;
 - (4) With the exception of the First Responder, Physical Fitness, ~~Electrical-Explosives~~ and Hazardous Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor certified by the Commission for each six trainees while actively engaged in a practical performance exercise;
 - (5) Schedule one specialized certified instructor certified by the Commission for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;"
 - (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;
 - (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; and
 - (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;
 - (8) Monitor, or designate an instructor certified by the Commission to monitor, ~~the presentations~~ a presentation of all instructors each instructor once during each three year certification period in each topic taught by the instructor and prepare a written evaluations-evaluation ~~on their-the instructor's~~ 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~~ evaluations of the instructor. For probationary instructors, ~~these~~ the evaluations conducted by another instructor 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 instructor 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;
- (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);
- (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; and
- (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; and
 - (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, as follows:
 - (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 last four digits of the social security numbers of all instructors and evaluators; and
 - (C) a copy of any rules, regulations, and requirements for the school; and
 - (4) Not more than 10 days after course completion 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 certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction;
- (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, and Presentation~~ which shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained on each type of approved speed measurement instrument. 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.

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)
- (8) 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;
- (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 CPR instructor certification through an organization whose curriculum meets the national standard;
 - (B) hold, or have held, basic Emergency Medical Technician certification;
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a 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;
 - (B) hold CPR instructor certification through an organization whose curriculum meets the national standard;
 - (C) hold, 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;
 - (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;
 - (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;
 - (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;
 - (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 valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be presently 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;
 - (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;
 - (2) hold 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 instructor certification as a First Responder Awareness Level Hazardous Materials instructor; hold~~

- General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
- (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; successfully complete the pertinent Commission-approved specialized instructor training course; 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; 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;~~
- (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; successfully complete the pertinent Commission-approved specialized instructor training course; and~~
- (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.

Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

12 NCAC 09B .0414 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" course, "Specialized Driver Instructor Training" course, "Specialized Subject Control Arrest Techniques Instructor Training" course, "Specialized Physical Fitness Instructor Training" course, "Specialized Explosives and Hazardous Materials Instructor Training" course, the "Radar Instructor ~~Training Course," "Training" course~~, the "Criminal Justice TD/SMI Instructor ~~Training Course," "Training" course~~, the "Lidar Instructor ~~Training Course," "Training" course~~, the

"Re-Certification Training for Radar Instructors" course, the "Re-Certification Training for TD/SMI Instructors" course, and the "Re-Certification Training for Lidar Instructors" course, in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves 75 percent correct answers.

(e) A trainee who fails to achieve a score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

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

12 NCAC 09B .0415 SATISFACTION OF MINIMUM TRAINING -- SPECIALIZED INSTRUCTOR

(a) To acquire successful completion of the "Specialized Firearms Instructor Training" course, "Specialized Driver Instructor Training" course, "Specialized Subject Control Arrest Techniques Instructor Training" course, "Specialized Physical Fitness Instructor" course, and the "Specialized Explosives and Hazardous Materials Instructor Training" course, the trainee shall:

- (1) satisfactorily complete all required coursework as specified in the course abstract of the "Specialized Firearms Instructor Training Manual," the "Specialized Driver Instructor Training Manual," the "Specialized Subject Control Arrest Techniques Instructor Training Manual," ~~and the "Specialized Physical Fitness Instructor Training Manual," and the "Specialized Explosives and Hazardous Materials Instructor Training Manual"~~ as published by the North Carolina Justice Academy; and
- (2) demonstrate proficiency in all required motor-skill and performance subjects as specified in each specialized instructor training manual; and
- (3) achieve a score of 75 percent correct answers on a comprehensive written examination.

(b) Should a trainee fail to meet the minimum criteria on a motor-skill or performance area, he/she shall be authorized one opportunity for a re-test at the discretion of the school director. Such re-test must be completed during the original course and prior to the trainee's being administered the comprehensive

written examination. Failure to meet the required criteria on a re-test requires enrollment in a subsequent course.

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

12 NCAC 09B .0417 SPECIALIZED EXPLOSIVES AND HAZARDOUS MATERIALS INSTRUCTOR TRAINING

(a) The instructor training course required for specialized explosives and hazardous materials instructor certification shall consist of a minimum of 68 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized explosives and hazardous materials instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice explosives and hazardous materials instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized explosives and hazardous materials instructor training shall:

- (1) have completed either
 - (A) the criminal justice general instructor training course; or
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with application in education, military training, and private enterprise;
- (2) present a written endorsement by either
 - (A) a certified school director indicating the student will be utilized to instruct explosives and hazardous materials in Basic Law Enforcement Training Courses; or
 - (B) a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct explosives and hazardous materials training in the "Law Enforcement Officer's Annual In-Service Training Program"; and
- (3) present a completed OSHA Respirator Medical Evaluation Questionnaire, accompanied by a statement from a licensed medical professional stating the applicant is physically fit to participate in the course.

(d) Each specialized explosives and hazardous materials instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation 2 Hours
- (2) Introduction to Hazardous Materials 1 Hour
- (3) Hazardous Materials Identification 2.5 Hours
- (4) Awareness Level Actions at Hazardous Materials Incidents 1.5 Hours

- (5) Chemical Properties and Hazardous Materials Behavior 3 Hours
- (6) Incident Management 3 Hours
- (7) Strategic Goals and Tactical Objectives 3.5 Hours
- (8) Terrorist and Other Criminal Activity 5 Hours
- (9) Personal Protective Equipment 5 Hours
- (10) Decontamination 5 Hours
- (11) Product Control 4 Hours
- (12) Air Monitoring and Sampling 1.5 Hours
- (13) Victim Rescue and Recovery 4 Hours
- (14) Evidence Preservation and Sampling 3 Hours
- (15) Illicit Laboratories 2 Hours
- (16) Introduction to Explosive Devices 1 Hour
- (17) Improvised Explosive Device Anatomy 2 Hours
- (18) Packaged Improvised Explosive Devices 1 Hour
- (19) Suicide/Homicide Improvised Explosive Devices 1 Hour
- (20) Vehicle Borne Improvised Explosive Devices 1 Hour
- (21) Radio Controlled Improvised Explosive Devices with Live Demonstration 5 Hours
- (22) Improvised Explosive Device Threat Response 1 Hour
- (23) Explosives and Hazardous Materials Emergencies and BLET Lesson Plan Review 10 Hours

(e) The texts and publications utilized in the "Explosives and Hazardous Materials Specialized Instructor Training" course shall be those approved by the Education and Training Committee of the Criminal Justice Education and Training Standards Commission, along with the current "Explosives and Hazardous Materials Emergencies Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy, which shall be used as the basic curriculum for delivery of specialized Explosives and Hazardous Materials instructor training courses. Copies of these publications may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at no cost to the student from the Academy at the following address:

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

(f) The Commission-certified school that is certified to offer the "Specialized Explosives and Hazardous Materials Instructor Training" course is the North Carolina Justice Academy.

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

SUBCHAPTER 09H - QUALIFIED RETIRED LAW

ENFORCEMENT OFFICERS

**SECTION .0100 - FIREARMS QUALIFICATION
CERTIFICATION PROGRAM**

12 NCAC 09H .0101 PURPOSE

The Commission hereby establishes rules to allow for the firearms qualification certification of qualified retired or separated law enforcement officers, as defined in G.S. 14-415.10, who are authorized by federal law, Section 926C of Title 18 of the United States Code, to lawfully carry handguns concealed. The rules in this Section establish the method by which a qualified retired or separated officer shall be tested to determine whether the officer meets the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm. The rules in this Section do not apply to qualified retired or separated law enforcement officers who ~~have complete~~ completed the required training and firearms qualification with the agency from which they ~~retired~~ retired or separated.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

**12 NCAC 09H .0102 MINIMUM TRAINING
SPECIFICATIONS**

- (a) Each qualified retired or separated law enforcement officer must qualify with each handgun he/she will carry in accordance with the standards outlined in 12 NCAC 09E .0105(1) and 12 NCAC 09E .0106(a), (c), (e), (f) and (g), which shall be incorporated in classroom instruction and firearms qualification on the firing range utilizing the course of fire from the "Specialized Firearms Instructor Training Manual."
- (b) In addition to the standards set out in Rules 09E .0105 and .0106, each qualified retired or separated law enforcement officer shall also receive a minimum of two hours of instruction on the North Carolina laws of self defense and the use of force by private citizens, detention of persons by private persons, and assistance to law enforcement officers by private persons.
- (c) Qualified retired or separated law enforcement officers shall qualify with each handgun that will be carried concealed at least once every 12 months. For the purpose of this Rule, handgun shall include semi-automatic pistols or revolvers.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.2.

12 NCAC 09H .0103 INSTRUCTORS

- (a) Only instructors who hold Specialized Instructor Certification in Firearms issued by the Criminal Justice Education and Training Standards Commission as outlined in Rules 09B .0302 and 09B .0304 may conduct the firearms qualification training as specified in Rule 09H .0102.
- (b) Each instructor specified in Paragraph (a) of this Rule shall record and retain the firearms qualification scores for each qualified retired or separated law enforcement officer trained by the instructor for a period of five years. These scores shall not be transmitted to the Criminal Justice Standards Division unless requested but must be available for inspection by Criminal Justice Standards Division representatives at reasonable times.

If the instructor is conducting training on behalf of a North ~~Carolina, Carolina~~ governmental law enforcement agency, the North Carolina Justice Academy, or a North Carolina Community College, the institution shall maintain the records in lieu of the instructor in order to comply with this Rule.

- (c) Upon successful qualification, the instructor shall sign and date the Retired or Separated Law Enforcement Officers Firearms Qualification Certification Application Form (F-9R) attesting to the successful qualification.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0104 SANCTIONS

- (a) The Commission shall deny or revoke the applicant for firearms qualification certification or the qualified retired or separated law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer has willfully and intentionally falsified any application or documentation required for qualification certification. Any applicant or qualified retired or separated law enforcement officer denied or revoked may request an administrative hearing with the Commission subsequent to the summary denial or revocation in accordance with G.S. Chapter 150B, Article 3A.
- (b) The Commission may deny or suspend the applicant or retired or separated law enforcement officer's firearms qualification certification when the Commission finds the applicant or retired officer:

- (1) has failed to successfully complete the required training or qualification specified in Rule 09H .0102; or
- (2) is ineligible to receive ~~and or~~ possess firearms under federal or state law.

- (c) Before taking action, the Standards Division shall investigate the alleged violation of Paragraph (b) of this Rule and present a report of its findings to the Probable Cause Committee of the Commission.

- (d) The Probable Cause Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to 12 NCAC 09A .0107 and 26 NCAC 03; or
- (3) determine the appropriate sanctions against the violator pursuant to Paragraphs (f) and (g) of this Rule.

- (e) Denials or revocations in accordance with Paragraph (a) of this Rule are permanent. The retired or separated officer is ineligible to ever receive firearms qualification certification from the Commission.

- (f) Denials or suspensions in accordance with Paragraph (b) of this Rule are:

- (1) until the applicant or retired or separated officer has successfully completed the required training or qualification specified in Rule 09H .0102; or
- (2) until the applicant or retired or separated officer is eligible to receive or possess firearms under federal or state law.

(g) Any applicant or qualified retired or separated law enforcement officer who receives firearms qualification certification under the rules in this Section who becomes ineligible under any of the standards enumerated in ~~this Rule~~ the rules of this Section shall notify the Criminal Justice Standards Division of such disqualification within 10 calendar days of the occurrence of the event.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

12 NCAC 09H .0105 FILING AND FEES

Each applicant for firearms qualification certification under the Qualified Retired or Separated Law Enforcement Officers Firearms Qualification Certification Program shall submit the following to the Commission:

- (1) An original Commission-approved application form containing the applicant's notarized signature which attests that the applicant meets the definition of qualified retired or separated law enforcement officer set forth in G.S. 14-415.10 and is eligible to receive or possess firearms under federal and state law. The application form must also include the signature of a Commission certified Specialized Firearms Instructor attesting that the applicant has met the training and qualification standards as specified in Rule 09H .0102 and lists the handguns with which the qualified retired or separated officer qualified;
- (2) A copy of the qualified retired or separated officer's photographic identification indicating retirement or separation status issued by the law enforcement agency from which the applicant ~~retired~~; retired or separated; and
- (3) A fee of fifty dollars (\$50.00) for the initial one-year qualification and a fee of twenty-five dollars (\$25.00) for the annual renewal thereafter. Applications and fees shall be submitted to:

Criminal Justice Standards Division
North Carolina Department of Justice
Post Office Drawer 149
Raleigh, NC 27602.

All fees shall be paid by certified check or money order
made payable to the North Carolina
Department of Justice.

Authority G.S. 17C-6; 14-415.10; 14-415.25; 14-415.26.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03I .0114; 03J .0209; 03L .0105; 03M .0201-.0202; 03Q .0202; 03R .0112, .0201.

Agency obtained G.S. 150B-19.1 certification:

- ☒ **OSBM certified on:** August 3, August 9, August 20, and October 25, 2012
☐ **RRC certified on:**
☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/mf/mfc-proposed-rules-links>

Fiscal Note if prepared posted at:

http://www.osbm.state.nc.us/files/pdf_files/DENR08032012.pdf
http://www.osbm.state.nc.us/files/pdf_files/DENR08032012_2.pdf
http://www.osbm.state.nc.us/files/pdf_files/DENR08092012.pdf
http://www.osbm.state.nc.us/files/pdf_files/DENR08202012.pdf
http://www.osbm.state.nc.us/files/pdf_files/DENR10252012.pdf

Proposed Effective Date: May 1, 2013

Public Hearing:

Date: January 15, 2013

Time: 6:00 p.m.

Location: DENR Washington Regional Office, 943 Washington Square Mall, Washington, NC 27889

Reason for Proposed Action:

15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS

In accordance with a request from the N.C. Marine Fisheries Commission, proposed amendments modify trip ticket reporting requirements to require all fish dealers that report an annual average of greater than 50,000 pounds of finfish for the previous three calendar years to report via electronic data file submission to the Division. Electronic reporting files are processed more quickly than paper files and the faster access to data reported in electronic files allows fisheries managers to make more timely decisions and also more efficiently monitor fisheries landings for species managed under a quota or a cap.

15A NCAC 03J .0209 ALBEMARLE SOUND/CHOWAN RIVER HERRING MANAGEMENT AREAS

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

15A NCAC 03R .0201 STRIPED BASS MANAGEMENT AREAS

In accordance with the N.C. Estuarine Striped Bass Fishery Management Plan, proposed amendments re-establish a coordinate point on land that has eroded for Roanoke Marshes Point, the western point of the southern boundary of the Albemarle Sound Management Area. The orientation of the boundary line remains unchanged. Establishing a new point is necessary to complete the management area line and facilitate fishing operations and enforcement.

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

Proposed amendments replace the 100-count measurement of shrimp harvested with a cast net in closed areas to a two-quart measurement, to improve Marine Patrol Officers' safety when enforcing shrimp harvest limits.

15A NCAC 03M .0201 GENERAL

In accordance with the N.C. Estuarine Striped Bass Fishery Management Plan, proposed amendments allow the potential use of hook-and-line gear for the commercial harvest and sale of striped bass in estuarine areas under the jurisdiction of the N.C. Marine Fisheries Commission, providing a potential alternative to gill net fishing. But, to be fully effective, these rule changes must be accompanied by a proclamation issued by the Fisheries Director providing for the use of hook-and-line gear as an acceptable means or method for the commercial harvest of striped bass during the open season. To ensure protection of the stock and to prevent abuse of additional commercial opportunities, such a proclamation would only be issued following thorough discussions by the N.C. Marine Fisheries Commission and its advisory committees on the unique characteristics of the Albemarle Sound Management Area and the Central Southern Management Area striped bass fisheries. Also, the proposed amendments do not automatically allow the commercial use of this gear everywhere. It remains unlawful to sell hook-and-line caught fish from joint waters of the Roanoke River Management Area, which is under the jurisdiction of the N.C. Wildlife Resources Commission. It also remains unlawful to sell Atlantic Ocean striped bass caught with the use of hook-and-line gear. Any changes to the commercial harvest and sale of Atlantic Ocean striped bass would be considered in the context of the next N.C. Interjurisdictional Fishery Management Plan review. Changes made to that plan would also be required to be implemented under the Fisheries Director's proclamation authority.

15A NCAC 03M .0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS

In accordance with the N.C. Estuarine Striped Bass Fishery Management Plan, proposed amendments clarify that it remains unlawful to sell hook-and-line caught fish from joint waters of the Roanoke River Management Area, which is under the jurisdiction of the N.C. Wildlife Resources Commission. Proposed amendments to Rule 15A NCAC 03M .0201 allow the potential use of hook-and-line gear for the commercial harvest and sale of striped bass in estuarine areas under the jurisdiction of the N.C. Marine Fisheries Commission.

15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

In accordance with the N.C. Estuarine Striped Bass Fishery Management Plan, proposed amendments shift the existing Joint/Coastal boundary line between the Albemarle Sound Management Area and the Roanoke River Management Area for easier public identification and adherence to striped bass regulations.

Procedure by which a person can object to the agency on a proposed rule: Objections shall be submitted in writing to Catherine Blum, Rulemaking Coordinator, NC Division of Marine Fisheries, PO Box 769, Morehead City, NC 28557; fax 252-726-0254; email catherine.blum@ncdenr.gov. Explain the reasons for objection and specify the portion of the rule to which the objection is being made.

Comments may be submitted to: Catherine Blum, PO Box 769, Morehead City, NC 28557, phone 252-808-8014, fax 252-726-0254, email catherine.blum@ncdenr.gov

Comment period ends: February 15, 2013

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 after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule 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 919-431-3000.

Fiscal impact (check all that apply).

- ☒ **State funds affected** 15A NCAC 03I .0114; 03L .0105
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☒ **Approved by OSBM**
- ☒ **No fiscal note required by G.S. 150B-21.4** 15A NCAC 03J .0209; 03M .0201-.0202; 03Q .0202; 03R .0112, .0201

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03I – GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0114 RECORDKEEPING REQUIREMENTS

(a) It is unlawful for a fish dealer:

- (1) To fail to accurately and legibly complete all mandatory items on the North Carolina trip ticket for each transaction and submit the trip ticket in accordance with G.S. 113-168.2;
- (2) To fail to provide to the Division a ~~completed no transaction form by the tenth day of the following month when no transactions occurred for a month;~~ Trip Ticket Submittal/Transaction form indicating the number of transactions that occurred during the previous month;
- (3) To fail to make paper copies of trip tickets available at the dealer location for inspection by Marine Patrol inspectors;

- (4) To fail to submit trip tickets to the Division via electronic file transfer if that dealer reported an annual average of greater than 50,000 pounds of finfish for the previous three calendar years. Dealers subject to the electronic reporting requirement will be notified via certified mail and within 120 days of receipt shall:

(A) Initiate electronic file transfer of trip tickets; and

(B) Continue to report by electronic file transfer until the dealer no longer holds a fish dealer license with finfish or consolidated categories;

- (5) To fail to use software or web-based utilities authorized by the Division when reporting electronically. Electronic submittals shall meet all other recordkeeping requirements in accordance with G.S. 113-168.2; and

- ~~(3)(6)~~ To fail to keep all trip tickets and all supporting documentation for each transaction including receipts, checks, bills of lading, ~~records~~ records, electronic files and accounts for a period of not less than three years.

(b) It is unlawful for a seller licensed under G.S. 113, Article 14A or donor to fail to provide to the fish dealer, at the time of transaction, the following:

- (1) A current and valid license or permit to sell the type of fish being offered and if a vessel is used, the commercial fishing vessel registration; and
- (2) Complete and accurate information on harvest method and area of catch and other information required by the Division.

(c) It is unlawful to transport fish without having ready at hand for inspection a bill of consignment, bill of lading, or other shipping documentation provided by the shipping dealer showing thereon the name of the consignee, name of the shipper, the date of the shipment, and the quantity of each species of fish shipped. In the event the fisherman taking the fish is also a dealer and ships from the point of landing, all shipping records shall be recorded at the point of landing. Fishermen who transport their fish directly to dealers are exempt from this Paragraph of this Rule.

(d) It is unlawful to export fish landed in the State in a commercial fishing operation without a North Carolina licensed fish dealer completing all the record keeping requirements in G.S. 113-168.2(i).

(e) It is unlawful to offer for sale fish purchased from a licensed fish dealer without having ready at hand for inspection written documentation of purchase showing thereon the name of the licensed dealer, name of the purchaser, date of the purchase, and the quantity of each species purchased.

(f) It is unlawful for a holder of a Fish Dealer's License to have fish in possession at a licensed location without written documentation from a licensed fish dealer or a completed North Carolina Marine Fisheries Trip Ticket to show the quantity and origin of all fish.

Authority G.S. 113-134; 113-168.2; 113-168.3; 113-169.3; 113-170; 113-170.3; 113-170.4; 143B-289.52.

SUBCHAPTER 03J – NETS, POTS DREDGES, AND OTHER FISHING DEVICES

SECTION .0200 – NET RULES, SPECIFIC AREAS

15A NCAC 03J .0209 ALBEMARLE SOUND/CHOWAN RIVER HERRING MANAGEMENT AREAS

(a) The Albemarle Sound Herring Management Area is defined as Albemarle Sound and all its joint water tributaries; Currituck Sound; Roanoke and Croatan sounds and all their joint water tributaries, including Oregon Inlet, north of a line beginning on the west shore at a point ~~35° 48.3693' N – 75° 43.7232' W~~ 35° 48.5015' N – 75° 44.1228' W on Roanoke Marshes Point; running southeasterly to the east shore to a point 35° 44.1710' N – 75° 31.0520' W on the north point of Eagles Nest Bay.

(b) The Chowan River Herring Management Area is defined as that area northwest of a line beginning on the west shore at a point 35° 59.9267' N – 76° 41.0313' W on Black Walnut Point; running northeasterly to the east shore to a point 36° 02.2140' N – 76° 39.3240' W on Reedy Point, to the North Carolina/Virginia state line; including the Meherrin River.

(c) Effective January 1, 2001, it is unlawful to use drift gill nets in the Albemarle Sound and Chowan River river herring management areas with a mesh length less than three inches from January 1 through May 15.

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03L – SHRIMP, CRABS AND LOBSTER

SECTION .0100 – SHRIMP

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It is unlawful to:

- (1) Possess more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303 (e) and (f).
- (2) Take or possess shrimp ~~taken from any area~~ closed to the taking of shrimp except 400 shrimp ~~two quarts of shrimp~~ per person per day may be taken while fishing in a closed area with a cast net.

Authority G.S. 113-134; 113-182; 143B-289.52.

SUBCHAPTER 03M – FINFISH

SECTION .0200 – STRIPED BASS

15A NCAC 03M .0201 GENERAL

(a) Striped bass is defined as striped bass (*Morone saxatilis*) and its hybrids taken in coastal and joint fishing 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.~~

~~(e)(b)~~ It is unlawful to possess striped bass imported from other states less than 18 inches long (total length).

~~(d)(c)~~ 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; and
 - (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)(d)~~ The management ~~units and recreational fishery management~~ areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03M .0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) It is unlawful to possess striped bass from the coastal fishing waters of the Cape Fear River and its tributaries.

(b) It is unlawful to possess striped bass from the Roanoke River Management Area in a commercial fishing operation.

~~(b)(c)~~ The Fisheries Director may, by proclamation impose any or all the following restrictions on the taking of striped bass in a commercial fishing operation or for recreational purposes in internal coastal waters during the period from October 1 through April 30:

- (1) Specify fishing days and times,
- (2) Specify areas,
- (3) Specify quantity, except possession for recreational purposes shall not exceed:
 - (A) more than three fish in any one day in the Albemarle Sound Management Area as designated in 15A NCAC 03R .0201, and
 - (B) more than two fish in any one day in the joint and coastal fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
- (4) Specify means/methods,
- (5) Specify size, but the minimum size specified shall not be less than 18 inches total length, and
- (6) Require submission of statistical and biological data.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52.

**SUBCHAPTER 03Q – JURISDICTION OF AGENCIES:
CLASSIFICATION OF WATERS**

**SECTION .0200 - BOUNDARY LINES:
COASTAL-JOINT-INLAND FISHING WATERS**

15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 03Q .0201 are as follows:

- (1) Beaufort ~~County~~ County:
 - (a) Pamlico -Tar River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 32.2167' N - 77° 02.8701' W; running southwesterly along the east side of the railroad bridge to a point on the south shore 35° 32.0267' N - 77° 03.5179' W.
 - (i) All Manmade tributaries - All manmade tributaries within Pamlico – Tar River in Beaufort County are designated as Joint.
 - (b) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.
 - (i) Flax Pond Bay - All waters within this waterbody are designated as Coastal.
 - (ii) Upper Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.8946' N - 76° 32.1231' W; running northeasterly to a point on the east shore 35° 31.9656' N - 76° 32.0114' W.
 - (iii) Lower Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the

- west shore 35° 32.4188' N - 76° 35.3924' W; running northeast to a point on the east shore 35° 32.4691' N - 76° 35.2748' W.
- (iv) George Best Creek - All waters within this waterbody are designated as Coastal.
- (v) Toms Creek - All waters within this waterbody are designated as Coastal.
- (vi) Pantego Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 31.9908' N - 76° 36.6105' W; running southerly along the Breakwater to a point 35° 31.6628' N - 76° 36.9840' W; running southwesterly to a point on the south shore 35° 31.5653' N - 76° 37.3832' W.
- (vii) Pungo Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 29.9986' N - 76° 40.3564' W; running southerly to a point on the south shore 35° 29.8887' N - 76° 40.3262' W.
- (A) Vale Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.0370' N - 76° 38.9044' W; running northeasterly to a point on the east shore 35° 31.0528' N - 76° 38.8536' W.
- (B) Scotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 30.4264' N - 76° 40.1156' W; running easterly to a point on the east shore 35° 30.4264' N - 76° 39.9430' W.
- (C) Smith Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 30.2844' N - 76° 40.2941' W; running southerly to a point on the south shore 35° 30.1982' N - 76° 40.2621' W.
- (viii) Woodstock (Little) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 30.5291' N - 76° 38.1600' W; running easterly to a point on the east shore 35° 30.4852' N - 76° 38.0278' W.
- (ix) Jordan Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 27.7256' N - 76° 36.2159' W; running southerly to a point 35° 27.5587' N - 76° 36.2704' W; following the eastern shore to a point 35° 27.4651' N - 76° 36.3294' W; running southerly to a point on the south shore 35° 27.3429' N - 76° 36.4498' W.
- (x) Satterthwaite Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 35° 25.2994' N - 76° 35.4281' W; running southerly to a point on the south shore 35° 25.1284' N - 76° 35.4949' W.
- (xi) Wright Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the west shore 35° 24.8664' N - 76° 35.4240' W; running southeasterly to a point on the east shore 35° 24.7995' N - 76° 35.3086' W.
- (c) North Creek - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.1667' N - 76° 40.1042' W; running easterly to a point on the east

- | | | | |
|-----|---|-----|---|
| | shore 35° 25.0971' N - 76° 39.6340' W. | | shore 35° 29.1059' N - 76° 57.1188' W. |
| (d) | St. Clair Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7691' N - 76° 42.6406' W; running easterly to a point on the east shore 35° 25.7695' N - 76° 42.5967' W. | (k) | Herring Run (Runyan Creek) - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.1615' N - 77° 02.3606' W; running southeasterly to a point on the east shore 35° 32.1340' N - 77° 02.3438' W. |
| (e) | Mixon Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7601' N - 76° 46.5971' W; running easterly to a point 35° 25.7304' N - 76° 46.2547' W; following the southern shoreline to a point 35° 25.6878' N - 76° 46.2034' W; running southeasterly to a point 35° 25.6606' N - 76° 46.1892' W; following the southern shoreline to a point 35° 25.6267' N - 76° 46.1494' W; running southeasterly to a point on the east shore 35° 25.6166' N - 76° 46.1361' W. | (l) | Chocowinity Bay - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 35° 29.4751' N - 77° 01.8507' W; running northeasterly to a point on the east shore 35° 29.8780' N - 77° 01.3169' W. |
| | | (m) | Calf Tree Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 29.2268' N - 77° 01.2973' W; running southeasterly to a point on the south shore 35° 29.2115' N - 77° 01.2831' W. |
| (f) | Bath Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.1685' N - 76° 49.4087' W; running northeasterly to a point on the east shore 35° 27.2371' N - 76° 49.0969' W. | (n) | Hills Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 28.5227' N - 77° 00.2664' W; running easterly to a point on the east shore 35° 28.5193' N - 77° 00.2270' W. |
| (g) | Duck Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 27.5395' N - 76° 52.0074' W; running southerly to a point on the east shore 35° 27.4401' N - 76° 51.9827' W. | (o) | Blounts Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 26.2010' N - 76° 58.1716' W; running southerly to a point on the south shore 35° 26.1369' N - 76° 58.1671' W. |
| (h) | Mallard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.6461' N - 76° 53.6398' W; running easterly to a point on the east shore 35° 27.6425' N - 76° 53.5816' W. | (p) | Nevil Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 26.1117' N - 76° 54.5233' W; running southeasterly to a point on the east shore 35° 26.0966' N - 76° 54.5045' W. |
| (i) | Upper Goose Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 28.5346' N - 76° 56.0229' W; running southeasterly to a point on the east shore 35° 28.4014' N - 76° 55.8714' W. | (q) | Barris Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 24.8423' N - 76° 49.9928' W; running easterly to a point on the east shore 35° 24.8451' N - 76° 49.9745' W. |
| (j) | Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 29.1023' N - 76° 57.3738' W; running easterly to a point on the east | (r) | Durham Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 23.7824' N - 76° 49.3016' W; running easterly to a point on the east shore 35° 23.7821' N - 76° 48.8703' W. |

- (s) Huddles Cut - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 22.5817' N - 76° 44.8727' W; running easterly to a point on the east shore 35° 22.5782' N - 76° 44.8594' W.
- (t) Huddy Gut – All waters within this waterbody are designated as Coastal.
- (u) South Creek – Inland Waters south and Coast Waters north of a line beginning at a point on the west shore 35° 18.9589' N – 76° 47.4298' W; running easterly to a point on the east shore 35° 18.9994' N – 76° 47.3007' W.
 - (i) Tooleys Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.7080' N - 76° 44.8937' W; running northeasterly to a point on the east shore 35° 20.7440' N - 76° 44.8324' W.
 - (ii) Drinkwater Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.1441' N - 76° 45.8262' W; running easterly to a point on the east shore 35° 20.1333' N - 76° 45.7530' W.
 - (iii) Jacobs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 35° 20.1420' N - 76° 45.8395' W; running southwesterly to a point on the south shore 35° 20.0692' N - 76° 45.8912' W.
 - (iv) Jacks Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 19.5455' N - 76° 47.0155' W; running southwesterly to a point on the south shore 35° 19.4986' N - 76° 47.0741' W.
 - (v) Whitehurst Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.2878' N - 76° 47.4778' W; running southerly to a point on the south shore 35° 19.2295' N - 76° 47.4430' W.
- (vi) Little Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 18.9873' N - 76° 45.9292' W; running easterly to a point on the east shore 35° 19.0209' N - 76° 45.8258' W.
- (vii) Short Creek - Inland Waters southeast and Coastal Waters northwest of a line beginning at a point on the north shore 35° 20.1228' N - 76° 44.6031' W; running southwesterly to a point on the south shore 35° 20.0527' N - 76° 44.6667' W.
- (viii) Long Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.3050' N - 76° 44.3444' W; running northeasterly to a point on the east shore 35° 20.4185' N - 76° 43.8949' W.
- (ix) Bond Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4231' N - 76° 42.0469' W; running southeasterly to a point on the east shore 35° 20.2539' N - 76 ° 41.8254' W.
- (x) Muddy Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.1523' N - 76° 41.2074' W; running northeasterly to a point on the east shore 35° 20.2413' N - 76° 41.0572' W.
- (v) Davis Creek - Inland Waters south Coastal Waters north of a line beginning at a point on the west shore 35° 20.7032' N - 76° 40.3404' W; running easterly to a point on the east shore 35° 20.7112' N - 76° 40.1637' W.
- (w) Strawhorn Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4091' N - 76° 39.0998' W; running northeasterly to a point

- on the east shore 35° 20.4750' N - 76° 38.8874' W.
- (x) Lower Goose Creek – All waters within this waterbody are designated as Coastal.
- (i) Lower Spring Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.7932' N - 76° 37.5347' W; running southerly to a point on the south shore 35° 19.4670' N - 76° 37.4134' W.
- (ii) Peterson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 18.7722' N - 76° 37.5059' W; running northeasterly to a point on the east shore 35° 18.8406' N - 76° 37.4111' W.
- (iii) Snode Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 18.2787' N - 76° 37.4679' W; running southwesterly to a point on the south shore 35° 18.0821' N - 76° 37.5544' W.
- (iv) Campbell Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 17.1203' N - 76° 37.9248' W; running southerly to a point on the south shore 35° 16.8807' N - 76° 37.9101' W.
- (A) Smith Creek – All waters within this waterbody are designated as Inland.
- (v) Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.
- (2) ~~Bertie County~~ Bertie County:
- (a) Albemarle Sound - All waters in this waterbody are designated as Coastal.
- (i) All Manmade Tributaries – All manmade tributaries within this waterbody for Bertie County are designated as Joint.
- (ii) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
- (A) Sandy Run (Norfleet Gut) – Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.
- (B) Quinine - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 09.6041' N - 77° 15.9091' W; running easterly to a point on the east shore 36° 09.6068' N - 77° 15.8912' W.
- (C) Wire Gut - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 00.9580' N - 77° 13.0755' W; running easterly to a point on the east shore 36° 00.9542' N - 77° 13.0320' W.
- (D) Apple Tree Creek - Inland Waters east and Joint Waters west of a line beginning at a point

- on the north shore
36° 00.4174' N -
77° 12.3252' W;
running
southeasterly to a
point on the south
shore 36° 00.3987'
N - 77° 12.3088' W.
- (E) Indian Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
35° 59.0794' N -
77° 11.4926' W;
running southerly
to a point on the
south shore 35°
59.0597' N - 77°
11.4967' W.
- (F) Coniott Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 56.6562' N -
77° 04.2860' W;
running
southwesterly to a
point on the south
shore 35° 56.6397'
N - 77° 04.3066' W.
- (G) Conine Creek - All
waters in this
waterbody are
designated as Joint.
- (H) Old Mill Creek -
Inland Waters north
and Joint Waters
south of a line
beginning at a point
on the west shore
35° 53.9483' N -
76° 55.3921' W;
running
southeasterly to a
point on the east
shore 35° 53.9378'
N - 76° 55.3710' W.
- (I) Cut Cypress Creek
- Inland Waters
northeast and Joint
Waters southwest
of a line beginning
at a point on the
north shore 35°
51.9465' N - 76°
53.5762' W;
running
southeasterly to a
point on the south
shore 35° 51.9229'
N - 76° 53.5556' W.
- (J) Broad Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 52.5191' N -
76° 50.4235' W;
running southerly
to a point on the
south shore 35°
52.4262' N - 76°
50.3791' W.
- (K) Thorofare - All
waters within this
waterbody are
designated as Joint.
- (iii) Cashie River - Inland Waters
west and Joint Waters east of
a line beginning at a point on
the north shore 35° 54.7865'
N - 76° 49.0521' W; running
southerly to a point on the
south shore 35° 54.6691' N -
76° 49.0553' W. Joint
Waters south and west and
Coastal Waters north and
east of a line beginning at a
point on the ~~north-west~~ shore
~~35° 56.4598' N - 76°
43.8093' W;~~ 35° 56.2934' N
- 76° 44.1769' W; running
~~southerly-easterly~~ to a point
on the north shore of an
island in the mouth of the
river ~~35° 56.2250' N - 76°
43.9265' W;~~ 35° 56.2250' N
- 76° 43.9265' W. Joint
Waters west and Coastal
Waters east of a line
beginning at a point on the
south shore of an island in
the mouth of the river 35°
56.1254' N - 76° 43.9846'
W; running southerly to a
point on the south shore ~~35°
56.0650' N - 76° 43.9599'
W;~~ 35° 56.0650' N - 76°
43.9599' W.
- (A) Cashoke Creek -
Inland Waters west
and Joint Waters
east of a line

- beginning at a point on the north shore 35° 56.2934' N - 76° 44.1769' W; running southwesterly to a point on the south shore 35° 56.2623' N - 76° 44.1993' W.
- (B) Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.0568' N - 76° 45.2632' W; running easterly to a point on the east shore 35° 55.0543' N - 76° 45.1309' W.
- (C) Grinnel Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 55.3147' N - 76° 44.5010' W; running southerly to a point on the south shore 35° 55.2262' N - 76° 44.5495' W.
- (iv) Middle River – All waters within this waterbody are designated Joint.
- (v) Eastmost River – Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.5024' N - 76° 42.4877' W; running westerly to a point on the east shore 35° 56.4070' N - 76° 42.7647' W.
- (vi) Mud Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 53.2880' N - 76° 45.4463' W; running southwesterly to a point on the south shore 35° 53.2527' N - 76° 45.4678' W.
- (b) Black Walnut Swamp - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 59.4680' N - 76° 40.9556' W; running southerly to a point on the south shore 35° 59.3946' N - 76° 40.9629' W.
- (c) Salmon Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 36° 00.4648' N - 76° 42.3513' W; running southeasterly to a point on the south shore 36° 00.3373' N - 76° 42.1499' W.
- (d) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (i) Barkers Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 14.0709' N - 76° 44.2451' W; running southerly to a point on the south shore 36° 14.0492' N - 76° 44.2456' W.
- (ii) Willow Branch - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 04.7206' N - 76° 43.7667' W; running southeasterly to a point on the south shore 36° 04.7138' N - 76° 43.7580' W.
- (iii) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (3) ~~Bladen County~~ County:
- (a) Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2628' N - 78° 17.6390' W; running northeasterly along the Lock and Dam # 1 to a point on the east shore 34° 24.2958' N - 78° 17.5634' W.
- (i) Natmore Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2841' N -

- 78° 16.4405' W; running easterly to a point on the east shore 34° 24.2852' N - 78° 16.4039' W.
- (4) ~~Brunswick County~~ Brunswick County:
- (a) Calabash River And Tributaries - All waters within this waterbody in Brunswick County are designated as Coastal.
 - (b) Saucepan Creek - All waters within this waterbody are designated as Coastal.
 - (c) Shallotte River - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 33° 58.3412' N - 78° 23.1948' W; running northeasterly to a point on the north shore 33° 58.3518' N - 78° 23.1816' W.
 - (i) Mill Dam Branch - All waters within this waterbody are designated as Coastal.
 - (ii) Squash Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Mill Pond - All waters within this waterbody are designated as Coastal.
 - (iv) Charles Branch - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 58.6276' N - 78° 21.2919' W; running easterly to a point on the east shore 33° 58.6257' N - 78° 21.2841' W.
 - (v) Grisset Swamp - All waters within this waterbody are designated as Coastal.
 - (vi) Little Shallotte River And Tributaries - All waters within this waterbody are designated as Coastal.
 - (d) Lockwood Folly River- Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the north shore 34° 00.6550' N - 78° 15.8134' W; running southeasterly along the south side of NC Hwy 211 bridge to a point on the south shore 34° 00.6285' N - 78° 15.7928' W.
 - (i) Stanberry Creek - All waters within this waterbody are designated as Coastal.
- (ii) Pompeys Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Maple Creek - All waters within this waterbody are designated as Coastal.
 - (iv) Rubys Creek - All waters within this waterbody are designated as Coastal.
 - (v) Big Doe Creek - All waters within this waterbody are designated as Coastal.
 - (vi) Lennons Creek - All waters within this waterbody are designated as Coastal.
 - (vii) Mercers Mill Pond Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 57.7498' N - 78° 12.3532' W; running southeasterly to a point on the east shore 33° 57.7439' N - 78° 12.3440' W.
- (e) Elizabeth River - All waters within this waterbody are designated as Coastal.
 - (i) Ash Creek - All waters within this waterbody are designated as Coastal.
 - (f) Beaverdam Creek - All waters within this waterbody are designated as Coastal.
 - (g) Dutchman Creek - All waters within this waterbody are designated as Coastal.
 - (i) Calf Gully Creek - All waters within this waterbody are designated as Coastal.
 - (ii) Jumpin Run - All waters within this waterbody are designated as Coastal.
 - (iii) Fiddlers Creek - All waters within this waterbody are designated as Coastal.
 - (h) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.
 - (i) Carolina Power And Light Intake Canal - All waters within this waterbody are designated as Coastal.

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|---|-------------|--|
| <p>(ii) Walden Creek - All waters within this waterbody are designated as Coastal.</p> | | <p>southernmost entrance into the Brunswick River:</p> |
| <p>(iii) Orton Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 02.8436' N - 77° 56.7498' W; running southerly to a point on the south shore 34° 02.8221' N - 77° 56.7439' W.</p> | | <p>Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 13.5040' N - 77° 58.6331' W; running</p> |
| <p>(iv) Lilliput Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 04.1924' N - 77° 56.5361' W; running southerly to a point on the south shore 34° 04.1487' N - 77° 56.5447' W.</p> | | <p>northwesterly to a point on the north shore 34° 13.5472' N - 77° 58.6628' W. For the northernmost entrance into the Brunswick River:</p> |
| <p>(v) Sandhill Creek -Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 06.9584' N - 77° 57.0085' W; running southeasterly to a point on the south shore 34° 06.9371' N - 77° 56.9943' W.</p> | | <p>Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 14.4300' N - 77° 59.2346' W; running northerly to a point on the north shore 34° 14.4618' N - 77° 59.2300' W.</p> |
| <p>(vi) Town Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 07.7492' N - 77° 57.3445' W; running southerly to a point on the south shore 34° 07.7034' N - 77° 57.3431' W.</p> | <p>(B)</p> | <p>Jackeys Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the south shore 34° 11.9400' N - 77° 58.5859' W; running northerly to a point on the north shore 34° 11.9565' N - 77° 58.5859' W.</p> |
| <p>(vii) Mallory Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 09.9868' N - 77° 58.2023' W; running southerly to a point on the south shore 34° 09.9618' N - 77° 58.2133' W.</p> | <p>(C)</p> | <p>Sturgeon Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 14.6761' N - 77° 59.4145' W; running southerly to a point on the south shore 34° 14.6404' N - 77° 59.4058' W.</p> |
| <p>(viii) Brunswick River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 34° 10.7281' N - 77° 57.7793' W; running northeasterly to a point on the north shore 34° 10.9581' N - 77° 57.6452' W.</p> | <p>(ix)</p> | <p>Cartwheel Creek - Inland Waters west and Joint Waters east of a line</p> |
| <p>(A) Alligator Creek - For the</p> | | |

- beginning at a point on the north shore 34° 15.7781' N - 77° 59.3852' W; running southerly to a point on the south shore 34° 15.7564' N - 77° 59.3898' W.
- (x) Indian Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 17.0441' N - 78° 00.3662' W; running southwesterly to a point on the south shore 34° 17.0006' N - 78° 00.3977' W.
- (xi) Hood Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 20.3713' N - 78° 04.7492' W; running southwesterly to a point on the south shore 34° 20.3393' N - 78° 04.7373' W.
- (xii) Northwest Creek - All waters within this waterbody are designated as Inland.
- (5) ~~Camden County~~ Camden County:
- (a) Albemarle Sound – All waters within this waterbody are designated Coastal.
- (i) All Manmade Tributaries – All waters within this waterbody are designated as Joint.
- (ii) Pasquotank River – Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
- (A) Raymond Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.0746' N - 76° 03.3952' W; running easterly to a point on the east shore 36° 14.0711' N - 76° 03.3668' W.
- (B) Portohonk Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 15.0519' N - 76° 05.2793' W; running southeasterly to a point on the east shore 36° 15.0391' N - 76° 05.2532' W.
- (C) Areneuse Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 17.3133' N - 76° 08.1655' W; running southeasterly to a point on the east shore 36° 17.1328' N - 76° 07.6269' W.
- (iii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.
- (A) Wading Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 10.6054' N - 75° 55.9529' W; running southeasterly to a point on the east

- shore 36° 10.5777' N - 75° 55.8654' W.
- (B) Little Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 11.6530' N - 75° 57.2035' W; running southeasterly to a point on the east shore 36° 11.5587' N - 75° 56.9160' W.
- (C) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2197' N - 75° 57.2685' W; running southerly to a point on the south shore 36° 11.6766' N - 75° 57.2254' W.
- (D) Hunting Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 15.0480' N - 75° 57.5820' W; running southeasterly to a point on the south shore 36° 14.9308' N - 75° 57.4635' W.
- (E) Abel Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 15.9530' N - 75° 58.0348' W; running southerly to a point on the south shore 36° 15.8553' N - 75° 58.0842' W.
- (F) Back Landing Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 36° 16.4746' N - 76° 07.6377' W; running southwesterly to a point on the south shore 36° 16.2030' N - 76° 57.8897' W.
- (G) Public Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.2462' N - 75° 58.2774' W; running southerly to a point on the south shore 36° 17.2121' N - 75° 58.2788' W.
- (H) Cow Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.8667' N - 75° 58.3483' W; running southerly to a point on the marsh island 36° 17.7600' N - 75° 58.3300' W; running southerly following the eastern shoreline of the island to a point 36° 17.7122' N - 75° 58.3273' W; running southwesterly to a point on the south shore 36° 17.6522' N - 75° 58.3543' W.
- (I) Great Creek - Mouth: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.1045' N - 75° 58.4289' W; running southerly to a point on the south shore 36° 17 9882' N - 75° 58.4458' W. On north shore of Great Creek within the

- fourth tributary:
Inland Waters south
and Joint Waters
north of a line
beginning at a point
on the west shore
36° 18.1729' N -
75° 58.9137' W;
running
southeasterly to a
point on the south
shore 36° 18.1640'
N - 75° 58.9022' W.
- (J) Indiantown Creek –
All waters within
this waterbody are
designated as
Inland.
- (6) ~~Carteret County~~ Carteret County:
- (a) Neuse River - All waters in this
waterbody are designated as Coastal.
- (i) Adams Creek - All waters in
this waterbody are
designated as Coastal.
- (A) Back (Black) Creek
- All waters in this
waterbody are
designated as
Coastal.
- (B) Cedar Creek - All
waters in this
waterbody are
designated as
Coastal.
- (ii) Garbacon Creek - All waters
in this waterbody are
designated as Coastal.
- (iii) South River - Inland Waters
south and Coastal Waters
north of a line beginning at a
point on the west shore 34°
53.5068' N - 76° 31.1233'
W; running northeasterly to
a point on the east shore 34°
53.4494' N - 76° 31.3032'
W.
- (A) Big Creek - All
waters in this
waterbody are
designated as
Coastal.
- (B) Southwest Creek -
All waters in this
waterbody are
designated as
Coastal.
- (C) West Fork - All
waters in this
waterbody are
- designated as
Inland.
- (D) East Creek - All
waters in this
waterbody are
designated as
Inland.
- (E) Eastman Creek -
All waters in this
waterbody are
designated as
Coastal.
- (iv) Browns Creek - All waters
in this waterbody are
designated as Coastal.
- (b) North River And Tributaries - All
waters in this waterbody are
designated as Coastal.
- (i) Panter Cat Creek - All
waters in this waterbody are
designated as Coastal.
- (ii) Cypress Creek - All waters
in this waterbody are
designated as Coastal.
- (c) Newport River - Inland Waters west
and Coastal Waters east of a line
beginning at a point on the north
shore 34° 45.2478' N - 76° 46.4479'
W; running southerly to a point on
the south shore 34° 45.1840' N - 76°
46.4488' W.
- (i) Core Creek - All waters in
this waterbody are
designated as Coastal.
- (ii) Harlowe Creek - All waters
in this waterbody are
designated as Coastal.
- (iii) Bogue Sound And
Tributaries - All waters in
this waterbody are
designated as Coastal.
- (d) White Oak River - Inland Waters
north and Coastal Waters south of a
line beginning at a point on the west
shore 34° 48.1466' N -77° 11.4711'
W; running easterly to a point on the
east shore 34° 48.1620' N -77°
11.4244' W.
- (i) Pettiford Creek - Inland
Waters east and Coastal
Waters west of a line
beginning at a point on the
north shore 34° 42.6935' N -
77° 04.0745' W; running
along the west side of the
Highway 58 bridge to a
point on the south shore 34°
42.6569' N - 77° 04.0786'
W.

- (ii) Little Hadnotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.0839' N - 77° 06.5931' W; running northerly to an easterly point on the east shore 34° 45.0867' N - 77° 06.5780' W.
 - (iii) Hadnotts Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 45.9908' N - 77° 05.7847' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 45.9738' N - 77° 05.7810' W.
 - (iv) Neds Creek - All waters in this waterbody are designated as Coastal.
 - (v) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.
- (7) Chowan County:
- (a) Albemarle Sound - All waters within this waterbody in Chowan County are designated as Coastal.
 - (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
 - (ii) Yeopim River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.4526' N - 76° 27.7651' W; running southerly to a point on the south shore at Norcum Point 36° 05.1029' N - 76° 27.7120' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.
- (iii) Queen Anne Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.3757' N - 76° 36.3629' W; running southerly to a point on the south shore 36° 03.3551' N - 76° 36.3574' W.
 - (iv) Pembroke Creek (Pollock Swamp) - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 03.2819' N - 76° 37.0138' W; running northeasterly to a point on the east shore 36° 03.4185' N - 76° 36.6783' W.
 - (v) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
 - (A) Rocky Hock Creek - Inland Waters east and Joint Waters west of a line beginning on the west shore at a point 36° 06.5662' N - 76° 41.3108' W; running southeasterly to a point on the east shore at 36° 06.6406' N - 76° 41.4512' W.
 - (B) Dillard (Indian) Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 14.2234' N - 76° 41.5901' W; running southerly to a point on the south shore 36° 14.2023' N - 76° 41.5855' W.
 - (C) Stumpy Creek - Inland Waters east and Joint Waters

- west of a line beginning at a point on the north shore 36° 16.6440' N - 76° 40.4251' W; running southerly to a point on the south shore 36° 16.6255' N - 76° 40.4196' W.
- (D) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (8) ~~Columbus County~~ Columbus County:
- (a) Cape Fear River – All waters within this waterbody of Columbus County are designated as Joint.
- (i) Livingston Creek – Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.1518' N – 78° 12.0358' W; running easterly to a point on the east shore 34° 21.1420' N – 78° 12.0018' W.
- (ii) Waymans Creek – Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 34° 22.9861' N – 78° 14.5266' W; running southeasterly to a point on the east shore 34° 22.9838' N – 78° 14.5236' W.
- (9) ~~Craven County~~ Craven County:
- (a) Neuse River - Inland Waters west and Joint Waters east of a line at Pitch Kettle Creek beginning at a point on the north shore 35° 16.9793' N - 77° 15.5529' W; running south to a point on the south shore 35° 16.9237' N - 77° 15.5461' W. Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the east shore 35° 07.7096' N - 77° 01.6749' W; running southwesterly along the southern side of the Southern Railroad bridge to a point on the west shore 35° 07.1530' N - 77° 02.5570' W.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back Creek – All waters in this waterbody are designated as Coastal.
- (ii) Courts Creek - Inland Waters east Joint Waters west of a line beginning at a point on the north shore 34° 56.6958' N - 76° 42.7175' W; running southwesterly to a point on the south shore 34° 56.6606' N - 76° 42.7450' W.
- (iii) Long Branch - Inland Waters south and Coastal Waters north of a line beginning on the west shore 34° 55.6189' N - 76° 43.8180' W; running easterly to a point on the east shore 34° 55.6175' N - 76° 43.7846' W.
- (iv) Clubfoot Creek - All waters in this waterbody are designated as Coastal.
- (A) Gulden Creek - All waters in this waterbody are designated as Coastal.
- (B) Mitchell Creek - All waters in this waterbody are designated as Coastal.
- (C) Morton Mill Pond - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 51.9245' N - 76° 45.7754' W; running southerly to a point on the south shore 34° 51.7799' N - 76° 45.8184' W.
- (v) Hancock Creek - Coastal Waters east and Inland Waters west of a line

- beginning on the north shore at 34° 56.3420' N - 76° 51.2809' W; running southerly to a point on the south shore at 34° 56.2731' N - 76° 51.3034' W.
- (vi) Slocum Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore at 34° 57.1875' N - 76° 53.7648' W; running southwesterly to a point on the south shore 34° 57.1334' N - 76° 53.8069' W.
- (vii) Scott Creek - Inland Waters west and Coastal Waters east of a line from a point on the north shore 35° 05.5723' N - 77° 02.0677' W; running southerly to a point on the south shore 35° 05.5316' N - 77° 02.0745' W.
- (viii) Trent River – Inland Waters west and Joint Waters east of a line at Wilson Creek beginning at a point on the north shore 35° 04.05490' N - 77° 06.0987' W; running southerly to a point on the south shore 35° 04.3837' N - 77° 06.1230' W. Joint Waters west and Coastal Waters east of a line on the western side of the Highway 70 Trent River Bridge beginning at a point on the north shore 35° 06.2136' N - 77° 02.1968' W; running southerly to a point on the south shore 35° 05.9351' N - 77° 02.2645' W.
- (A) Brice Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 04.5114' N - 77° 03.6433' W; running easterly to a point on the east shore 35° 04.5634' N - 77° 03.4469' W.
- (ix) Jack Smith Creek - Inland Waters southwest and Joint Waters northeast of a line beginning on the west shore 35° 07.5482' N - 77° 03.1613' W; running southeasterly to a point on the east shore 35° 07.5320' N - 77° 03.1338' W.
- (x) Bachelor Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 09.0099' N - 77° 04.5858' W; running southerly to a point on the south shore 35° 08.9085' N - 77° 04.7172' W.
- (xi) Dollys Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 13.6303' N - 77° 09.9847' W; running southerly to a point on the south shore 35° 13.5937' N - 77° 09.9778' W.
- (xii) Greens Thoroughfare - Easternmost entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 13.7807' N - 77° 09.9224' W; running southwesterly to a point on the south shore 35° 13.7587' N - 77° 09.9728' W. Westernmost entrance: Inland Waters south and Joint Waters north of a line beginning on the west shore 35° 14.1398' N - 77° 11.5530' W; running easterly to a point on the east shore 35° 14.1481' N - 77° 11.5036' W.
- (xiii) Greens Creek - Inland Waters west and Joint Waters east of a line beginning on the north shore 35° 14.1883' N - 77° 11.8862' W; running southeasterly to a point on the south shore 35° 14.1389' N - 77° 11.7535' W.
- (xiv) Turkey Quarter Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 15.6738' N - 77° 14.6823' W; running southeasterly to a point on the east shore 35° 15.6534' N - 77° 14.6470' W.

- (xv) Pitch Kettle Creek – All waters within this waterbody are designated as Inland.
 - (xvi) Taylors Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 14.3719' N - 77° 10.8050' W; running southwesterly to a point on the south shore 35° 14.3300' N - 77° 10.8352' W.
 - (xvii) Pine Tree Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 12.6663' N - 77° 07.4285' W; running southwesterly to a point on the south shore 35° 12.7033' N - 77° 07.3594' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 12.8553' N - 77° 07.8300' W; running easterly to a point on the east shore 35° 12.8372' N - 77° 07.7934' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 13.2012' N - 77° 08.7753' W; running southeasterly to a point on the east shore 35° 13.1714' N - 77° 08.7071' W.
 - (xviii) Stumpy Creek - Southern entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 11.5752' N - 77° 06.1866' W; running southwesterly to a point on the south shore 35° 11.5550' N - 77° 06.2411' W. Northern entrance: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.9377' N - 77° 06.7263' W; running southeasterly to a point on the south shore 35° 11.9169' N - 77° 06.7044' W.
 - (xix) Swift Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.5972' N - 77° 06.0562' W; running easterly to a point on the east shore 35° 11.5816' N - 77° 05.9861' W.
 - (xx) Mill Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 08.5041' N - 77° 02.3400' W; running south easterly to a point on the south shore 35° 08.4711' N - 77° 02.3176' W.
 - (xxi) Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 05.7648' N - 77° 00.5191' W; running south easterly to a point on the south shore at 35° 05.6803' N - 77° 00.4179' W.
 - (xxii) Northwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.5096' N - 76° 58.2604' W; running northeasterly to a point on the east shore at 35° 03.5948' N - 76° 58.0297' W.
 - (xxiii) Upper Broad Creek – Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly along the Tidelands EMC power lines to a point on the east shore at 35° 04.4705' N - 76° 56.2115' W.
- (10) Currituck County:
- (a) Albemarle Sound - All waters within Albemarle Sound in Currituck County are designated as Coastal.
 - (i) All Manmade Tributaries - All Manmade Tributaries to Albemarle Sound in Currituck County are designated as Joint.
 - (ii) North River – Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the

south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.

(A) Duck Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 12.4056' N - 75° 54.2967' W; running southeasterly to a point on the east shore 36° 12.1865' N - 75° 54.0298' W.

(B) Barnett Creek - Inland Waters northeast and Joint Waters southwest of line beginning at a point on the north shore 36° 14.2405' N - 75° 55.0112' W; running southeasterly to a point on the south shore 36° 14.0956' N - 75° 54.9774' W.

(C) Lutz Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 14.7397' N - 75° 55.4914' W; running southeasterly to a point on the east shore 36° 14.4948' N - 75° 55.1989' W.

(D) Goose Pond - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 15.5152' N - 75° 57.0936' W; running easterly to

a point on the east shore 36° 15.4016' N - 75° 56.7842' W. Also south of a line beginning at a point on the west shore 36° 16.0334' N - 75° 57.1018' W; running easterly to a point on the east shore 36° 16.0301' N - 75° 57.0629' W.

(E) Deep Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 17.1576' N - 75° 56.7594' W; running southerly to a point on the south shore 36° 16.9846' N - 75° 56.6802' W.

(F) Narrow Ridges Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 18.3249' N - 75° 57.8910' W; running southerly to a point on the south shore 36° 18.1388' N - 75° 57.9029' W.

(G) Bump Landing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 19.3757' N - 75° 57.9057' W; running southerly to a point on the south shore 36° 19.2496' N - 75° 57.9107' W.

(H) Taylor Bay - All waters within Taylor Bay are designated Joint.

(I) Intracoastal Waterway From

- Taylor Bay To
Coinjock Bay - All
waters within the
IWW are
designated Joint.
- (J) Indiantown Creek –
All waters within
this waterbody are
designated Inland.
- (b) Currituck Sound - Joint Waters north
and Coastal Waters south of a line
beginning at a point on the west shore
of Currituck Sound 36° 04.8195' N -
75° 47.4101' W; running easterly to a
point on the east shore 36° 05.5739'
N - 75° 44.5729' W.
- (i) All Manmade Tributaries –
All manmade tributaries
within this waterbody are
designated as Joint.
- (ii) Coinjock Bay - All waters
within this waterbody are
designated as Joint.
- (iii) Nelson (Nells) Creek -
Northern entrance: Inland
Waters south and Joint
Waters north of a line
beginning at a point on the
west shore 36° 16.5806' N -
75° 52.1168' W; running
northeasterly to a point on
the east shore 36° 16.6410'
N - 75° 51.9580' W.
Southern entrance: Inland
Waters west and Joint
Waters east of a line
beginning at a point on the
north shore 36° 15.9816' N -
75° 51.7245' W; running
southerly to a point on the
south shore 36° 15.8640' N -
75° 51.6897' W.
- (iv) Hog Quarter Creek -
Northernmost entrance:
Inland Waters west and Joint
Waters east of a line
beginning at a point on the
north shore 36° 07.7400' N -
75° 48.6254' W; running
southerly to a point on the
south shore 36° 07.7210' N -
75° 48.6135' W.
Southernmost entrance:
Inland Waters west and Joint
Waters east of a line
beginning at a point on the
north shore 36° 07.4118' N -
75° 48.4986' W; running
southerly to a point on the
- south shore 36° 07.3532' N -
75° 48.5110' W.
- (v) Parkers Creek – Inland
Waters northwest and Joint
Waters southeast of a line
beginning on the west shore
36° 22.1079' N - 75°
55.5459' W; running
northeasterly to a point on
the east shore 36° 22.1607'
N - 75° 55.4512' W. Inland
Waters south and Joint
Waters north of a line
beginning at a point on the
west shore 36° 22.3928' N -
75° 55.6970' W; running
northeasterly to a point on
the east shore 36° 22.4011'
N - 75° 55.6782' W.
- (vi) North Landing River - All
waters in this waterbody are
designated as Joint.
- (A) Northwest River -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
of 36° 30.8374' N -
76° 04.8770' W;
running southerly
to a point on the
south shore 36°
30.7061' N - 76°
04.8916' W.
- (I) Gibbs Canal -
Inland Waters
west and Joint
Waters east of
a line
beginning at a
point on the
north shore
36° 32.2322'
N - 76°
01.8923' W;
running
southerly to a
point on the
south shore
36° 32.1997'
N - 76°
01.8937' W.
- (II) Tull Creek -
Inland Waters
southwest and
Joint Waters
northeast of a
line beginning

- at a point on the north shore 36° 30.0991' N - 76° 04.8587' W; running southeasterly to a point on the south shore 36° 29.9599' N - 76° 04.7126' W.
- (B) West Landing - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 30.9867' N - 76° 02.5868' W; running easterly to a point on the east shore 36° 31.0045' N - 76° 02.3780' W.
- (11) ~~Dare County~~ Dare County:
- (a) Alligator River - Coastal Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 54.2903' N - 76° 01.6818' W; running along the south side of the US 64 bridge to a point on the east shore 35° 53.6835' N - 75° 58.8578' W.
- (i) Whipping Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 41.3930' N - 76° 00.2481' W; running southerly to a point on the south shore 35° 41.3717' N - 76° 00.2554' W.
- (ii) Swan Creek and Lake - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 40.2674' N - 76° 00.7360' W; running southerly to a point on the south shore 35° 40.2420' N - 76° 00.7548' W.
- (iii) Milltail Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 50.5192' N - 75° 58.6134' W; running southerly to a point on the south shore 35° 50.4956' N - 75° 58.6158' W.
- (iv) Laurel Bay Lake (Creek) - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 52.4036' N - 75° 58.8560' W; running southerly to a point on the south shore 35° 52.3960' N - 75° 58.8528' W.
- (v) East Lake - Coastal Waters west and Inland Waters east of a line beginning at a point on the north shore 35° 56.1676' N - 75° 55.2603' W; running southerly to a point on the south shore 35° 55.4727' N - 75° 55.5043' W. Joint Waters north and Inland Waters south of a line beginning at a point on the west shore 35° 58.6402' N - 75° 52.1855' W; running easterly to a point on the east shore 35° 58.5887' N - 75° 51.7080' W.
- (b) Albemarle Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) All Manmade Tributaries - All manmade tributaries in Dare County for this waterbody are designated as Joint.
- (ii) Kitty Hawk Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 03.1967' N - 75° 44.3087' W; running easterly to a point on the east shore 36° 03.1871' N - 75° 44.2716' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.1338' N - 75° 44.2423' W; running southerly to a point on the south shore 36° 03.0919' N - 75° 44.2533' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.9960' N - 75° 44.2840' W; running southerly to a point on the south shore 36° 02.9592' N - 75° 44.2291' W. Joint

- Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.4964' N - 75° 44.2089' W; running southerly to a point on the south shore 36° 01.3270' N - 75° 43.6422' W.
- (iii) Peter Mashoes Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 57.2344' N - 75° 48.3087' W; running southerly to a point on the south shore 35° 56.7805' N - 75° 48.3563' W.
- (iv) Tom Mann Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 58.5296' N - 75° 52.8982' W; running easterly to a point on the east shore 35° 58.5175' N - 75° 53.6851' W.
- (v) Collington Harbor - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 01.0828' N - 75° 43.6070' W; running southerly to a point on the south shore 36° 01.0510' N - 75° 43.6015' W.
- (c) Croatan Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Spencer Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.4205' N - 75° 45.0645' W; running southerly to a point on the south shore 35° 51.3876' N - 75° 45.0640' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.5597' N - 75° 45.0141' W; running southerly to a point on the south shore 35° 51.4624' N - 75° 45.0498' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.6783' N - 75° 44.9125' W; running southerly to a point on the south shore 35° 51.5693' N - 75° 45.0109' W.
- (iii) Calahan Creek (Callaghan Creek) - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.1312' N - 75° 45.1327' W; running southwesterly to a point on the south shore 35° 51.0953' N - 75° 45.1629' W.
- (d) Roanoke Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Buzzard Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 59.6662' N - 75° 41.8400' W; running easterly to a point on the east shore 35° 59.4376' N - 75° 40.5770' W.
- (e) Pamlico Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Stumpy Point Bay - All waters in this waterbody are designated as Coastal.
- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W
- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (B) Pains Bay - All waters in this waterbody are designated as Coastal.

- (I) Pains Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 36.4464' N - 75° 49.0420' W; running easterly to a point on the east shore 35° 36.4439' N - 75° 49.0324' W.
- (C) Deep Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 37.8971' N - 75° 51.3125' W; running easterly to a point on the east shore 35° 37.8840' N - 75° 51.2928' W.
- (f) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
- (i) All Manmade Tributaries – All manmade tributaries are designated as Joint.
- (ii) Martin Point Creek (Jean Guite Creek) - Inland Waters south Joint Waters north of a line beginning at a point on the west shore 36° 07.6716' N - 75° 44.9656' W; running easterly to a point on the east shore 36° 07.7568' N - 75° 44.6823' W.
- (12) ~~Gates County~~ Gates County:
- (a) Chowan River - All waters within this waterbody for Gates County are designated as Joint.
- (i) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (ii) Bennetts Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.3499' N - 76° 42.0286' W; running northeasterly to a point on the east shore 36° 18.4057' N - 76° 41.6986' W.
- (iii) Beef Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 20.3235' N - 76° 44.6401' W; running easterly to a point on the east shore 36° 20.3070' N - 76° 44.5797' W.
- (iv) Sarem Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 21.7259' N - 76° 46.4085' W; running southerly to a point on the south shore ~~36° 21.6748' N - 76° 46.4392' W~~ 36° 21.6748' N - 76° 46.4392' W.
- (v) Shingle (Island) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the north shore of the westernmost entrance into Chowan River 36° 21.8449' N - 76° 48.0940' W; running southeasterly to a point on the south shore 36° 21.7831' N - 76° 48.0427' W. At the easternmost entrance to the creek: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 21.8469' N - 76° 47.2668' W; running northeasterly to a point on the east shore 36° 21.9062' N - 76° 47.1862' W.
- (vi) Barnes Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the western shore 36° 21.8820' N - 76° 48.6419' W; running easterly to a point on the east

- shore 36° 21.8978' N - 76° 48.5902' W.
- (vii) Spikes Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 22.6515' N - 76° 50.8882' W; running northeasterly to a point on the east shore 36° 22.6684' N - 76° 50.8493' W.
- (viii) Buckhorn Creek (Run Off Swamp) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 22.9682' N - 76° 51.9172' W; running easterly to a point on the east shore 36° 22.9614' N - 76° 51.8870' W.
- (ix) Mud Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 23.5134' N - 76° 53.9131' W; running easterly to a point on the east shore 36° 23.5132' N - 76° 53.8815' W.
- (x) Somerton Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.7177' N - 76° 54.8327' W; running easterly to a point on the east shore 36° 31.7143' N - 76° 54.7810' W.
- (13) ~~Halifax County~~ County:
- (a) Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W.
- (i) Kehukee Swamp - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.1942' N - 77° 18.9596' W; running southwesterly to a point on the south shore 36° 05.1670' N - 77° 18.9761' W.
- (ii) Clarks Canal - Inland Waters north and Joint Waters south of a line of a line beginning at a point on the west shore 36° 04.6165' N - 77° 19.5817' W; running easterly to a point on the east shore 36° 04.6215' N - 77° 19.5643' W.
- (14) ~~Hertford County~~ County:
- (a) Chowan River - All waters within this waterbody for Hertford County are designated as Joint.
- (i) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (ii) Swain Mill (Taylor Pond) Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.5808' N - 76° 43.4729' W; running southerly to a point on the south shore 36° 18.5616' N - 76° 43.4706' W.
- (iii) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 19.5838' N - 76° 44.5971' W; running southerly to a point on the south shore 36° 19.5375' N - 76° 44.5925' W.
- (iv) Wiccacon River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 20.5439' N - 76° 45.4550' W; running southeasterly to a point on the south shore 36° 20.4684' N - 76° 45.3392' W.
- (v) Hodges Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 21.2459' N - 76° 46.3421' W; running southerly to a point on the south shore 36° 21.1823' N - 76° 46.3243' W.
- (vi) Catherine Creek - Inland Waters south and Joint

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| <p>Waters north of a line beginning at a point on the west shore 36° 22.9579' N - 76° 53.1994' W; running southeasterly to a point on the east shore 36° 22.9456' N - 76° 53.1742' W.</p> <p>(vii) Harris (Hares) Mill Creek - All waters within this waterbody are designated as Inland.</p> <p>(viii) Meherrin River - All waters within this waterbody are designated as Joint.</p> <p style="padding-left: 20px;">(A) Potecasi Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 26.1234' N - 76° 57.5262' W; running southeasterly to a point on the east shore 36° 26.1005' N - 76° 57.4960' W.</p> <p style="padding-left: 20px;">(B) Liverman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 26.7244' N - 76° 58.2797' W; running easterly to a point on the east shore 36° 26.7086' N - 76° 58.2499' W.</p> <p style="padding-left: 20px;">(C) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36° 28.3307' N - 77° 05.6369' W.</p> <p style="padding-left: 20px;">(D) Banks Creek - All waters in this waterbody are designated as Inland.</p> <p>(ix) Buckhorn Creek - Inland Waters north and Joint</p> | <p>Waters south of a line beginning at a point on the west shore 36° 31.9519' N - 76° 55.2580' W; running easterly to a point on the east shore 36° 31.9628' N - 76° 55.2429' W.</p> <p>(15) Hyde County <u>County</u>:</p> <p style="padding-left: 20px;">(a) Pamlico Sound - All waters within this waterbody in Hyde County are designated as Coastal.</p> <p style="padding-left: 20px;">(i) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.</p> <p style="padding-left: 20px;">(A) Rutman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 33.1874' N - 76° 27.4090' W; running easterly to a point 35° 33.1759' N - 76° 27.2525' W; running northeasterly to a point on the east shore 35° 33.2455' N - 76° 26.9119' W.</p> <p style="padding-left: 20px;">(B) Wilkerson Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 33.1251' N - 76° 27.2328' W; running northerly to a point 35° 33.1553' N - 76° 27.2447' W; running easterly to a point on the east shore 35° 33.3286' N - 76° 26.2019' W.</p> |
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| <p>(C) Atlantic Intracoastal Waterway From Wilkerson Creek To Alligator River At Winn Bay – All waters within this part of the IWW are designated as Joint.</p> | <p>(H) Fishing Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the west shore 35° 30.2400' N - 76° 35.0143' W; running southeasterly to a point on the east shore 35° 30.0645' N - 76° 34.8211' W.</p> |
| <p>(D) Horse Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 32.1965' N - 76° 28.0462' W; running southerly to a point on the south shore 35° 32.1480' N - 76° 28.0705' W.</p> | <p>(I) Slades Creek - All waters within this waterbody are designated as Coastal.</p> |
| <p>(E) Tarklin Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 31.1553' N - 76° 28.1478' W; running southeasterly to a point on the south shore 35° 31.0974' N - 76° 28.0984' W.</p> | <p>(J) Fortescue Creek - All waters within this waterbody are designated as Coastal.</p> |
| <p>(F) Scranton Creek – Inland Waters east and Joint Waters west of line beginning at a point on the north shore 35° 30.0080' N - 76° 26.7759' W; running southerly to a point on the south shore 35° 29.9574' N - 76° 26.7750' W.</p> | <p>(ii) Rose Bay - All waters within this waterbody are designated as Coastal.</p> |
| <p>(G) Smith Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 30.2812' N - 76° 29.7546' W; running southeasterly to a</p> | <p>(A) Rose Bay Creek - All waters within this waterbody are designated as Coastal.</p> <p>(B) Rose Bay Canal - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 28.5607' N - 76° 19.6545' W; running southerly to a point on the south shore 35° 28.5509' N - 76° 19.6572' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.8491' W - 76° 24.2198' W; running easterly to a point on the east shore 35° 27.8404' N - 76° 24.2065' W.</p> |

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| (iii) | Swan Quarter Bay - All waters within this waterbody are designated as Coastal.
(A) Oyster Creek - All waters within this waterbody are designated as Coastal. | | running
northeasterly to a point on the east shore 35° 21.5480' N - 76° 06.4819' W. |
| | | (B) | Lake Landing Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 28.7878' N - 76° 04.5867' W; running easterly to a point on the east shore 35° 28.7910' N - 76° 04.5726' W. Joint Waters north and Coastal waters south of a line beginning at a point on the west shore 35° 25.9529' N - 76° 03.6785' W; running easterly to a point on the east shore 35° 25.9568' N - 76° 03.6566' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.9666' N - 76° 03.5856' W; running easterly to a point on the east shore 35° 25.9819' N - 76° 03.5600' W. |
| (iv) | Juniper Bay - All waters within this waterbody are designated as Coastal.
(A) Juniper Bay Creek - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 23.2472' N - 76° 14.8754' W; running southwesterly to a point on the south shore 35° 23.1738' N - 76° 14.9794' W.
(B) Juniper Bay Creek Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 23.8618' N - 76° 13.1044' W; running easterly to a point on the east shore 35° 23.8677' N - 76° 13.0888' W. | | |
| (v) | Lake Mattamuskeet - All waters in this waterbody are designated as Inland.
(A) Outfall Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 26.6017' N - 76° 10.1715' W; running easterly to a point on the east shore 35° 26.6093' N - 76° 10.1513' W. Joint Waters north and Coastal waters south of a line beginning at a point on the west shore 35° 21.4945' N - 76° 06.5336' W; | (C) | Waupopin Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 31.8413' N - 76° 01.7779' W; running southerly to a point on the south shore 35° 31.8283' N - 76° 01.7637' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 31.5557' N - 75° |

- 58.8725' W;
running easterly to
a point on the east
shore 35° 31.5648'
N - 75° 58.8555' W.
- (D) Rattlesnake Canal - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 26.6965' N - 76° 00.8079' W; running easterly to a point on the east shore 35° 26.7116' N - 76° 00.7749' W.
- (E) All Other Manmade Tributaries To Lake Mattamuskeet – All manmade tributaries of this waterbody are designated as Inland.
- (vi) Middletown Creek - All waters within this waterbody are designated as Coastal.
- (vii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W.
- (A) All Manmade Tributaries – All manmade tributaries of this waterbody are designated as Joint.
- (B) Broad Creek - All waters within this waterbody are designated as Coastal.
- (C) Flag Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 37.3782' N - 75° 53.0699' W; running easterly to a point on the east shore 35° 37.3894' N - 75° 53.0593' W.
- (D) Cumberland Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 38.3026' N - 75° 53.3010' W; running southerly to a point on the south shore 35° 38.2692' N - 75° 53.3038' W.
- (b) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W.
- Swan Creek and Lake - All waters within this waterbody are designated as Inland.
- (16) Jones ~~County~~ County:
- (a) White Oak River – Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Grants Creek - All waters within this waterbody are designated as Inland.
- (ii) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.
- (17) Martin ~~County~~ County:
- (a) Roanoke River – All waters within this waterbody in Martin County are designated as Joint.
- (i) Prices Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 57.3701' N - 77° 11.9815' W; running southerly to a point on the south shore 35° 57.3552' N - 77° 11.9796' W.

- (ii) Rainbow Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.9334' N - 77° 11.3246' W; running easterly to a point on the east shore 35° 55.9275' N - 77° 11.3136' W.

northwest of a line beginning at a point on the north shore 35° 50.1683' N - 76° 50.9664' W; running southwesterly to a point on the south shore 35° 50.1363' N - 76° 56.9907' W.
- (iii) Conoho Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 52.5439' N - 77° 02.6673' W; running easterly to a point on the east shore 35° 52.5407' N - 77° 02.6280' W.

(vii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.
- (iv) Sweetwater Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the west shore 35° 51.6464' N - 77° 00.5090' W; running southeasterly to a point on the east shore 35° 51.6252' N - 77° 00.4879' W.

(A) Peter Swamp - All waters within this waterbody are designated as Inland.

(18) New Hanover County ~~County~~:

(a) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.

(i) Lords Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 05.1562' N - 77° 55.3816' W; running southerly to a point on the south shore 34° 05.1303' N - 77° 55.4008' W.

(ii) Todds Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 07.4791' N - 77° 55.5175' W; running southeasterly to a point on the south shore 34° 07.4578' N - 77° 55.5116' W.

(iii) Barnards Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 09.4347' N - 77° 56.5969' W; running southerly to a point on the south shore 34° 09.3887' N - 77° 56.5791' W.

(iv) Greenfield Lake Outlet - Greenfield Lake Outlet Inland Waters east and Coastal Waters west of a line
- (v) Devils Gut - All waters in this waterbody are designated as Joint.

(A) Upper Deadwater Creek - All waters in this waterbody are designated Joint.

(B) Lower Deadwater Creek - All waters in this waterbody are designated Joint.

(C) Gardner Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 50.1599' N - 76° 56.0211' W; running easterly to a point on the east shore 35° 50.1633' N - 76° 55.9899' W.
- (vi) Roses Creek - Inland Waters southeast and Joint Waters

- beginning at a point on the north shore 34° 12.7210' N - 77° 57.2058' W; running southerly to a point on the south shore 34° 12.7075' N - 77° 57.2085' W.
- (v) Tommer Creek - For the southernmost entrance into the Cape Fear: Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the west shore 34° 15.6397' N - 77° 58.9608' W; running northeasterly to a point on the east shore 34° 15.6589' N - 77° 58.9338' W. For the northernmost entrance into the Cape Fear: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 16.6630' N - 77° 59.4699' W; running northeasterly to a point on the east shore 34° 16.6767' N - 77° 59.4506' W.
- (vi) Catfish Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 16.7546' N - 77° 59.3751' W ; running southeasterly to a point on the south shore 34° 16.7118' N - 77° 59.3870' W.
- (vii) Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.
- (A) Smiths Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 16.0366' N - 77° 56.8405' W; running southeasterly to a point on the south shore 34° 15.9919' N - 77° 56.7961' W.
- (B) Ness Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 17.1741' N - 77° 57.2460' W; running southeasterly to a point on the south shore 34° 17.1494' N - 77° 57.2044' W.
- (C) Dock Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 18.1274' N - 77° 57.3847' W; running southwesterly to a point on the south shore 34° 18.1173' N - 77° 57.3678' W.
- (D) Fishing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 19.1613' N - 77° 57.2460' W; running southwesterly to a point on the south shore 34° 19.1331' N - 77° 57.2245' W.
- (E) Prince George Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.8481' N - 77° 57.0066' W; running northeasterly to a point on the east shore 34° 21.8778' N - 77° 57.9755' W.
- (F) Sturgeon Creek - Inland Waters south and Joint Waters north of a line

- beginning at a point
on the west shore
34° 22.6796' N -
77° 51.6018' W;
running
northeasterly to a
point on the east
shore 34° 22.6931'
N - 77° 51.5776' W.
- (G) Island Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the south shore
34° 23.2509' N -
77° 47.3377' W ;
running
northeasterly to a
point on the north
shore 34° 23.3322'
N - 77° 49.3208' W.
- (19) Northampton County:
(a) Roanoke River - Inland Waters
northwest and Joint Waters southeast
of a line beginning at a point on the
west shore 36° 12.5264' N - 77°
23.0223' W; running northeasterly
along the south side of the Highway
258 Bridge to a point on the east
shore 36° 12.5674' N - 77° 22.9724'
W.
(i) Sandy Run (Norfleet Gut) -
Inland Waters north and
Joint Waters south of a line
beginning at a point on the
west shore 36° 10.1119' N -
77° 17.5396' W; running
northeasterly to a point on
the east shore 36° 10.1172'
N - 77° 17.5316' W.
- (b) Meherrin River - All waters of
Meherrin River up to the Virginia
state line within Northampton County
are designated as Joint.
(i) Vaughan's Creek - Inland
Waters west and Joint
Waters east of a line
beginning at a point on the
north shore 36° 28.3541' N -
77° 05.6259' W; running
southerly to a point on the
south shore 36 ° 28.3307' N
- 77° 05.6369' W.
- (20) Onslow County:
(a) Beasleys Creek (Barlow Creek) - All
waters within this waterbody are
designated as Coastal.
- (b) Kings Creek - All waters within this
waterbody are designated as Coastal.
- (c) Turkey Creek - All waters within this
waterbody are designated as Coastal.
- (d) Mill Creek - All waters within this
waterbody are designated as Coastal.
- (e) New River - Inland Waters north and
Coastal Waters south of a line
beginning at a point on the west shore
34° 45.1654' N - 77° 26.1222' W;
running easterly along the southern
side of the US Hwy 17 bridge to a
point on the east shore 34° 45.2007'
N - 77° 25.9790' W.
- (i) Wheeler Creek - All waters
within this waterbody are
designated as Coastal.
- (ii) Everett Creek - All waters
within this waterbody are
designated as Coastal.
- (iii) Stones Creek - All waters
within this waterbody are
designated as Coastal.
- (iv) Muddy Creek - All waters
within this waterbody are
designated as Coastal.
- (v) Mill Creek - All waters
within this waterbody are
designated as Coastal.
- (vi) Lewis Creek - All waters
within this waterbody are
designated as Coastal.
- (vii) Southwest Creek - Inland
Waters north and Coastal
Waters south of a line
beginning at a point on the
west shore 34° 40.8723' N -
77° 26.2399' W; running
northeasterly to a point on
the east shore 34° 40.9112'
N - 77° 26.1758' W.
- (viii) Brinson Creek - Inland
Waters west and Coastal
Waters east of a line
beginning at a point on the
north shore 34° 44.0945' N -
77° 26.4335' W; running
southerly to a point on the
south shore 34° 44.0654' N -
77° 26.4239' W.
- (ix) Northeast Creek - Inland
Waters northeast and Coastal
Waters southwest of a line
beginning at a point on the
west shore 34° 44.0778' N -
77° 21.2640' W; running
southeasterly along the
southern side of the railroad
bridge to a point on the east

- shore 34° 44.0446' N - 77° 21.2126' W.
- (x) Wallace Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 40.9604' N - 77° 21.5698' W; running southwesterly along the western side of the first bridge upstream from the mouth, to a point on the south shore 34° 40.8576' N - 77° 21.4787' W.
 - (xi) Codels Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.8845' N - 77° 20.4533' W; running southerly to a point on the south shore 34° 38.8691' N - 77° 20.4515' W.
 - (xii) French Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.4059' N - 77° 20.2619' W; running southerly to a point on the south shore 34° 38.2566' N - 77° 20.3233' W.
 - (xiii) Duck Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 38.0179' N - 77° 20.5169' W; running southwesterly to a point on the south shore 34° 37.9172' N - 77° 20.6520' W.
- (f) Freeman (Browns) Creek - All waters within this waterbody are designated as Coastal.
 - (g) Bear Creek - All waters within this waterbody are designated as Coastal.
 - (h) Queens Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 42.1815' N - 77° 11.5690' W; running easterly to a point on the east shore 34° 42.2273' N - 77° 11.4193' W.
 - (i) Parrotts Swamp - All waters within this waterbody are designated as Coastal.
 - (i) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running northeasterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Stevens Creek - All waters within this waterbody are designated as Coastal.
 - (ii) Holland Mill (Mill Pond) Creek - All waters within this waterbody are designated as Coastal.
 - (iii) Webbs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 34° 45.7559' N - 77° 10.1321' W; running southwesterly to a point on the south shore 34° 45.7404' N - 77° 10.1486' W.
 - (iv) Freemans Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 46.9791' N - 77° 10.3935' W; running southerly to a point on the south shore 34° 46.9663' N - 77° 10.3999' W.
 - (v) Calebs Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 48.1354' N - 77° 11.4688' W; running southeasterly to a point on the south shore 34° 48.1192' N - 77° 11.4546' W.
 - (vi) Grants Creek - All waters within this waterbody are designated as Inland.
- (21) Pamlico ~~County~~ County:
 - (a) Pamlico River - All waters within this waterbody are designated as Coastal.
 - (i) Lower Goose Creek - All waters within this waterbody are designated as Coastal.
 - (A) Dixons Creek - All waters within this waterbody are designated as Coastal.
 - (B) Patons Creek - All waters within this waterbody are designated as Coastal.
 - (C) Wilson Creek - All waters within this

- waterbody are designated as Coastal.
- (D) Eastham Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 17.8205' N - 76° 35.1828' W; running southerly to a point on the south shore 35° 17.6797' N - 76° 35.1840' W.
- (E) Upper Spring Creek - All waters within this waterbody are designated as Coastal.
- (F) Intracoastal Waterway from Upper Spring Creek To Gale Creek - All waters within this waterbody are designated as Coastal.
- (G) Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.
- (ii) Oyster Creek - All waters within this waterbody are designated as Coastal.
- (iii) Clark Creek - All waters within this waterbody are designated as Coastal.
- (A) Middle Prong - All waters within this waterbody are designated as Coastal.
- (B) James Creek - All waters within this waterbody are designated as Coastal.
- (b) Pamlico Sound - All waters within this waterbody are designated as Coastal.
- (i) Porpoise Creek - All waters within this waterbody are designated as Coastal.
- (ii) Drum Creek - All waters within this waterbody are designated as Coastal.
- (iii) Bay River - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 08.4601' N - 76° 45.9173' W; running southeasterly to a point on the south shore 35° 08.4436' N - 76° 45.8885' W.
- (A) Gale Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 13.3142' N - 76° 36.7089' W; running southwesterly to a point on the south shore 35° 13.2964' N - 76° 36.7222' W.
- (B) Chadwick Creek - All waters within this waterbody are designated as Coastal.
- (C) Bear Creek - All waters within this waterbody are designated as Coastal.
- (D) Vandemere Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 12.0330' N - 76° 40.7460' W; running northeasterly to a point on the east shore 35° 12.0433' N - 76° 40.7235' W.
- (I) Long Creek - All waters within this waterbody are designated as Coastal.

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| <p>(E) Smith Creek - All waters within this waterbody are designated as Coastal.</p> <p>(F) Chapel Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 10.0076' N - 76° 42.4909 ' W; running easterly to a point on the east shore 35° 10.0096' N - 76° 42.4722' W.</p> <p>(G) Raccoon Creek - All waters within this waterbody are designated as Coastal.</p> <p>(H) Trent Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 06.2738' N - 76° 43.1071' W; running southeasterly to a point on the east shore 35° 06.2603' N - 76° 43.0741' W.</p> <p>(I) Thomas Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 07.2024 ' N - 76° 43.0929' W; running southerly to a point on the south shore 35° 07.1610' N - 76° 43.0947' W.</p> <p>(iv) Masons Creek - All waters within this waterbody are designated as Coastal.</p> <p>(v) Moore Creek - All waters within this waterbody are designated as Coastal.</p> <p>(vi) Rices Creek - All waters within this waterbody are designated as Coastal.</p> | <p>(vii) Ball Creek - All waters within this waterbody are designated as Coastal.</p> <p>(viii) Cabin Creek - All waters within this waterbody are designated as Coastal.</p> <p>(ix) Riggs Creek - All waters within this waterbody are designated as Coastal.</p> <p>(x) Spring Creek - All waters within this waterbody are designated as Coastal.</p> <p>(xi) Long Creek - All waters within this waterbody are designated as Coastal.</p> <p>(c) Neuse River - All waters within this waterbody are designated as Coastal.</p> <p>(i) Swan Creek - All waters within this waterbody are designated as Coastal.</p> <p>(ii) Lower Broad Creek - All waters within this waterbody are designated as Coastal.</p> <p>(A) Greens Creek - All waters within this waterbody are designated as Coastal.</p> <p>(B) Pittman Creek - All waters within this waterbody are designated as Coastal.</p> <p>(C) Burton Creek - All waters within this waterbody are designated as Coastal.</p> <p>(D) Brown Creek - All waters within this waterbody are designated as Coastal.</p> <p>(I) Spice Creek - All waters within this waterbody are designated as Coastal.</p> <p>(E) Gideon Creek - All waters within this waterbody are designated as Coastal.</p> <p>(F) Tar Creek - All waters within this waterbody are designated as Coastal.</p> |
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| <p>(G) Parris Creek - All waters within this waterbody are designated as Coastal.</p> <p>(iii) Orchard Creek - All waters within this waterbody are designated as Coastal.</p> <p>(iv) Pierce Creek - All waters within this waterbody are designated as Coastal.</p> <p>(v) Whitaker Creek - All waters within this waterbody are designated as Coastal.</p> <p>(vi) Smith Creek - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore at the Oriental Bridge 35° 01.5149' N - 76° 41.9549' W; running southwesterly to a point on the south shore 35° 01.3391' N - 76° 42.1774' W.</p> <p>(vii) Greens Creek - All waters within this waterbody are designated as Joint.</p> <p>(A) Kershaw Creek - All waters within this waterbody are designated as Joint.</p> <p>(viii) Dawson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 00.3371' N - 76° 45.6513' W; running southerly to a point on the south shore 35° 00.1492' N - 76° 45.6202' W.</p> <p>(A) Tarkiln Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.4124' N - 76° 45.5392' W; running easterly to a point on the east shore 35° 00.4289' N - 76° 45.4472' W.</p> <p>(ix) Gatlin Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.4165' N - 76° 47.4645' W; running easterly to a point on the east shore 34°</p> | <p>58.4154' N - 76° 47.4371' W.</p> <p>(x) Little Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.5175' N - 76° 49.5822' W; running southeasterly to a point on the east shore 34° 58.5086' N - 76° 49.5680' W.</p> <p>(xi) Mill Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 59.6024' N - 76° 51.1276' W; running easterly to a point on the east shore 34° 59.5955' N - 76° 51.0864' W.</p> <p>(xii) Beard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.3293' N - 76° 52.1855' W; running easterly to a point on the east shore 35° 00.3055' N - 76° 51.9012' W.</p> <p>(xiii) Lower Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 01.5781' N - 76° 54.1580' W; running easterly to a point on the east shore 35° 01.5566' N - 76° 54.0248' W.</p> <p>(xiv) Goose Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.4414' N - 76° 55.1170' W; running easterly to a point on the east shore 35° 03.3567' N - 76° 54.9728' W.</p> <p>(xv) Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly to a point on the east shore 35° 04.4705' N - 76° 56.2115' W.</p> |
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- (22) Pasquotank County ~~County~~:

- (a) Albemarle Sound - All waters within this waterbody in Pasquotank County are designated Coastal.
- (i) All Manmade Tributaries - All manmade tributaries of Pasquotank County are designated as Joint.
- (ii) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.2950' N - 76° 17.1405' W; running northeasterly to a point on the east shore 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Symonds Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 10.2898' N - 76° 14.1801' W; running southeasterly to a point on the south shore 36° 10.2042' N - 76° 14.0368' W.
- (iii) Big Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 09.3267' N - 76° 08.2562' W; running southerly to a point on the south shore 36° 08.9730' N - 76° 08.3175' W. Joint waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 07.9621' N - 76° 07.1818' W; running easterly to a point on the east shore 36° 08.2706' N - 76° 06.2525' W.
- (iv) Pasquotank River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
- (A) Little Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 11.5209' N - 76° 04.6517' W; running southerly to a point on the south shore 36° 10.9973' N - 76° 04.5149' W.
- (B) New Begun Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 13.3298' N - 76° 08.2878' W; running southerly to a point on the south shore 36° 13.0286' N - 76° 08.1820' W.
- (I) Paling Creek - All waters in this waterbody are designated as Inland.
- (II) James Creek - All waters in this waterbody are designated as Inland.
- (C) Charles Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 17.8090' N -

- 76° 13.0732' W;
running easterly to
a point on the east
shore 36° 17.8024'
N - 76° 13.0407' W.
- (23) ~~Pender County~~ Pender County:
- (a) Cape Fear River – All waters within this waterbody for Pender County are designated as Joint.
- (i) Thorofare – For the easternmost entrance into the Black River: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 34° 22.0493' N - 78° 04.4435' W; running northeasterly to a point on the east shore 34° 22.0783' N - 78° 04.4123' W. For the westernmost entrance into the Cape Fear River: Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 21.9197' N - 78° 07.0527' W; running southeasterly to a point on the south shore 34° 21.8618' N - 78° 06.9992' W
- (ii) Black River - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 34° 22.0783' N - 78° 04.4123' W; running southeasterly to a point on the south shore 34° 21.9950' N - 78° 04.2864' W.
- (iii) Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.
- (A) Cowpen Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 22.1417' N - 77° 59.3357' W; running southerly to a point on the south shore 34° 22.1298' N - 77° 59.3426' W.
- (B) Long Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the west shore 34° 22.7149' N - 77° 58.2797' W; running northeasterly to a point on the east shore 34° 22.7428' N - 77° 58.2348' W.
- (C) Turkey Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 22.8465' N - 77° 57.4827' W; running southerly to a point on the south shore 34° 22.7895' N - 77° 57.4452' W.
- (D) Old Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.5249' N - 77° 52.1493' W; running northeasterly to a point on the east shore 34° 22.5327' N - 77° 52.1278' W.
- (E) Honey Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.8627' N - 77° 51.0887' W; running easterly to a point on the east shore 34° 22.8609' N - 77° 51.0507' W.
- (F) Harrisons Creek - Inland Waters east and Joint Waters west of a line

- beginning at a point
on the north shore
34° 24.1859' N -
77° 48.6570' W;
running
southwesterly to a
point on the south
shore 34° 24.1387'
N - 77° 48.6982' W.
- (G) Island Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the south shore
34° 23.2509' N -
77° 47.3377' W;
running
northeasterly to a
point on the north
shore 34° 23.3322'
N - 77° 49.3208' W.
- (b) Topsail Sound And Tributaries - All
waters within this these waterbodies
are designated as Coastal.
- (c) Beasleys (Barlow) Creek - All waters
within this waterbody are designated
as Coastal.
- (24) Perquimans County:
(a) Albemarle Sound – All waters within
this waterbody in Perquimans County
are designated as Coastal.
- (i) All Manmade Tributaries –
All waters within this water
body are designated as Joint.
- (ii) Yeopim River – Inland
Waters west and Joint
Waters east of a line
beginning at a point on the
north shore 36° 05.4526' N -
76° 27.7651' W; running
southerly to a point on the
south shore at Norcum Point
36° 05.1029' N - 76°
27.7120' W. Joint Waters
west and Coastal Waters east
of a line beginning at a point
on the north shore 36°
04.7426' N - 76° 24.2536'
W; running southwesterly to
a point on the south shore
36° 04.1136' N - 76°
24.5365' W.
- (A) Yeopim Creek -
Inland Waters north
and Joint Waters
south of a line
beginning at a point
on the west shore of
- 36° 04.7206' N -
76° 24.8396' W;
running easterly to
a point on the east
shore 36° 04.7426'
N - 76° 24.2536' W
- (iii) Perquimans River - Joint
Waters west and Coastal
Waters east of a line
beginning at a point on the
west shore 36° 05.9669' N -
76° 18.1791' W; running
northeasterly to a point on
the east shore 36° 06.7655'
N - 76° 16.5953' W. Inland
Waters southwest and Joint
Waters northeast of a line
beginning at a point on the
west shore 36° 11.6569' N -
76° 28.0055' W; running
southeasterly to a point on
the east shore 36° 11.6123'
N - 76° 27.9382' W.
- (A) Walter's Creek -
Inland Waters
southwest and Joint
Waters northeast of
a line beginning at
a point on the north
shore 36° 11.1305'
N - 76° 27.9185'
W; running
southeasterly to a
point on the south
shore 36° 11.0224'
N - 76° 27.6626' W.
- (B) Mill Pond Creek -
Inland Waters north
and Joint Waters
south of a line
beginning at a point
on the west shore
36° 11.9757' N -
76° 27.5752' W;
running easterly to
a point on the east
shore 36° 11.9766'
N - 76° 27.2511' W.
- (C) Suttons Creek -
Inland Waters north
and Joint Waters
south of a line
beginning at a point
on the west shore
36° 10.0394' N -
76° 23.7945' W;
running
southeasterly to a
point on the east

- shore 36° 09.9325'
N - 76° 23.5263' W.
- (D) Jackson (Cove) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 08.4642' N - 76° 20.3324' W; running southeasterly to a point on the east shore 36° 08.4159' N - 76° 20.2890' W.
- (E) Muddy Creek - Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the north shore 36° 07.0381' N - 76° 17.1350' W; running southeasterly to a point on the east shore 36° 07.0218' N - 76° 17.1226' W.
- (iv) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.2950' N - 76° 17.1405' W; running northeasterly to a point on the east shore 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Deep Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.0945' N - 76° 16.6717' W; running southeasterly to a point on the south shore 36° 10.7510' N - 76° 16.2258' W.
- (B) Davis Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2950' N - 76° 17.1405' W; running southerly to a point on the south shore 36° 12.2222' N - 76° 17.1153' W.
- (25) ~~Tyrrell County~~ Tyrrell County:
- (a) Albemarle Sound – All waters within this waterbody in Tyrrell County are designated as Coastal.
- (i) All Manmade Tributaries – All manmade tributaries within this waterbody are designated as Joint.
- (ii) Banton (Maybell) Creek – Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
- (iii) Scuppernong River – Coastal Waters northwest and Joint Waters southeast of a line beginning at a point on the northeast shore 35° 56.7196' N - 76° 18.8964' W; running southwesterly to a point on the southwest shore at 35° 56.3351' N - 76° 19.6609' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0158' N - 76° 15.4605' W; running easterly to a point on the east shore 35° 54.0406' N - 76° 15.3007' W.
- (A) First Creek (Rider's Creek) - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0495' N - 76° 15.2842' W;

- running
northeasterly to a
point on the east
shore 35° 54.0641'
N - 76° 15.2554' W.
- (B) Furlough Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 55.6391' N -
76° 18.9797' W;
running
southwesterly to a
point on the south
shore 35° 55.6322'
N - 76° 18.9907' W.
- (iv) Alligator River - Inland
Waters west and Joint
Waters east of a line
beginning at a point on the
north shore at Cherry Ridge
Landing 35° 42.2172' N -
76° 08.4686' W; running
southerly to a point on the
south shore 35° 42.1327' N -
76° 08.5002' W. Coastal
Waters north and Joint
Waters south of a line
running along the north side
of the Highway 64 Bridge
beginning at a point on the
west shore 35° 54.2903' N -
76° 01.6818' W; running
easterly to a point on the east
shore 35° 53.6835' N - 75°
58.8578' W.
- (A) Little Alligator
River - Inland
Waters west and
Coastal Waters east
of a line beginning
at a point on the
north shore 35°
56.7640' N - 76°
01.0299' W;
running southerly
to a point on the
south shore 35°
55.9362' N - 76°
01.2492' W.
- (B) Second Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 51.7616' N -
76° 03.5105' W;
running southerly
to a point on the
south shore 35°
51.1317' N - 76°
03.8003' W.
- (C) Goose Creek -
Inland Waters west
and Joint Waters
east of a line
beginning at a point
on the north shore
35° 50.2658' N -
76° 03.9115' W;
running southerly
to a point on the
south shore 35°
50.2123' N - 76°
03.9120' W.
- (D) The Frying Pan -
Joint Waters by
connection with
Alligator River.
- (E) Gum Neck Landing
Ditch - Inland
Waters northeast
and Joint Waters
southwest of a line
beginning at a point
on the west shore
35° 41.6054' N -
76° 06.8215' W;
running
southeasterly to a
point on the east
shore 35° 41.5841'
N - 76° 06.7991' W.
- (26) ~~Washington County~~ County:
- (a) Albemarle Sound - All waters within
this waterbody in Washington County
are designated as Coastal.
- (i) All Manmade Tributaries -
All manmade tributaries of
Albemarle Sound within
Washington County are
designated as Joint.
- (ii) Mackeys (Kendrick) Creek -
Inland Waters southeast and
Coastal Waters northwest of
a line beginning at a point on
the north shore 35° 56.3806'
N - 76° 36.4356' W; running
southwesterly to a point on
the south shore 35° 56.3122'
N - 76° 36.4613' W.
- (iii) Pleasant Grove Creek
(Cherry Swamp) - Inland
Waters south and Coastal
Waters north of a line

- beginning at a point on the west shore 35° 56.4791' N - 76° 34.1624' W; running easterly to a point on the east shore 35° 56.5042' N - 76° 34.0319' W.
- (iv) Chapel Swamp Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.4150' N - 76° 33.3494' W; running easterly to a point on the east shore 35° 56.4122' N - 76° 33.3091' W.
- (v) Bull Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.9954' N - 76° 23.0291' W; running southerly to a point on the south shore 35° 56.9602' N - 76° 23.0282' W.
- (vi) Deep Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.1291' N - 76° 23.1179' W; running southerly to a point on the south shore 35° 56.0744' N - 76° 23.1230' W.
- (vii) Banton (Maybell) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
- (b) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
- (i) Conaby Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.3779' N - 76° 42.4401' W; running easterly to a point on the east shore 35° 55.3752' N - 76° 42.3408' W.
- (ii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.
- (c) Scuppernong River - All waters in this waterbody in Washington County are designated as Inland.

Authority G.S. 113-132; 113-134; 143B-289.52.

SUBCHAPTER 03R – DESCRIPTIVE BOUNDARIES

SECTION .0100 – DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103(g) are delineated in the following areas:

- (1) Pamlico River, west of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Maults Point;
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Maults Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (3) Pungo River, east of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries; and

- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southerly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the attendance boundary.

(b) The attended gill net areas referenced in 15A NCAC 03J .0103(h) are delineated in the following coastal and joint fishing waters of the state south of a line beginning on Roanoke Marshes Point at a point ~~35° 48.3693' N - 75° 43.7232' W~~; 35° 48.5015' N - 75° 44.1228' W; running southeasterly to a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay to the South Carolina State line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no-trawl areas described in 15A NCAC 03R .0106(2), (4), (5), (7), (8), (10), (11), and (12);
- (2) In the area along the Outer Banks, beginning at a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay; running northwesterly to a point 35° 45.1833' N - 75° 34.1000' W west of Pea Island; running southerly to a point 35° 40.0000' N - 75° 32.8666' W west of Beach Slough; running southeasterly and passing near Beacon "2" in Chicamicomico Channel to a point 35° 35.0000' N - 75° 29.8833' W west of the Rodanthe Pier; running southwesterly to a point 35° 28.4500' N - 75° 31.3500' W on Gull Island; running southerly to a point 35° 22.3000' N - 75° 33.2000' W near Beacon "2" in Avon Channel ; running southwesterly to a point 35° 19.0333' N - 75° 36.3166' W near Beacon "2" in Cape Channel; running southwesterly to a point 35° 15.5000' N - 75° 43.4000' W near Beacon "36" in Rollinson Channel; running southeasterly to a point 35° 14.9386' N - 75° 42.9968' W near Beacon "35" in Rollinson Channel; running southwesterly to a point 35° 14.0377' N - 75° 45.9644' W near a "Danger" Beacon northwest of Austin Reef; running southwesterly to a point 35° 11.4833' N - 75° 51.0833' W on Legged Lump; running southeasterly to a point 35° 10.9666' N - 75° 49.7166' W south of Legged Lump; running southwesterly to a point 35° 09.3000' N - 75° 54.8166' W near the west end

of Clarks Reef; running westerly to a point 35° 08.4333' N - 76° 02.5000' W near Nine Foot Shoal Channel; running southerly to a point 35° 06.4000' N - 76° 04.3333' W near North Rock; running southwesterly to a point 35° 01.5833' N - 76° 11.4500' W near Beacon "HL"; running southerly to a point 35° 00.2666' N - 76° 12.2000' W; running southerly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the Colregs Demarcation line to the point of beginning;

- (3) In Core and Back sounds, beginning at a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northwesterly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running southerly to a point 34° 58.8000' N - 76° 12.5166' W; running southeasterly to a point 34° 58.1833' N - 76° 12.3000' W; running southwesterly to a point 34° 56.4833' N - 76° 13.2833' W; running westerly to a point 34° 56.5500' N - 76° 13.6166' W; running southwesterly to a point 34° 53.5500' N - 76° 16.4166' W; running northwesterly to a point 34° 53.9166' N - 76° 17.1166' W; running southerly to a point 34° 53.4166' N - 76° 17.3500' W; running southwesterly to a point 34° 51.0617' N - 76° 21.0449' W; running southwesterly to a point 34° 48.3137' N - 76° 24.3717' W; running southwesterly to a point 34° 46.3739' N - 76° 26.1526' W; running southwesterly to a point 34° 44.5795' N - 76° 27.5136' W; running southwesterly to a point 34° 43.4895' N - 76° 28.9411' W near Beacon "37A"; running southwesterly to a point 34° 40.4500' N - 76° 30.6833' W; running westerly to a point 34° 40.7061' N - 76° 31.5893' W near Beacon "35" in Back Sound; running westerly to a point 34° 41.3178' N - 76° 33.8092' W near Buoy "3"; running southwesterly to a point 34° 39.6601' N - 76° 34.4078' W on Shackleford Banks; running easterly and northeasterly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;
- (4) Within 200 yards of any shoreline in the area upstream of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River; and

- (5) Within 50 yards of any shoreline east of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River, except from October 1 through November 30, south and east of Highway 12 in Carteret County and south of a line from a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line.

Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52.

SECTION - .0200 – FISHERY MANAGEMENT AREAS

15A NCAC 03R .0201 STRIPED BASS MANAGEMENT AREAS

- (a) The Albemarle Sound Management Area is designated as Albemarle Sound and all its joint and inland water tributaries,

(except for the Roanoke, Middle, Eastmost and Cashie rivers), Currituck, Roanoke and Croatan sounds and all their joint and inland water tributaries, including Oregon Inlet, north of a line beginning at a point ~~35° 48 .3693' N - 75° 43 .7232' W~~ 35° 48.5015' N - 75° 44.1228' W on Roanoke Marshes Point, running southeasterly to a point 35° 44 .1710' N - 75° 31 .0520' W on the north point of Eagle Nest Bay.

(b) The Roanoke River Management Area is designated as Roanoke River and its joint and inland tributaries, including Middle, Eastmost and Cashie rivers, up to the Roanoke Rapids dam.

(c) The Central/Southern Management Area is designated as all internal coastal, and joint and contiguous inland waters south of a line beginning at a point ~~35° 48 .3693' N - 75° 43 .7232' W~~ 35° 48.5015' N - 75° 44.1228' W on Roanoke Marshes Point, running southeasterly to a point 35° 44 .1710' N - 75° 31 .0520' W on the north point of Eagle Nest Bay, to the South Carolina line.

Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.

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>.

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

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STATE OF NORTH CAROLINA

COUNTY OF ORANGE

Filed

2012 AUG 14 PM 2:00

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DHR 9197

Office of
Administrative Hearings

COMPREHENSIVE PT CENTER,
Petitioner

vs.

NC Dept. of Health and Human Services
Division of Medical Assistance
Respondent.

DECISION

On May 16, 2012, Administrative Law Judge Melissa Owens Lassiter conducted an administrative hearing in this case. Pursuant to the undersigned's June 11, 2012 Order, Respondent filed a proposed Decision with the Office of Administrative Hearings on July 2, 2012.

APPEARANCES

Petitioner appeared *pro se*. Respondent is represented by Brenda Eaddy, Assistant Attorney General, North Carolina Department of Justice.

ISSUE

Whether Respondent acted properly when it denied payment on Petitioner's claims for Medicaid reimbursement for providing physical therapy services?

STATUTES AND POLICIES AT ISSUE

42 U.S.C. §§ 1396a-1396v
42 C.F.R. part 430-456
N.C. Gen. Stat. § 108C-1 *et seq*
North Carolina State Plan for Medical Assistance
Clinical Coverage Policy No. 10A Outpatient Specialized Therapies

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1

For Respondent: A and B

PROCEDURAL BACKGROUND

1. On June 16, 2011, Respondent issued a Final Agency Decision, upholding the initial decision to deny Petitioner's claims for Medicaid payment for physical therapy services for four Medicaid recipients/patients. Respondent denied payment to Petitioner, because "Prior Approval (PA) is required. There is no PA request on file. All requests for PA must be submitted in accordance with DMA's clinical coverage policies and published procedures." (Pet. Exh. 1)

2. On July 15, 2011, Petitioner Bruce Buley and Petitioner Comprehensive PT Center filed a petition for a contested case hearing in the North Carolina Office of Administrative Hearings contesting Respondent's denial of payment for physical therapy services.

3. On December 12, 2011, the undersigned issued a Final Decision In Part dismissing Bruce Buley as a Petitioner in his individual capacity.

FINDINGS OF FACT

1. Petitioner Comprehensive P.T. Center ("Center") is a group of physical therapy providers, and is enrolled in the NC Medicaid program as a Medicaid provider. Petitioner submits requests for payment to Respondent for physical therapy services provided to Medicaid recipients under its Medicaid group provider number 720778A.

2. Bruce Buley is a physical therapist who provides physical therapy services at Petitioner Center. Mr. Buley is enrolled as a Medicaid provider in his individual capacity with his own individual Medicaid provider number 7200046. Mr. Buley is also the manager of Petitioner Center's facility.

3. Respondent Division of Medical Assistance (DMA) is responsible for administering and managing the State Medicaid plan and program. Pursuant to N.C. Gen. Stat. §108A-54, Respondent is authorized to adopt rules and regulations for program operation.

4. Respondent's Clinical Coverage Policy No. 10A explains the coverage criteria for Medicaid covered outpatient specialized therapies, including skilled physical therapy. This clinical coverage policy states in part that providers of physical therapy services must obtain prior approval to provide the treatment to Medicaid recipients.

5. In approximately May 2011, Petitioner Center submitted claims to Respondent for Medicaid payment for services rendered to four Medicaid recipients in 2010. Those claims were submitted under Petitioner Center's provider number 720778A. (See North Carolina Medicaid-Remittance and Status Advice)

6. On June 16, 2011, Respondent denied payment for Petitioner's claims of service to four Medicaid recipients in the amount of \$12,253.04. Respondent denied payment, because Petitioner did not follow Clinical Coverage Policy 10A when it failed to obtain prior authorization to treat four Medicaid recipients, before Petitioner provided physical therapy treatments to those Medicaid recipients.

7. At hearing, Petitioner presented its evidence first. Petitioner's manager, Mr. Buley, presented documentation showing that Petitioner Center received medical authorization to provide physical therapy to four Medicaid recipients. He presented documentation showing that Petitioner actually rendered physical therapy services to those four Medicaid recipients. Buley also presented several forms, titled "North Carolina Medicaid –Remittance and Status Advice" that showed Respondent's initial denial of payment for the services Petitioner provided to those four Medicaid recipients. The Remittance and Status Advice forms listed Petitioner's Medicaid provider number, at the top left hand corner of the form, as the Medicaid provider for all four Medicaid recipients whom Respondent denied Medicaid reimbursement.

8. Mr. Buley also explained facts related to his individual Medicaid provider status in 2009, and his reenrollment as a Medicaid provider in 2010. Respondent conducted cross-examination of Mr. Buley. Respondent introduced Respondent's Exhibits A and B into evidence through Mr. Buley's identification of such exhibits on cross-examination. Those exhibits relate to Mr. Buley's Medicaid provider number.

9. Since Respondent denied Medicaid payment under Petitioner Center's Medicaid provider number, not Mr. Buley's Medicaid provider number, the status of Mr. Buley's Medicaid provider number is immaterial to the determination of this case.

10. At hearing, Respondent argued that Petitioner Center was aware of and abided by the prior approval requirements in Clinical Coverage Policy 10A, because it obtained prior approval for physical therapy services it supplied other Medicaid recipients in 2010. Respondent argued that none of Petitioner's claims for those recipients was denied payment for failure to obtain prior approval.

11. However, Respondent failed to present any evidence at hearing, through witnesses or documentation, demonstrating the reasons Respondent denied payment to Petitioner for the claims in question. First, Respondent failed to present any evidence explaining Respondent's initial denial of payments listed on the North Carolina Medicaid - Remittance and Status Advice forms in question. Second, Respondent failed to present any evidence showing that Petitioner knew of the prior approval requirement under Clinical Policy 10A because Petitioner had requested and received prior approval for other Medicaid recipients during 2010. Third, neither did Respondent cite any claims where Respondent paid Petitioner for services rendered to other Medicaid recipients in 2010, where Petitioner had requested and received prior approval for services.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. §150B-23 *et seq.*, and N.C. Gen. Stat. § 108C-12, and there is no question as to misjoinder or nonjoinder. The parties received proper notice of the hearing in this matter.

2. Pursuant to N.C. Gen. Stat. §108A-54, Respondent is authorized to adopt rules and regulations for program operation. Respondent's Clinical Coverage Policy No. 10A states that physical therapy providers must obtain prior approval before treating Medicaid recipients.

3. N.C. Gen. Stat. § 108C-1 provides that Chapter 108C applies to providers enrolled in Medicaid, and to Respondent's adverse determinations to deny, terminate, suspend, reduce, or recoup a Medicaid payment.

4. N.C. Gen. Stat. § 108C-12(d) provides that Respondent "shall have the burden of proof in appeals of Medicaid providers or applicants concerning an adverse determination."

5. Respondent failed to present sufficient evidence that it acted properly, and did not deprive Petitioner of property when it denied payment of Petitioner's claims for Medicaid reimbursement because Petitioner failed to obtain the required prior authorization. First, Respondent failed to present any evidence that Petitioner knew about the prior approval requirement as it had requested prior approval to provide services for other Medicaid recipients in 2010. Second, Respondent failed to prove that Respondent granted Petitioner prior approval to provide services to other Medicaid recipients in 2010. Third, Respondent failed to prove that it paid Petitioner for other Medicaid claims for services in 2010, where Respondent had granted prior approval to Petitioner before Petitioner rendered such services.

6. For the foregoing reasons, Respondent failed to meet its burden of proof under N.C. Gen. Stat. § 108C-12(d), and deprived Petitioner of property in the amount of \$12,253.04 in Medicaid reimbursements.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that Respondent's denial of Medicaid payments of Petitioner's claims for service on four patients in 2010, should be **REVERSED**. Respondent should issue Medicaid payments to Petitioner for services rendered in 2010 to the four Medicaid recipients at issue in this case.

NOTICE AND ORDER

The North Carolina Department of Health and Human Services will make the final decision in this case. That agency shall adopt the Decision of the Administrative Law Judge, unless the agency demonstrates that the Decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency is required to give each party an opportunity to file exceptions to this Decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. §150B-36(a)

In accordance with N.C. Gen. Stat. §150B-36, the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the Administrative Law Judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

This agency is required by N.C. Gen. Stat. §150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This is the 14th day of August, 2012.



Melissa Owens Lassiter
Administrative Law Judge

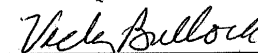
CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing **DECISION** was served on the Petitioner by e-mail and placing same in the United States mail, postage prepaid, and addressed as follows:

Comprehensive PT Center
115 Timberhill Place
Chapel Hill, NC 27514
PETITIONER

Brenda Eaddy
Assistant Attorney General
NC Dept of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 14th day of August, 2012


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Phone: 919-431-3000

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

Filed

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DHR 12064

2012 AUG -3 PM 4: 27

Brenda Brewer,
Petitioner,

)
Office of
Administrative Hearings

vs.

DECISION

North Carolina Department of Health and
Human Services, Division of Child
Development,
Respondent.

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)
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)

This matter was heard before Beecher R. Gray, Administrative Law Judge, on June 14, 2012 in Bolivia, North Carolina.

APPEARANCES

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Wilmington, NC 28401

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Raleigh, NC 27602

ATTORNEY FOR PETITIONER

ATTORNEY FOR RESPONDENT

APPLICABLE STATUTES AND RULES

N.C.G.S. §§ 110-90(5), 110-90(9), §110-91(14) § 110-98, 110-102.2(5), 10 NCAC 09 .0707, 09 .0705, 09 .2206, and 09 .2211

ISSUES

Whether Respondent acted erroneously in revoking the Special Provisional License issued to Church of God of Prophecy to operate King's Memorial Christian Academy.

EXHIBITS

Petitioner's Exhibits ("Exs.") 1, 2, and 4-10 were admitted into evidence.

Respondent's Exhibits ("Exs.") 1-3 and 5-15 were admitted into evidence.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witnesses; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent, Division of Child Development (the "Division") is an administrative agency of the North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina under The North Carolina Child Care Act, N.C.G.S. § 110-85, *et seq.*
3. Under N.C.G.S. § 110-85, the Division has a mandate to ensure that children in child care facilities are cared for in physically safe and healthy environments where their developmental needs are met.
4. Between approximately 1998 and early 2009, Candace Artis was a child care nurse employed by the New Hanover County Department of Health and Human Services. Nurse Artis provided training and technical assistance to child care workers in the areas of ITS- SIDS, Child Health and Safety, and hygiene, among others.
5. Lynette Brammer is a child care consultant with the Division. Consultant Brammer holds a bachelor's degree in family and child development and a master's degree in instruction and curriculum. Her job duties include investigation of complaints and compliance monitoring of facilities in southern New Hanover County and eastern Brunswick County.
6. Lisa Lyons is the Licensing Enforcement Program Supervisor with the Division. Supervisor Lyons holds a bachelor's degree in psychology with a minor in child development and family relations. She has held her current position for two years and previously worked in the Abuse and Neglect Unit of the Division for the prior two years. Among other duties, Supervisor Lyons oversees the administrative actions process of the Division.
7. Beverly Moore is the Regional Manager for the Division for the eastern district of North Carolina. Regional Manager Moore holds both a bachelor's and master's degree in child development and family relations. She has been a supervisor with the Division for approximately 15 years and an employee of the Division for approximately 30 years.

Regional Manager Moore's responsibilities include oversight of consultant supervisors in eastern North Carolina.

8. Petitioner Brenda Brewer is the administrator of King's Memorial Christian Academy ("King's Memorial"), a child care facility located at 1380 North College Road in Wilmington, North Carolina. Petitioner has a bachelor's degree in church ministries. She has been the administrator of King's Memorial for nine years.
9. At all times relevant to this action, King's Memorial was operating a child care center under a Special Provisional License granted to Church of God of Prophecy.
10. The Division maintains an 18-month compliance history of licensed child care centers. In the previous two years, King's Memorial's compliance history has been approximately 90 percent or greater, significantly better than the average compliance history.
11. In her capacity with the Division, Consultant Brammer conducted compliance audits at King's Memorial and completed a Visit Summary for each visit that generally was reviewed and signed by Petitioner prior to Consultant Brammer's departure from the center.
12. On April 25, 2011, Consultant Brammer and a co-worker, Alison Johnson, conducted an unannounced compliance visit at King's Memorial to monitor compliance with applicable child care requirements. (R. Ex. 2)
13. While Ms. Johnson completed a Staff and Training Worksheet to audit employee file compliance, Consultant Brammer conducted her observation of the center. (P. Ex. 3, R. Ex. 2)
14. Ms. Johnson noted on the Staff and Training Worksheet and Consultant Brammer noted in the April 25, 2011, Visit Summary that Petitioner's IT-SIDS certification had expired in January 2011 and that this was a violation of a requirement in 10A NCAC 09 .0705(f). (P. Ex. 3, R. Ex. 2)
15. During the April 25, 2011, visit, Petitioner stated that she had completed the training but could not find the certificate. (R. Ex. 2)
16. Petitioner mailed a letter of compliance dated May 2, 2011, to the Division and included a copy of the certificate for her ITS-SIDS certification. (R. Ex. 3)
17. The date of April 9, 2009, and Petitioner's name were handwritten on the ITS-SIDS certificate provided with Petitioner's letter of compliance. Consultant Brammer's initials were written under the date on the certificate. (R. Ex. 3)
18. Consultant Brammer believed that the certificate was suspect because of the handwritten date and name and because the certificate was not reflected in a previous Staff and Training Worksheet completed on April 29, 2010. (P. Ex. 1, R. Ex. 5)

19. The Staff and Training Worksheet completed on April 29, 2010, reflected that two employees of King's Memorial, Kara Parish and Aletha Williams, had certificates for an ITS-SIDS certification with a date of April 9, 2009. Consultant Brammer did not identify either of these certificates as suspect at the time the worksheet was completed. (R. Ex. 5)
20. Consultant Brammer contacted Candace Artis in an attempt to verify whether Petitioner attended an ITS-SIDS certification on April 9, 2009, taught by Ms. Artis. Consultant Brammer alleged that Petitioner had "whited out" the information contained in either Kara Parish's or Aletha Williams' certificate and inserted her own information. (P. Ex. 1)
21. Ms. Artis told Consultant Brammer that she no longer taught the ITS-SIDS course and that it was taught by Smart Start which had all of Ms. Artis' official records relating to ITS-SIDS certification courses that she had taught, but that she still had some documents which she could check. (R. Ex. 7)
22. On May 18, 2011, Consultant Brammer conducted a follow-up visit to review the ITS-SIDS certification provided by Petitioner in her May 2, 2011, letter of compliance. Petitioner provided Consultant Brammer with the certificate in her file which was a copy of an original certificate. Petitioner provided Kara Parish's and Aletha Williams' certificates contained in her files, also copies of originals. (R. Ex. 6, 7)
23. On May 26, 2011, Consultant Brammer emailed Regional Manager Moore and stated that Ms. Artis had informed her that she had not taught an ITS-SIDS-class on April 9, 2009, and that she thought the certificate provided by Consultant Brammer was from either 2006 or 2008. Ms. Artis also provided an attendance list for ITS-SIDS certifications that she taught from February to May 2011, including the date of March 25, 2009. This list was generated from the sign-in sheets at the ITS-SIDS classes. Consultant Brammer stated that she would not have accepted a copy of a certificate in the audit conducted in 2010. (R. Ex. 7)
24. Ms. Artis testified that the policy related to providing blank certificates had changed by 2009 and that all certificates provided to attendees now had their names filled in via computer.
25. On May 27, 2011, a Visit Summary was completed by the Division that cited a violation for falsification of the ITS-SIDS certificate under G.S. 110-01(14). (R. Ex. 8)
26. In response to the allegation of fraud, Petitioner responded to the Division stating that she had taken the ITS-SIDS class and was current on that certification. Petitioner stated that she did not write the April 9, 2009, date on the certificate, that she had told Consultant Brammer that she did not write it, that she had spoken with Ms. Artis the evening that she attended the class, that she had attended the class on a standby basis, and that she did not sign in that evening. Petitioner remembered that a woman attending the class had a baby with her in the room.
27. Prior to the allegation of fraud, it previously had been the policy of King's Memorial to

- keep a copy of certificates from training classes in employee files and to return the original to the employee. (R. Ex. 10)
28. Petitioner attached copies of her calendar from February and March 2009 to this response. The month of February reflects a note in the margin that reads, "March Sids Class full Waiting list." The March 25th contains an entry that reads, "SIDS 6:30". (R. Ex. 10)
 29. No one from the Division could remember having provided Petitioner with the dates that Ms. Artis stated that she had taught ITS-SIDS courses prior to this response.
 30. It never has been the policy of the Division to require that original certificates be kept by employers.
 31. On February 24, 2010, Consultant Brammer sent an email to her supervisor, Christine Carroll, stating that she was "fed up" with Petitioner and needed a more objective opinion. This email was sent prior to Consultant Brammer's allegation that Petitioner had falsified her ITS-SIDS certification. (P. Ex. 4)
 32. On July 26, 2011, Consultant Brammer emailed a draft memo to Supervisor Carroll for her review. The last paragraph reads, "It does not appear that Ms. Brewer has accepted responsibility for the falsification of the ITS-SIDS certificates for herself and her staff, but has focused on excuses, placing blame on otherss, (sic) and fantastical tales." (P. Ex. 5)
 33. In an email dated July 25, 2011, to which the July 6, 2011, memo was attached, Consultant Brammer indicates to Supervisor Carroll that she "won't like my last paragraph under recommendation, but it felt good writing it". (P. Ex. 5)
 34. Regional Manager Moore removed the final lines from the draft memo to which Consultant Brammer had made reference in her July 25, 2011, email because they were highly subjective and inappropriate.
 35. On August 16, 2011, Petitioner received an ITS-SIDS Certificate of Completion after Petitioner retook the class in an attempt to prevent the license revocation. This certificate contains a hand-written name and date and the authenticity of this certificate has remained unchallenged by the Division. (P. Ex. 10)
 36. North Carolina General Statute §110-90(5) provides that the Division shall have the power to revoke the license of any child care facility that ceases to meet the standards established by this Article and rules on these standards adopted by the Commission.
 37. 10A NCAC 09 .2206 provides that revocation of a permit may be ordered when violation of any section of the statutes or rules has been willful, continual, or hazardous to health safety, or the operator has not made reasonable efforts to conform to standards or is unable to comply.

38. 10A NCAC 09 .0705 states that in centers that are licensed to care for infants ages 12 months and younger, the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training.
39. North Carolina General Statute §110-91(14) provides that any effort to falsify information provided to the Department shall be considered by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the child care facility and shall constitute a cause for revoking or denying a license to such child care facility.
40. On September 12, 2011, the Division issued a Notice of Revocation of License for King's Memorial based on the alleged willful falsification of Petitioner's ITS-SIDS certification. (R. Ex. 12)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case under Chapters 110 and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder. There is insufficient evidence to find that Petitioner made an effort to falsify information under N.C. Gen. Stat. §110-91(14) regarding ITS-SIDS training.
3. There is insufficient evidence to find that Petitioner willfully or continually violated any statutes or rules that would be grounds for license revocation under 10A NCAC 09 .2206.
4. Respondent acted erroneously by revoking the license of King's Memorial Christian Academy.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Respondent's decision to revoke Petitioner's Special Provisional License is not supported by the evidence and is **REVERSED**.

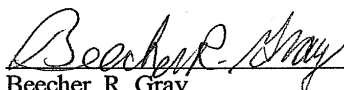
NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department North Carolina Department of Health and Human Services, Division of Child Development.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. The Agency is required to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

The Agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 03 day of August, 2012.



Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

Andrew T. Nettleman
The Nettlemen Law Firm PLLC
219 N 2nd Street
Wilmington, NC 28401
ATTORNEY FOR PETITIONER

Letitia C. Echols
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 6th day of August, 2012.



Office of Administrative Hearings
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STATE OF NORTH CAROLINA

Filed

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

2012 AUG 23 PM 4:51

12 DHR 0642

COUNTY OF PITT

Office of
Administrative Hearings

ANGELA MOYE,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
DIVISION OF HEALTH SERVICE
REGULATION, HEALTH CARE
PERSONNEL REGISTRY,

DECISION

Respondent

THIS MATTER came on for hearing before the undersigned, Joe Webster,
Administrative Law Judge, on June 19, 2012, in Halifax, North Carolina.

APPEARANCES

Petitioner: Angela Moye, pro se
1315 Ellison Court
Greenville, NC 27858

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated the allegation that Petitioner abused a resident of Edwards Group Home 2 in Hookerton, NC and entered findings of abuse by Petitioner's name in the Health Care Personnel Registry.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-255
N.C. Gen. Stat. § 131E-256

N.C. Gen. Stat. §150B-23
42 CFR § 488.301
10A N.C.A.C. 130.0101

EXHIBITS

Respondent's exhibits 1-16 were admitted into the record. Exhibit 17 (video) has been admitted into evidence after the undersigned took it under advisement.

WITNESSES

Angela Moye (petitioner)
Danny Taylor (neighbor)
Alexine McCollum (supervisor)
Labeebah Pridgen (DSS worker)
Gina Boccetti (facility survey consultant)
Nancy Gregory (HCPR Nurse Investigator)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony of witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. At all times relevant to this matter Petitioner, Angela Moye, was a habilitation technician at Edwards Group Home #2 (Edwards Group Home) in Hookerton, North Carolina. Edwards Group Home is a group home and residential care facility. It is therefore subject to N.C. Gen. Stats. §131E-255 and §131E-256. (T. pp. 7, 25, 64; Resp't Ex. 2)
2. Petitioner was trained for her position at Edwards Group Home. Petitioner's training included abuse, neglect and consumers' goals. Petitioner was also trained on mental illness, and restrictive interventions including interventions for out of control consumers. Based on Edwards Group Home training, it is never appropriate to push a resident as part of de-escalation. (T. pp. 7-8, 26, 28; Resp't Exs. 1, 3-4)
3. Petitioner's job responsibilities included providing safety for clients, ensuring caring therapeutic relationships with consumers and providing appropriate treatment. (T. pp. 7, 9; Resp't Ex. 1)

4. Petitioner was working at Edwards Group Home on May 19, 2011. Petitioner was assigned to take care of Resident SB. (T. p. 10; Resp't Exs. 5-6)
5. At all times relevant to this proceeding, Resident SB was a resident of Edwards Group Home. Resident SB's diagnoses include: schizo-affective disorder, and borderline personality disorder. Petitioner had taken care of Resident SB previously and was familiar with Resident SB's care. (T. pp. 11, 25; Resp't Exs. 6, 8, 9)
6. At some point during the day, Petitioner took Resident SB outside and interacted with her. According to Petitioner, Resident SB indicated she wanted to kill herself because her family had not visited and Petitioner restrained Resident SB. Resident SB's care plan provides that staff is to provide verbal prompts and redirection to Resident SB if Resident SB attempts to walk away. (T. p. 11; Resp't Ex. 8)
7. Danny Taylor ("Taylor") was outside his home on May 19, 2011 when he heard a commotion. At all times relevant to this proceeding, Taylor was a resident of Hookerton and lived directly across the street from Edwards Group Home. Resident SB was shouting during her interaction with Petitioner. (T. p. 17; Resp't Exs. 6, 7)
8. After hearing the noise, Taylor walked around to the edge of his home and saw a confrontation between an employee and a consumer in the yard of Edwards Group Home. Taylor ran into his home and watched his wife record the confrontation. Taylor observed the employee push the consumer on the ground with both hands. Taylor observed the consumer lying on the ground crying after the push. (T. p. 18; Resp't Ex. 7)
9. Following the incident, Petitioner contacted her supervisor, Alexine McCollum ("McCollum") and documented the incident. At all times relevant to this proceeding, McCollum was the co-owner of Edwards Group Home. Petitioner told McCollum there had been a verbal and physical altercation between her (Petitioner) and Resident SB and that Resident SB had fallen. (T. pp. 23, 25; Resp't. Ex. 5).
10. The undersigned finds the hearing testimony of Petitioner that she tried to employ a "therapeutic hold" on SB not credible in light of the other credible evidence in the record. Specifically the video does not support Petitioner's version of the event that she attempted to do a therapeutic hold by grabbing SB's arm when she lost her balance. The undersigned has considered the statement of SB taken during the investigation and also finds it not credible. When interviewed, SB stated that she wanted to make this quick and simple; that she did this to herself (apparently referring to her black eye). SB stated Ms. Moye tried to restrain her. All the credible testimony demonstrated SB had a reputation of not telling the truth. The only indisputable proof is that of the video, which I have admitted as Respondent's Exhibit 17 after taking its admissibility under advisement at the hearing.
11. McCollum made a report to the Health Care Personnel Registry. McCollum also conducted a facility investigation and reviewed video footage of the incident. After reviewing the video footage of the incident, McCollum understood why Petitioner's

actions could be characterized as abuse. McCollum terminated Petitioner from the facility. (T. pp. 29-31; Resp't Ex. 10)

12. Following the incident, Taylor called the DHHS complaint line and made a report which notified various DHHS agencies of his observations. Taylor also sent a recording of the incident to the state agencies. (T. p. 19; Resp't Ex. 15)

13. At all times relevant to this proceeding, Labeebah Pridgen ("Pridgen") was employed at Greene County DSS as an Adult Protective Services worker. Pridgen received a report about the incident. On May 20, 2011 Pridgen made an unannounced visit to the facility and interviewed Petitioner, McCollum, residents, and reviewed the video footage of the incident. Petitioner told Pridgen there was no reason for Resident SB's upset behavior. Based on her investigation, Pridgen requested protective steps be taken to ensure Resident SB's safety. (T. pp. 32-37; Resp't Ex. 11)

14. At all times relevant to this proceeding, Gina Boccetti ("Boccetti") was a Facility Survey Consultant for the Mental Health Licensure and Certification Division. Edwards Group Home falls within Boccetti's region. Boccetti also received a report about the incident and conducted an investigation. Boccetti's investigation included interviewing clients, staff, Taylor, and reviewing the physical site. Petitioner told Boccetti Resident SB suddenly started throwing blows on the day in question, and following the incident Resident SB was crying. Boccetti determined that Resident SB's movements had been restricted inappropriately by pushing her to the ground. (T. pp. 41-45, 54; Resp't Ex. 12)

15. At all times relevant to this matter, Nancy Gregory ("Nurse Investigator Gregory") was an investigator with the Health Care Personnel Registry. Nurse Investigator Gregory is charged with investigating allegations against health care personnel in the Pitt, Greene and Lenoir counties of North Carolina. Accordingly, she received the allegation that Petitioner had abused Resident SB at Edwards Group Home. (T. pp. 60-62; Resp't. Ex. 9)

16. Nurse Investigator Gregory independently reviewed the facility documents and conducted her own investigation. As part of her investigation, Nurse Investigator Gregory interviewed people involved with the incident. Nurse Investigator Gregory also reviewed the facility investigation and the video footage of the incident. At the conclusion of her investigation Nurse Investigator Gregory substantiated the allegation of abuse. (T. pp. 28, 64-68, 70; Resp't. Exs. 6, 10, 13-14)

17. Following the conclusions of her investigation, Nurse Investigator Gregory notified Petitioner of her decision to substantiate the allegation of abuse. (T. p. 71; Resp't Ex. 16).

18. "Abuse" is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish." (T. p. 70; Resp't. Ex. 15)

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to chapters 131E and 150B of the North Carolina General Statutes.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. As a habilitation technician working in a residential treatment and group home facility, Petitioner is a health care personnel and is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.
4. "Abuse" is defined as the "willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish."
5. On or about May 19, 2011, Angela Moye, a Health Care Personnel, abused a resident, SB, by willfully and forcefully pushing the resident, resulting in a fall to the ground and mental anguish.
6. Respondent did not act erroneously because there is sufficient evidence to support Respondent's conclusion that Petitioner abused Resident SB.

DECISION


Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent's decision to place a finding of abuse by Petitioner's name on the Nurse Aide Registry and the Health Care Personnel Registry should be **UPHELD**.

NOTICE

Under the provisions of North Carolina General Statute §150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012 and the Rules of Civil Procedure, N.C. General Statute §1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C.

Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

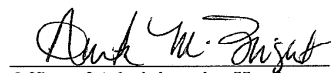
This the 23rd day of August, 2012.


Joe Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

Angela Moye
1315 Ellison Court
Greenville, NC 27858
Petitioner

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IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 EHR 12185

**FRIENDS OF THE GREEN SWAMP and
BLUE RIDGE ENVIRONMENTAL
DEFENSE LEAGUE, INC.**
Petitioners,

V.

N.C. DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES, DIVISION
OF WASTE MANAGEMENT,
Respondent.

and

**WASTE MANAGEMENT OF THE
CAROLINAS, INC., d/b/a WASTE
MANAGEMENT OF WILMINGTON,
Respondent-Intervenor.**

DECISION

APPEARANCES

For Respondent: Nancy E. Scott
Assistant Attorney General
Post Office Box 629
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For Respondent-Intervenor:

Benne C. Hutson
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201 North Tryon Street
Post Office Box 31247
Charlotte, NC 28231-1247

E. Brett Breitschwerdt
McGuireWoods LLP
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Post Office Box 27507
Raleigh, NC 27611-7507

ISSUE

Whether Respondent DWM substantially prejudiced Petitioners' rights by exceeding its authority or jurisdiction, acting erroneously, failing to use proper procedure, acting arbitrarily or capriciously, or failing to act as required by law or rule in granting Septage Land Application Site Permit No. SLAS-24-08 (the "Permit") to Respondent-Intervenor?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 130A, Article 9, "Solid Waste Management"
N.C. Gen. Stat. §§130A-290 and 130A-291.1
15A N.C.A.C. 13B.0837, 15A N.C.A.C. § 13B .0838,
15A N.C.A.C. 13B.0840, 15A N.C.A.C. 13B .0831 and .0832
40 CFR Part 503 and 40 CFR Part 257 (incorporated by reference)

EXHIBITS RECEIVED INTO EVIDENCE

Stipulated Joint Exhibits of All Parties:

1. SLAS-24-08 issued September 12, 2011 (the Permit).
2. Notice of Issuance of SLAS-24-08, September 12, 2011.
3. DWM's Response to Public Comments on SLAS-24-08, September 12, 2011.
4. Permit Application of Waste Management of Wilmington for land application site in Columbus, County, North Carolina, submitted in September, 2010, and including revisions and additions submitted through August 15, 2011.

For Petitioner:

1. E-mail from Chester Cobb to Cathy Ackroyd dated September 07, 2011, transmitting Summation of Changes to Draft SLAS.
2. Memorandum to Interested Parties re: Notice of Issuance of SLAS-24-08, with notation of Worley home on attached map.
3. Resumé, Barnes R. Bierck, P.E., Ph.D.

For Respondent:

1. Resumé of Chester Cobb, soil scientist, Solid Waste Section of Respondent of Waste Management.
2. Resumé of Michael Scott, Section Chief, Solid Waste Section of Respondent of Waste Management.

For Respondent-Intervenor:

1. Photograph of Septage Dewatering Facility.
2. Aerial Photograph of Permitted Land Application Site.

WITNESSES

For Petitioners: Stephen Michael Smith, Harriett Wilkes Council,
Amanda Regan, Worley, Barnes Bierck, P.E.,
Ph.D.

For Respondent: Michael Edward Scott, Chester Cobb

For Respondent-Intervenor: Albert Robert Rubin, Ph.D., Shawn Carroll

FINDINGS OF FACT

Based upon careful consideration of the applicable law, evidence received during the contested case hearing, and the entire record of this proceeding, and having weighed the credibility of the testimony of the witnesses, the Undersigned makes the following findings of fact:

I. Stipulated Facts

1. In September 2010, Respondent-Intervenor submitted a permit application to Respondent to operate a septage land application site off NC Highway 211 in Columbus County, North Carolina (the "Permit Application"). During the permit application review process, and through August, 2011, Respondent-Intervenor submitted additional information and revisions to the application.

2. From November 15, 2010, through March 14, 2011, as part of its review of the Permit Application, Respondent Division accepted written comments on the Permit Application.

3. On February 10, 2011, as part of its review of the Permit Application, Respondent held a public hearing on the Permit Application and a draft permit in Whiteville, Columbus County.

4. On September 12, 2011, Respondent issued a document entitled "Response to Public Comments," which presented Respondent's summary of the comments made during the public hearing and the written comments received during the public comment period and Respondent's responses to all such comments.

5. On September 12, 2011, Respondent issued Respondent-Intervenor a permit to operate a septage land application site, permit no. SLAS-24-08 (the "Permit").

6. The permitted site consists of approximately 39.1 acres, divided into four separate fields. The permitted septage land application site is located within an approximately 682 acre tract of land owned by Respondent-Intervenor.

7. On October 12, 2011, Petitioners filed a Petition for Contested Case Hearing challenging Respondent's issuance of the Permit. Petitioner alleged that:

a. Respondent erred in allowing the land application of liquid fractions resulting from 'dewatering' of septage as the liquid fraction is not 'a material derived from domestic treatment plant septage' in the definition of septage. G.S. 130A-290(a)(32)b."

b. Respondent erred in acting upon an incomplete permit application because the proposed annual volume of each type of septage defined in G.S. 130A-290(a)(32) proposed for land application per acre was not stated. Petitioners alleged that the applicant did not provide data on each type of septage proposed for land application, and that Respondent does not have the authority to grant a permit without it. As a result, "the application contains an incomplete, inconsistent, and flawed Site Assessment with accompanying nutrient management plan targeting calculating the volume of septage to be land applied per year. 15A NCAC 13B .0835(c)(4)."

c. Respondent did not have information necessary for evaluating submitted determinations of the proposed annual volume of each type of septage proposed for land application. 15A NCAC 13B .0835(c)(4). Petitioners further alleged that "the approach in the permit application of the method ('pilot dewatering activity') in which samples were produced for analyses, and used in the application for determining nutrient levels and application rates, is inadequate, incomplete, and unclear."

II. The Parties

8. Petitioners ("Friends") are an unincorporated citizen association registered and formed in Columbus County in 2001. Petitioners' mission is to advocate for the

environmental protection of the Waccamaw basin, including the Green Swamp. Petitioners' members primarily live around the Lake Waccamaw drainage basin, including one member that lives approximately one-half a mile from the property on which Respondent-Intervenor would conduct land application activities under the Permit. (T. p 50). Petitioner Friends is an affiliate of Petitioner Blue Ridge Environmental Defense League, Inc. ("BREDL") (T. p 50). Petitioner Friends address is Friends of the Green Swamp, Post Office Box 133, Lake Waccamaw, North Carolina 28450.

9. Respondent ("Agency" or "DENR") is the state agency authorized to issue permits and enforce regulations under the Solid Respondent-Intervenor Act, N.C.G.S. § 113A-290 *et seq.*

10. Respondent-Intervenor, Waste Management of the Carolinas, Inc., d/b/a Waste Management of Wilmington ("Waste Management"), owns and operates a collection facility and septage dewatering facility located at 3920 River Road, Wilmington, North Carolina, 28412 ("Wilmington Facility") (Jt. Exh. 4). Waste Management also owns the approximately 682 acre parcel of land in Columbus County which includes the 39.1 acres permitted for land application of septage under SLAS 24-08 (the "Property").

III. Property and Permitted Septage Land Application Site

11. The permitted septage land application site is located within an approximately 682-acre tract of land owned by Respondent-Intervenor in rural Columbus County, consisting of pine and scrub/cut-over areas. No structures are present on the site (Jt. Exh. 4). The permitted site consists of approximately 39.1 acres, divided into four separate fields (Jt. Stip. F. 6). Field 1 is approximately 15.1 acres. Field 2 is approximately 6.4 acres, Field 3 is approximately 5.2 acres, and Field 4 is approximately 12.4 acres (T. p 164).

12. Respondent-Intervenor's Exhibit 2 is an aerial photograph of the land application site delineating Fields 1, 2, 3, and 4, and is an accurate depiction of the permitted land application site (T. p 218). The property is located off Highway 211, and is approximately seven miles from Lake Waccamaw. (T. p 36).

IV. Waste Management's Dewatering Facility and Dewatering Process

13. Respondent-Intervenor operates a permitted septage dewatering facility at its Wilmington Facility (Jt. Exh. 4; T. p 168). Respondent-Intervenor's Exhibit 1 is a photograph of the septage dewatering facility (R-I Exh. 1), and is an accurate depiction of the septage dewatering facility, except for a rain cover that has subsequently been constructed after the photograph was taken. A rain cover was placed over the dewatering boxes to prevent rainwater from entering the boxes, and to provide shade for Respondent-Intervenor's employees working at the dewatering facility. (T. p 209)

14. At the time of the hearing, Respondent-Intervenor was delivering the liquid fraction of the dewatered septage to the Town of Wallace wastewater treatment plant, and the solids were being disposed in a local landfill. (T. pp.. 216-17)

15. Shawn Carroll is an environmental protection manager for Respondent-Intervenor in the South Atlantic area, which includes Georgia, South Carolina and North Carolina. Mr. Carroll is responsible for Respondent-Intervenor's environmental and regulatory compliance at the Wilmington Facility, including compliance oversight of the dewatering facility. (T. pp.. 206-207). Mr. Carroll has been in the environmental compliance management field for a total of 22 years (T. p 208).

16. The first step in the dewatering process at the Wilmington Facility occurs when Respondent-Intervenor's fleet of vacuum trucks collect septage materials, including restaurant grease trap waste, domestic septage, and portable toilet waste from the Wilmington and regional area. Once a collection vehicle has completed its route, the truck returns to the dewatering facility to unload the septage materials (T. p 210).

17. The collection trucks gravity feed the septage material into the primary solid screening boxes, which separates out large items including rags, plastic forks and other materials from the septage prior to dewatering. The septage material enters subsurface vaults where the material is mixed by an impeller that stirs up and homogenizes the septage materials. At this stage, lime is added to establish a pH level between 8 and 8.5 as to improve flocculation later in the dewatering process. Flocculation is most effective when the pH of the septage material is between 8 and 8.5. (T. pp. 210-211).

18. The septage material exits the subsurface vault, via piping into four horizontal aeration tanks, where the septage material is vigorously aerated to reduce biochemical oxygen demand and chemical oxygen demand. After aeration in the horizontal tanks, the mixed septage material is piped into the polymer injection control room where the polymer flocculent is added. The flocculent assists in removing the finer particles suspended in the liquid by causing them to adhere together to form larger particles. After completing this process, the septage materials are piped into two dewatering boxes (T. pp. 211-212; T. p 163).

19. The dewatering boxes are 20 yard roll-off containers lined with industrial grade filter media to allow the solid materials to separate out from the liquid materials, with the liquid materials passing through the filter media, and settling out in the bottom of the dewatering boxes. The liquid portion of the septage exits at the base of the dewatering boxes, while the solids are captured by the filter media. The liquid portion of the septage drains onto a concrete pad, and is collected through a drain sump, which pumps the liquid portion into four 25,000 gallon aerated vertical storage tanks. The dewatered septage is stored in these four vertical storage tanks.

20. Before loading the dewatered septage onto tanker trucks for transport to the land application site, lime would be added to the dewatered septage to adjust the pH to a pH of 12 for vector and pathogen control. The pH must remain at 12 (1) for the required 30 minute period for domestic septage, and (2) for two hours for grease septage or a mixture of domestic and grease septage.

21. Respondent-Intervenor personnel must test the septage to ensure the pH remains at 12 for the required period of time. (T. pp. 212-214; Jt. Exh. 1, Permit Condition #7; 40 CFR Part 503.30-33). The entire dewatering process typically takes about 12 hours (T. pp. 215-216).

22. The dewatering of septage allows the septage material to be more easily land applied, because the solids have been removed from the waste stream. Removal of grease solids prevents grease from coating and damaging plant tissue. The dewatering process also removes contaminants from the waste stream, including straws, plastics, rags or silverware that otherwise would end up on the land application site. The liquid portion of septage also more effectively infiltrates into the soil profile and so there is a reduced possibility of septage accumulating on the ground surface. This allows the crops being grown on a land application site to better utilize the septage nutrients for crop growth. Dewatering septage also has the added benefit of reducing the amount of heavy metals typically found in septage as the majority of those metals are contained in the solid portion of the septage (T. pp. 176-178).

23. Respondent-Intervenor has been land applying non-dewatered septage for many years in Brunswick County, and has significant experience in operating the equipment for the land application of septage. (T. p 189)

V. Permit Application Process, Review and Issuance of SLAS 24-08

24. The Composting and Land Application Branch within Respondent's Solid Waste Section of DWM is responsible for the administration of the State's septage management program. The Composting and Land Application Branch's Septage Management Program oversees all aspects of the management of septage in North Carolina. Administration of the program includes permitting and oversight of approximately 500 septage management firms that pump, transport and dispose of septage; the permitting and oversight of approximately 140 sites utilized for the land application of septage; and the permitting of over 100 septage detention and treatment facilities for the management of septage (T. p 151).

25. Respondent has permitted a number of other land application sites in North Carolina where the liquid portion of septage is being land applied today. Today, approximately eight or nine other land application sites, out of approximately 140 permitted sites in the state, land apply dewatered septage (T. p 167).

26. Respondent has approximately 10 years of experience regulating the land application of dewatered septage since Respondent permitted the first land application site to receive dewatered septage around 2000 or 2001 (T. pp. 167-68).

27. When Respondent reviewed Respondent-Intervenor's permit application, Michael Scott was the branch head of the Composting and Land Application Branch. In spring of 2011, Mr. Scott was promoted to section chief of the Solid Waste Section of DWM, and was in this position when the Permit was issued to Respondent-Intervenor (T. pp. 152-153).

28. Mr. Scott has a Bachelor of Science degree from North Carolina State University in Agronomy, and a Masters degree from North Carolina State University in Crop Science. Mr. Scott is also a licensed soil scientist accredited by the State of North Carolina (T. p 152). (Resp. Exh. 2, Scott resume)

29. Chester Cobb is a soil scientist within the Solid Waste Section of Respondent DWM with a Master's Degree in soil science. His responsibilities include compliance inspections and the processing of new and renewal septage land application permit applications submitted to DWM for the eastern part of the State. (T. p 19). Mr. Cobb was the primary reviewer of Respondent-Intervenor's application (T. p 21). (Resp. Exh. 1, Cobb resume).

30. Dr. A. R. Rubin served as a consultant for Respondent-Intervenor on the development of the permit application, the site evaluation, and the nutrient management plan (T. p 125). Dr. Rubin is an professor emeritus in the agricultural engineering department at North Carolina State University. In 1978, Dr. Rubin joined the agricultural engineering department at NC State, and has extensive academic and regulatory experience in the areas of septage and septage management (T. p 138). During his career, Dr. Rubin worked with the United States Environmental Protection Agency to develop guidelines for the management of decentralized wastewater treatment plants, including guidelines for septage management. Now retired, Dr. Rubin consults with industry on permit applications and issues related to septage management, treatment, and disposal. Dr. Rubin has previously prepared over a dozen permit applications for septage land application sites (T. p 139).

31. The application process for a septage land application site requires an applicant to submit specific components as set forth under the 15A NCAC 13B .0800 rules. The septage land application permit components include, among other requirements, a two-page application, a site evaluation conducted by a licensed soil scientist, and a nutrient management plan (T. pp. 153-154).

32. Dr. Rubin, in coordination with Mr. Dwayne Graham, a licensed soil scientist, developed the site assessment and soil evaluation, and signed the site evaluation (T. pp. 125-126). The nutrient management plan for the Bermuda Grass and cover crop fields and for the pine fields was developed by Dr. Rubin and Mr. Scott Fredrick (T. p 126). Dr. Douglas Frederick, Professor of Forestry at N.C. State

University, prepared the Forestry Management report for the pine fields. (See Documents in Jt. Exh. 4)

33. Mr. Carroll was responsible for gathering data included in the application, coordinating with DWM and other state agencies, and reviewing the application for completeness prior to submitting it to DWM. During the permit review process, Mr. Carroll communicated with DWM personnel in person, via email, and by telephone, including Mr. Scott, Mr. Cobb, and Mr. Gallo (T. p 220).

34. Respondent-Intervenor's permit application states that the waste material to be land applied is the clarified liquid portion of septage, consisting of 50% domestic septage, 45% grease trap waste and 5% portable toilet waste. The septage application rate was stated in the application to be 50,000 gallons per year, with potential reduction to 25,000 gallons per year for the pine tree fields. (Jt. Exh. 4).

35. Bermuda grass is the receiver crop for Field 2 and Field 3. Pine trees are the receiver crop for Field 1 and Field 4 (T. p 164; Jt. Exh. 4).

36. Mr. Cobb reviewed the permit application to ensure that Respondent had all information required to issue the requested permit. He also evaluated additional information related to potential endangered species impacts under the Natural Heritage Program and wetlands delineations on the property. Mr. Cobb developed the initial draft permit (T. p 22).

37. Mr. Cobb also met with his then-direct supervisor, Mr. Scott, to ensure that all required information had been provided and to review conditions to be imposed under the permit (T. p 21).

38. During the permit application review process, Respondent-Intervenor submitted additional information and revisions to the application as requested by Respondent. (Jt. Stip. F. 1.) Specifically, Mr. Cobb requested additional information relating to ownership of the property, an update to the endangered species study, and clarification of certain boundaries of the proposed land application fields (T. pp. 222-223).

39. By correspondence dated January 31, 2010 [sic: *actual date January 2011*], Respondent-Intervenor's District Manager, Chris McKeithan clarified that Respondent-Intervenor was not requesting approval to land apply industrial process waste under the requested land application permit (Jt. Exh. 4; T. pp. 198-199). Specifically, Condition 7 of the Permit addresses this as it excludes septage that may include waste resulting from any processes of industry, manufacture, trade, or business from the septage materials that may be land applied under the subject permit. (Jt. Exh. 1)

40. Per agency standard procedure, Mr. Scott and other representatives of Respondent visited the Property as part of DWM's review of the permit application.

(T. p 156). During the site visit, Respondent's representatives took soil borings to evaluate the soil textural class, and to determine the approximate depth of the seasonal high water table to ensure that applicable regulatory requirements were met. Respondent's representatives walked each field proposed for land application (T. p 156). Respondent's soil borings in each of the four fields verified the soils report information included in the application (T. p 47). The site visit lasted approximately 8 hours. During this visit, Respondent's representatives also verified setbacks to wetlands and ditches to be included in the permit (T. pp. 221-222).

41. From November 15, 2010, through March 14, 2011, as part of its review of the Permit Application, DWM accepted written comments on the Permit Application (Jt. Stip. F. 2; Jt. Exh. 3). The public comments received focused largely on the proximity of the site to Lake Waccamaw, concerns over the septage materials to be land applied, concerns over the application rates of septage materials, and concerns over monitoring of the land application site (T. p 27).

42. Respondent's regulations do not require a public hearing where an application for the land application of septage is limited to an application rate of no more than 50,000 gallons per acre per year. However, due to public interest in the Permit application, and the comments received by the agency during the public comment period, Respondent deemed it appropriate to hold a public hearing (T. pp. 23-24).

43. On February 10, 2011, Respondent held a public hearing on the Permit application in Whiteville, Columbus County (Jt. Stip. F. 3). Members of Petitioner attended the public hearing, and raised concerns about the permit application related to noise, sound, air pollution, and truck traffic on Highway 211 (T. p 51). Other members had concerns about potential impacts to water quality at Lake Waccamaw (T. p 56).

44. On August 15, 2011, Respondent-Intervenor submitted a revised nutrient management plan to address comments and modifications requested by Respondent. Specifically, DWM requested reductions in the realistic yield expectations ("RYE") for the Bermuda grass and Rye grass set forth in the nutrient management plan that was included in the initial application (T. pp. 42-43).

45. On September 12, 2011, Mr. Scott, as chief of the Solid Waste Section of DWM, issued the requested Permit to Respondent-Intervenor. (Jt. Stip. F. 5) Seven conditions in the draft and initial permit addressed concerns related to potential impacts to the local environment, application rates, types of septage to be land applied, monitoring, and reporting requirements (Pet. Exh. 1). The maximum annual septage application rate for the pine fields is 25,000 gallons per acre. The maximum annual application rate for the Bermuda grass/ small grain overseed fields is 50,000 gallons per acre. In accordance with 15A NCAC 13B .0832(8), Respondent issued the subject Permit for one year. (Jt. Exh. 1)

46. After receiving public input during the comment and hearing process, Respondent made changes to the permit by adding Conditions 8, 12, 13, 14, 15, 23,

and by modifying Conditions 7 and 18, to address those concerns. (Jt. Exhs. 1, 3; Pet. Exh. 1; T. p 27). Respondent-Intervenor did not object to these conditions (T. p 223)

47. The Permit issued to Respondent-Intervenor includes 23 conditions on Respondent-Intervenor's land application of septage at the site (Jt. Exh. 3), including:

- a. Permit condition no. 1 provides that the Permit shall become void if the soils fail to adequately assimilate land applied septage and the Permit shall be rescinded unless the site is maintained and operated in a manner which will protect the assigned water quality standards of both surface and ground waters.
- b. Permit condition no. 5 requires continuing compliance with all state and federal regulatory requirements related to the land application of septage. Permit condition No. 6 provides that the Permit may be modified by DWM at any time to incorporate any condition, limitation, and/or monitoring requirement that DWM deems necessary to adequately protect the environment and public health.
- c. Permit condition no. 7 was modified to require that septage that may contain waste resulting from any processes of industry, manufacture, trade or business shall not be land applied.
- d. Permit condition no. 8 states the annual application rates for the pine trees and bermuda grass fields, and that applications are not to exceed the permitted rates and amount. Refer to the nutrient management plan for the monthly application rates.
- e. Permit condition no. 9 requires the dewatered septage to be sampled and analyzed quarterly for plant nutrients.
- f. Permit condition no. 18 requires the permittee to submit a renewal for its permit application, along with the septage land application logs for the entire time of its current permit, within 90 days before the current permit expires.

(Jt. Exh. 3)

48. Permit condition no. 11 requires Respondent-Intervenor to demonstrate to Respondent that the irrigation system will evenly cover the designated application areas and not spray septage outside the designated boundaries (Jt. Exhs. 1, 3). As of the date of the hearing, Respondent-Intervenor had not scheduled a time to make this demonstration to Respondent, and Respondent-Intervenor had not begun to land apply septage at the site. (T. pp. 172-173; p 217)

49. Permit condition no. 12 requires that septage shall only be applied when soil and weather conditions are favorable for application, and soil and weather conditions must also be considered before any septage application. Permit condition no. 13 requires Respondent-Intervenor to monitor soil conditions so that any septage application will not result in ruts greater than 3" in the soil surface. (Jt. Exh. 3)

50. Permit condition no. 14 prohibits any discharge, including aerial drift, of septage outside of the permitted boundaries. Permit condition no. 15 requires the permittee to notify Respondent as soon as possible, but within 24 hours of first knowledge, of the occurrence of any discharge outside the permitted boundaries or any exceedance to the permitted application rates. (Jt. Exh. 3)

51. Permit condition no. 23 requires the property site to be inspected by a representative from Respondent Division before the initial septage application. (Jt. Exh. 3)

52. The pine trees and Bermuda grass crops grown on the land application fields will be harvested and beneficially reused upon maturity. After the crops on the land application site have been harvested, Respondent-Intervenor intends to replant the fields with pine trees or Bermuda grass or some other suitable crop, subject to approval by DWM. (T. p. 219)

53. On September 12, 2011, Respondent issued a document entitled "Response to Public Comments," which consists of Respondent's summary of the comments made during the public hearing and the written comments received during the public comment period, and Respondent's responses to all such comments (Jt. Exh. 3; Jt. Stip. F. 4)

VI. The Dewatering Process and the Statutory Definition of Septage

54. At hearing, Dr. Rubin opined that dewatering qualifies as the treatment of septage (T. p. 133). Mr. Scott agreed, and explained that a dewatering facility qualifies as a detention and treatment facility subject to permitting under 15A N.C.A.C. 13B.0836. Specifically, 15A N.C.A.C. 13B.0836(e) provides in part:

Treatment shall include, but not be limited to, aerobic or anaerobic digestion, dewatering or thickening, pressing, centrifuging, the use of organisms or enzymes, and pathogen reduction methods or vector attraction reduction methods other than lime stabilization.

(T. p. 169) Mr. Scott further explained that septage includes a slurry fraction of liquids and solids, which also includes the dewatered fraction from a dewatering facility.

55. At hearing, Dr. Bierk testified as an expert witness for Petitioners in the areas of "dewatering of septage, use of polymers in dewatering of septage, land application of septage, analysis of what is septage liquid fractions," and generally

regarding rules and regulations of septage and land application of septage. (Pet. Exh. 3, Bierk resume; T. p. 80) Dr. Bierk also opined that dewatering of septage constitutes the treatment of septage under the Septage Management Rules (T. p. 114)

56. The Permit provides that septage can be applied at the rate set forth in the permit, which includes both untreated septage as well as the dewatered liquid portion of septage after treatment at the dewatering facility (T. pp.. 184-185).

57. Dr. Bierk expounded that septage that is processed through a machine separating out the liquid portion from the solid portion of septage would generate a liquid that would still be classified as septage (T. pp.. 121-122).

VII. Annual Volumes of Septage to be Land Applied

58. Rule 15A NCAC 13B.0835(c)(4) requires a permit application for a septage land application site to include information as part of the nutrient management plan on the proposed annual volume per acre of each type of septage proposed for land application.

59. The Permit application specifically states that the septage to be land applied at the Property would consist of 50 percent domestic septic tank, 45 percent grease trap waste, and 5 percent portable toilet waste. (Jt. Exh. 4) Portable toilet waste is included within the definition of "domestic septage" at N.C.G.S. § 130A-290(a)(32)a.

VIII. Establishing Limiting Nutrient Requirements for Land Application

60. Rule 15A NCAC 13B.0835(c)(13) requires an application rate for a septage land application site to be established based upon the most limiting nutrient for the receiver crop.

61. Before the dewatering system was built, Respondent-Intervenor conducted a pilot study to determine the qualities of the liquid portion of the dewatered septage. The primary purpose for the pilot study was to provide information to Cape Fear Public Utility Authority ("Cape Fear PUA"), an unrelated disposal option for the dewatered portion of septage (T. pp.. 139-140). The pilot study was completed at the request of the Cape Fear PUA (T. p. 234). Dr. Rubin explained that the samples used and data produced by the pilot study were representative samples of the mixed septage material that would be produced by the dewatering facility, consistent with Dr. Rubin's experience with other projects. The results of the pilot study were consistent with the nutrient values that have been seen in other dewatering operations using the same equipment, and were included in the Permit application to present information on the quality of the liquid septage that would be land applied (T. pp.. 140-141).

62. A pilot study is not required by the Septage Management regulations to be included in a permit application, and was not considered by Respondent (T. p 173; pp. 39-40).

63. Respondent DWM's standard procedure is to use the North Carolina RYE database nutrient values, as set forth in the federal regulations at 40 CFR 503.13(c) for domestic septage, to establish the approximate loading rate for the receiver crops. This database allows environmental professionals to reference a particular soil type in a particular county to determine the acceptable level of nutrient loading rates based on the crops to be grown (T. p 157).

64. Mr. Scott explained that the limiting nutrient for both of the crops to be grown at the Property – Bermuda grass and pine trees – would be nitrogen (T. p 161). The value of 2.6 pounds of nitrogen per 1,000 gallons of septage is the limiting nutrient value used based upon the federal regulations (T. p 158).

65. The values in the federal regulations are for domestic septage that has not been dewatered. Grease septage is lower in nitrogen content than domestic septage. Mr. Scott explained that the nitrogen values for dewatered septage would be significantly reduced due to the removal of the solids (T. pp.. 160-161).

66. In this case, the revised nutrient management plan contains all of the information necessary for determination of the appropriate nutrient loading rate for application of septage to each of the receiver crops at the site. (T. pp.. 165-166)

67. As written, the subject permit allows Respondent-Intervenor to land apply non-dewatered septage, if, for example, there is a power outage at the dewatering facility. (T. pp.. 166-167)

68. Maximum land application rates for domestic septage (50,000 gallons per acre per year) and for grease septage (25,000 gallons per acre per year) are found at 15A NCAC 13B .0938(b). Paragraphs (6) and (7) of that rule require at least four samples of the liquid from a septage dewatering process in order to apply for a higher land application rate for the liquid fraction of dewatered septage. (T. pp.. 173-174)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C.G.S. § 130A-24(a), (a1) and (e) and N.C.G.S. § 150B-23, and all parties are properly before the Office of Administrative Hearings.

2. All parties are correctly designated, and there is no question of mis-joinder or non-joinder of the parties.

3. Petitioners have standing to bring this contested case related to environmental concerns they have raised regarding the issuance of the Permit.

4. N.C. Gen. Stat. § 130A-291.1(d) provides that a permit "shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission." (Commission for Public Health)

5. N.C. Gen. Stat. 130A-291.1(d) states that "septage" shall be treated and disposed of only at an approved wastewater system or at a site that is permitted by DENR for the land application of septage.

6. N.C. Gen. Stat. § 130A-291.1(e5) provides for the taking of soil samples by Respondent on proposed and permitted septage land application sites. Section (g) of the statute provides that production of a crop in accordance with an approved nutrient management plan is a "bona fide farm purpose." Section (h) of the statute requires Respondent to inspect each septage land application site at least twice a year, and requires inspection of the records associated with the site at least annually.

7. N.C. Gen. Stat. § 130A-290(a)(32) defines the term "septage." "Domestic septage" and "Grease septage", as defined below, are permitted for land application under SLAS-24-08.

(32) "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system. The term septage includes the following:

- a. Domestic septage, which is either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works receiving only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.
- b. Domestic treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works where the designed disposal is subsurface. Domestic treatment plant septage includes, but is not limited to, scum or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from domestic treatment plant septage. . . .
- c. Grease septage, which is material pumped from grease interceptors, separators, traps, or other appurtenances used for

the purpose of removing cooking oils, fats, grease, and food debris from the waste flow generated from food handling, preparation, and cleanup.

- d. Industrial or commercial septage, which is material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.
- e. Industrial or commercial treatment plant septage, which is solid, semisolid, or liquid residue generated during the treatment of sewage that contains any waste resulting from any process of industry, manufacture, trade, or business in a treatment works where the designed disposal is subsurface. . . .

8. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E.2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm'r of Insurance v. Fire Insurance Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982). In weighing evidence which detracts from the agency decision, "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand." *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983)(citations omitted).

9. An "agency's construction of its own regulations is entitled to substantial deference . . . [and] must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" *Morrell v. Flaherty*, 338 N.C. 230, 237-38, 449 S.E.2d 175, 179-80 (1994). A Court should also "take into account the specialized expertise of the staff of an administrative agency." *High Rock Lake Ass'n Inc. v. N.C. Env't Mgmt. Comm'n*, 51 N.C. App. 275, 279, 276 S.E.2d 472, 475 (1981).

10. The primary rule at issue in this case is 15A N.C.A.C. § 13B .0835. That rule establishes the requirements for septage land application site permits, including soil characteristics of soil on septage applications sites; setbacks from water, residences, roads, and wetlands; and specific site size and slope restrictions. 15A N.C.A.C. § 13B .0835(b) provides that:

Septage land application sites shall not be located in the watershed of a Class WS-I stream. New septage land application sites shall not be located in the water quality critical area of Class WS-II, WS-III, or WS-IV streams or reservoirs.

11. In this case, the preponderance of evidence showed that the liquid portion of septage separated from the solid portion of septage during the dewatering treatment process is septage under N.C.G.S. 130A-290(a)(32), and may be permitted to be land applied under the Septage Management Rules.

12. The preponderance of evidence established that the permit application in this case includes a nutrient management plan which is sufficient to meet the requirements of 15A N.C.A.C. 13B .0835(c) (4), (12) and (13). The application states that the septage to be land applied at the Property would consist of 50 percent domestic septic tank, 45 percent grease trap waste, and 5 percent portable toilet waste. Nitrogen is the limiting nutrient for both the fields planted in Bermuda Grass and the fields growing pine trees.

13. Respondent properly determined that the proposed annual volume of each type of septage to be land applied was easily discerned from the application percentages of domestic and grease septage by multiplying these percentages by 25,000 gallons for the pine tree fields and by 50,000 gallons for the Bermuda grass fields.

14. The pilot study of dewatered septage was neither required by the rules nor considered by Respondent during the application process. Critique of the study methods and results thus has no relevance in determining whether Respondent issued the permit in accordance with applicable law.

15. Petitioners failed to demonstrate by a preponderance of the evidence that Respondent's issuance of SLAS Permit 24-08 did not conform to applicable law.

16. A preponderance of the evidence showed that Respondent did not substantially prejudice Petitioners' rights, did not exceed its authority or jurisdiction, did not act erroneously, did not act arbitrarily or capriciously, but used proper procedure, and acted as required by law or rule in issuing the septage land application site Permit SLAS Permit 24-08 to Respondent-Intervenor.

DECISION

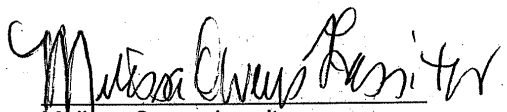
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent's decision to issue a permit to operate a septage land application site in Columbus County, North Carolina should be **UPHELD**.

ORDER AND NOTICE

The North Carolina Department of Environment and Natural Resources will make the Final Decision in this case. The Department is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a). The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

It is hereby ordered that the agency serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C.G.S. § 150B-36(b)(3).

This the 8th day of August, 2012.


Melissa Owens Lassiter
Administrative Law Judge

A copy of the foregoing was mailed to:

John D. Runkle
Attorney at Law
2121 Damascus Church Rd
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ATTORNEY FOR PETITIONER

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ATTORNEY FOR RESPONDENT INTERVENOR

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Nancy E. Scott
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 9th day of August, 2012.

Vicky Bullock
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

Filed

STATE OF NORTH CAROLINA 2012 AUG 13 PM 2:48 IN THE OFFICE OF
COUNTY OF COLUMBUS Office of ADMINISTRATIVE HEARINGS
Administrative Hearings 11 EHR 12185

Friends of the Green Swamp and Blue Ridge
Environmental Defense League Inc.
Petitioner
vs.
N. C. Department of Environment and Natural Resources Division of Waste Management
Respondent
and
Waste Management of the Carolinas, Inc.,
d/b/a Waste Management of Wilmington
Respondent Intervenor

ORDER AMENDING DECISION

Pursuant to 26 NCAC 3.0129, for the purpose of correcting clerical errors, IT IS HEREBY ORDERED that the Decision in the above captioned case, issued from this Office on August 8, 2012, is amended as follows:


Pg. 2, APPLICABLE STATUTES AND RULES: "15A N.C.A.C. .0835" is added.

Pg. 5, FINDINGS OF FACT #9: Corrected to read "under the Solid Waste Management Act, N.C.G.S. § 130A—290 *et seq.*"

Pg. 14, FINDINGS OF FACT #68: Correct Rule number to ".0838(b)".

Pg. 17, CONCLUSIONS OF LAW #15: Corrected spelling of "jurisdiction".

This the 13th day of August, 2012.


Melissa Owens Lassiter
Administrative Law Judge

A copy of the foregoing was mailed to:

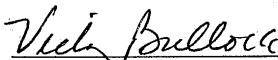
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Nancy E. Scott
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
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ATTORNEY FOR RESPONDENT

This the 14th day of August, 2012.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

DAVID B. STONE,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
CULTURAL RESOURCES,
Respondent.

Filed

2012 AUG 10 PM 12

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

11 OSP 11926

Office of
Administrative Hearings.

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DECISION

THIS MATTER came on for hearing before the Honorable Joe L. Webster, Administrative Law Judge, on May 31, 2012, in New Bern, North Carolina. After considering the allegations in the Petition, the testimony of the witnesses, and the documentary evidence and exhibits admitted, the undersigned makes the following **DECISION**:

APPEARANCES

For Petitioner:

Kirk J. Angel
The Angel Law Firm, PLLC
P.O. Box 692
Harrisburg, North Carolina 28075

For Respondent:

Karen A. Blum, Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

ISSUES

1. Whether an employee may file a contested case action for discharge without just cause when the employee had no current disciplinary actions taken against him and the employee's position was abolished under a reduction in force plan.
2. Whether the Department discriminated against Petitioner in eliminating his position under a reduction in force plan.
3. Whether the Department failed to give Petitioner priority consideration for reemployment pursuant to as required by G.S. 126 7.1 and G.S. 126 36.2.

PRE-HEARING MOTIONS TO DISMISS

On 21 November 2011, the Respondent North Carolina Department of Cultural Resources [hereinafter "Department"] filed an Amended Motion to Dismiss those portions of Petitioner's Petition for Contested Case Hearing contending that the Department acted without just cause in eliminating Petitioner's position, the Department failed to follow its Reduction-In-Force policy, that the Department discriminated or retaliated against Petitioner, and any other issues falling outside the scope of G.S. § 126-34.1. On 4 January 2012, after considering the filings and arguments of counsel, the undersigned dismissed pursuant to N.C. GEN. STAT. § 126-34.1(e), *Jailall v. N.C. Dep't of Pub. Instruction*, 196 N.C. App. 90, 95, 675 S.E.2d 79, 82 (2009) (quoting *Feinstein*), and *Univ. of N.C. at Chapel Hill v. Feinstein*, 161 N.C. App. 700, 704, 590 S.E.2d 401, 403 (2003), that portion of the petition contending that the Department failed to follow the reduction in force policy. The undersigned continued the hearing on the motion to dismiss as to the remaining issues to allow the parties to pursue discovery. On 3 April 2012, after considering the filings and arguments of counsel, the undersigned deferred judgment on the issue of just cause pending a hearing on the merits.

APPLICABLE STATUTES AND RULES

1. § 126-7.1. Posting requirement; State employees receive priority consideration; reduction in force rights; Work First hiring.
2. § 126-34. Grievance appeal for career State employees.
3. § 126-34.1. Grounds for contested case under the State Personnel Act defined.
4. § 126-35. Just cause; disciplinary actions for State employees.
5. § 126-36. Appeal of unlawful State employment practice.
6. § 126-36.1. Appeal to Personnel Commission by applicant for employment.
7. § 126-36.2. Appeal to Personnel Commission by career State employee denied notice of vacancy or priority consideration.
8. 25 N.C.A.C. 1C .1004. Reduction in Force.
9. 25 N.C.A.C. 1H .0701. Priority Consideration: General Provisions.
10. 25 N.C.A.C. 1H .0901. Policy and Scope.
11. 25 N.C.A.C. 1H .0902. Requirements for Reduction-in-Force Priority Consideration.
12. 25 N.C.A.C. 1H .0904. Agency and Employee Responsibilities.

CONSENT PROTECTIVE ORDER

On 5 January 2012, the undersigned signed a consent protective order restricting the disclosure of confidential personnel information. After reviewing the exhibits, the undersigned has determined that the following exhibits below are deemed confidential and protected from disclosure pursuant to G.S. § 126-22: Petitioner's Exhibits 15, 27, 31, and 34; and Respondent's Exhibits 1-11.

EXHIBITS

The following exhibits offered by the Petitioner were received into evidence:

P3	06/13/2008	State of North Carolina Work Plan—David Stone
P10	06/28/2011	Letter to David Stone
P13	07/18/2011	Internal Vacancy Posting
P15	07/19/2011	Application for Employment—David Stone
P27	09/06/2011	Letter to David Stone
P31	09/09/2011	Letter to David Stone
P32	10/03/2011	Petition for a Contested Case Hearing
P33	10/05/2011	Letter to David Stone
P34	11/03/2011	Letter to David Stone
P35		Historic Interpreter I
P36		<i>David B. Stone v. N.C. Dep't of Cultural Resources</i> Petition
P38	08/02/2011	Form DCR-GR-8-2004—David Stone
P39		Costume Design Assistant Description

The following exhibits offered by Respondent were received into evidence:

R1	06/28/2011	Reduction-in-Force Plan
R2	09/20/2011	Stone Grievance Form
R3	11/03/2011	Letter Donnell E. Adams to David Stone re Grievance
R4	07/19/2011	Richard David Wolf Application for Historic Interpreter I
R5	07/19/2011	Richard David Wolf Application EEO Sheet
R6	08/09/2011	Historic Interpreter I Responses of Richard Wolf
R7	08/09/2011	Historic Interpreter I Responses of David Stone
R8		Applicant Selection Decision Form—Most Qualified
R9	08/11/2011	Memorandum Lafargue to Adams re recommendation to hire
R10	08/11/2011	Hiring Action Request for Richard Wolf
R11	08/11/2011	Attachment to PAR to Hire by Lafargue
R12		Educational Services Branch Meeting—Recurring Calendar
R13		Tryon Palace Fourth of July Activity Map
R14	07/11/2011	E-mail from Anderson to Educational Services

WITNESSES

Petitioner called as witnesses:

Mr. David B. Stone, Petitioner

Respondent called as witnesses:

Ms. Kay P. Williams
Mr. Donnell E. Adams
Mr. Philippe Lafargue
Ms. Alison L. Rhodes
Mr. Brandon J. Anderson

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision, which is tendered to the Office of State Personnel for a final decision.

FINDINGS OF FACT

1. From January 2000 through July 2011, Petitioner David Benjamin Stone [hereinafter "Petitioner"] was permanently employed by the North Carolina Department of Cultural Resources [hereinafter "Department"]. (T. pp. 9-10)
2. Petitioner was hired as a Costume Design Assistant to sew and make clothes at Tryon Palace. (Pet'r Ex. 39; T. pp. 9-11, 60-61)
3. Tryon Palace is a State historic site in New Bern. (T. pp. 11)
4. Petitioner worked on a daily basis demonstrating blacksmithing for the public, and repairing and making articles for use at Tryon Palace. (T. pp. 9-11) He also gave tours of some of the buildings at Tryon Palace. (T. pp. 10, 58-59).
5. Petitioner sometimes worked in the kitchen wing of Tryon Palace, cooking and interpreting 18th century food. (T. p. 14)

6. On 30 June 2011, Petitioner received a reduction-in-force letter, dated 28 June 2011, from Linda A. Carlisle, Secretary of the Department. (Pet'r Ex. 10; T. pp. 31-32)
7. The letter stated that Petitioner's position was being abolished effective 1 August 2011 due to the budget crisis affecting state government. (Pet'r Ex. 10)
8. On 18 July 2011, a Historic Interpreter I position at Tryon Palace was posted by the Department. (Pet'r Ex. 13; T. p. 33-34)
9. Petitioner applied for the position on or about 19 July 2011. (Pet'r Ex. 15; T. pp. 20-21, 23, 34-35)
10. Petitioner's position was RIF'd effective 1 August 2011. (Pet'r Ex. 10; T. p. 51)
11. After Petitioner's position was RIF'd 1 August 2011, Petitioner received from the Department approximately \$11,000 in severance pay in three monthly payments. (Pet'r Ex. 10; T. pp. 50-51)
12. On or about 2 August 2011, Petitioner filed a grievance with the Department alleging, in pertinent part, that he was improperly RIF'd and discriminated against. (Pet'r Ex. 38; T. pp. 37, 43, 107) Petitioner requested that he be reinstated into his former position or, alternatively, that his former position be reclassified as a Historic Interpreter I. (Pet'r Ex. 38; T. pp. 106-08)
13. Petitioner was interviewed for the Historic Interpreter I position on 9 August 2011. (Resp't Ex. 7; T. pp. 23-24; 138) Two other applicants were interviewed for the position, including Richard Wolf. (Resp't Ex. 4; T. pp. 25-26, 140)
14. On or about 6 September 2011, Philippe Lafargue, Deputy Director of Tryon Palace, informed Petitioner that he was not selected for the position. (Pet'r Ex. 27; T. pp. 25, 36)
15. On or about 20 September 2011, Petitioner filed a second grievance with the Department alleging that he was not given priority consideration for being hired into the Historic Interpreter I position. (Resp't Ex. 2; pp. 109-11)
16. The Department responded to the grievance, stating that Petitioner "did not have priority placement or promotional rights to a higher graded position." (Pet'r Ex. 34; T. p. 112)
17. On 4 October 2011, Petitioner filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings [hereinafter "Petition"]. (Pet'r Exs. 32, 36; T. pp. 43-44, 46) Petitioner alleged in his Petition that he failed to receive priority consideration, was discriminated against on the basis of creed, sex, and age, was discharged without just cause, and the Department failed to follow the RIF policy. (Pet'r Exs. 32, 36; T. pp. 42, 46-48)

Discrimination

18. Petitioner is a white, Presbyterian male who was 47 years old at the time of the hearing. (T. pp. 68, 151)

19. Katie Brightman Loveless was Petitioner's supervisor until March 2011, when Brandon Anderson took over as director of the education branch. (Pet'r Ex. 3; T. pp. 15, 160) Brandon Anderson was the Curator of Interpretation since October 2010 and, as of March 2011, has been the acting Director of Educational Services at Tryon Palace. (T. p. 160) Aside from ticket sales and the museum store, Anderson oversees all front-line operations, including the Governor's Palace, historic homes, the kitchen office, the North Carolina History Center [hereinafter "History Center"], and the galleries and exhibits. (T. pp. 160-61) Anderson mainly deals with the interpretive staff, but also oversees programming and budgeting. (T. p. 160-61)

20. Anderson became Petitioner's supervisor when he was hired as Curator of Interpretation. (T. p. 161) Petitioner testified that he felt that he had not been treated fairly by Anderson. (T. pp. 37-38; see Pet'r Ex. 36) Petitioner testified that, "in the end [Anderson] had not really been polite with me for the last few months that I'd been working there." (T. p. 38)

21. Petitioner testified that "not polite" meant that Anderson excluded Petitioner from certain things at work and did not inform him of things he needed to know. (T. p. 62; see Pet'r Ex. 36)

22. Specifically, Petitioner contended that Anderson did not include him in a December 2010 education branch meeting. (T. p. 63; see Pet'r Ex. 36) However, the Tryon Palace Calendar in Microsoft Outlook indicates that a recurring Educational Services Branch Meeting was automatically scheduled from 4 pm to 5 pm the first Wednesday of every month between 1 September 2010 and 4 May 2011. (Resp't Ex. 12; T. pp. 167-68) A calendar invitation was sent to 10 employees, including Petitioner and Anderson, in December 2010. (Resp't Ex. 12; T. pp. 167-68) The calendar was set up by Katie Lovelace before Anderson was employed at Tryon Palace. (T. p. 168) Anderson testified that he received the invitation. (T. p. 168)

23. Petitioner also testified that "not polite" meant that Anderson told all of the other employees on July 4, 2011 that they could leave early but count it as a full day. (T. pp. 63, 66-67; see Pet'r Ex. 36) Petitioner was working from 9:00 to 5:00 that day. (Resp't Ex. 13; T. p. 64) He testified that the people who got to go home early were scheduled to work on the grounds until 3:00 or 4:00. (T. p. 64)

24. Anderson testified that, because July 4 was a staff holiday, employees could leave after their events were over and they cleaned up. (T. p. 171) On 11 July 2011, Anderson sent an e-mail to Educational Services employees reminding them to submit accurate hours of work for July 4. (Resp't Ex. 14; T. pp. 172-73) None of Anderson's employees who left early reported that they worked a full day. T. p. 173)

25. Petitioner also testified that Anderson was not polite to him because Anderson scheduled Petitioner to work outside of the blacksmith shop on days that Petitioner had scheduled apprentices to train there. (T. p. 71-72; see Pet'r Ex. 36) In January 2011, Anderson took over scheduling duties from Lovelace. (T. pp. 176-77) Anderson would schedule permanent employees, including Petitioner, to work in the kitchen no more than two times per week. (T. p.

178) When Lovelace was making the schedule in December 2010, she scheduled volunteers, temporary, and permanent employees, including Petitioner, in the kitchen. (T. pp. 178-79)

26. Petitioner also testified that Anderson was not polite to him because Anderson questioned why Petitioner did not work on a Saturday night when Petitioner was not scheduled to work. (T. p. 73) Petitioner was only verbally disciplined for failing to show up at work. (T. p. 73) During his employment, Petitioner never received a written warning or disciplinary action. (T. pp. 51-52)

27. Petitioner did not know of any reason why Anderson was not polite with him. (T. p. 38) He never asked Anderson why he was not being polite with him. (T. p. 38)

28. Petitioner received two evaluations per year by his supervisors. (Pet'r Ex. 3; T. p. 27) Petitioner's Work Plans from 2008 through 2010 indicate his position as "Blacksmith/Tailor/Tradesperson." (Pet'r Ex. 3; T. pp. 28-30)

29. On his 14 May 2009 performance appraisal, Petitioner's combined Key Responsibilities and Results were VG. (Pet'r Ex. 3; T. pp. 74-75) The Combined Dimensions Rating was VG. (Pet'r Ex. 3; T. p. 75) Katie Brightman was the supervisor performing the appraisal. (Pet'r Ex. 3; T. p. 75)

30. On his 19 May 2010 performance appraisal, Petitioner's combined Key Responsibilities and Results were G. (Pet'r Ex. 3; T. p. 75) The Combined Dimensions Rating was G. (Pet'r Ex. 3; T. pp. 75-76) Katie Brightman was the supervisor performing the appraisal. (Pet'r Ex. 3; T. p. 76)

31. On his 12 May 2011 performance appraisal, Petitioner's Combined Key Responsibilities and Results were G. (Pet'r Ex. 3; T. p. 76) The Combined Dimensions Rating was G. (Pet'r Ex. 3; T. p. 76) Brandon Anderson was the supervisor performing the appraisal. (Pet'r Ex. 3; T. p. 76) Petitioner did not write any comments on the performance evaluation performed by Anderson. (Pet'r Ex. 3; T. p. 76)

32. On his 2010 and 2011 performance appraisals, Petitioner's Combined Dimensions Ratings were the same under supervisors Katie Loveless and Brandon Anderson. (Pet'r Ex. 3; T. p. 76)

33. At the end of the fiscal year in 2011, the budget for Tryon Palace was \$4.2 million. (T. p. 96) In June 2011, the General Assembly cut Tryon Palace's budget by \$966,067, or over 23 percent. (T. pp. 83, 91-92) The budget bill eliminated 10 maintenance positions funded by appropriations and moved them to positions funded by admission receipts. (T. pp. 92, 126, 128-30) The budget bill also eliminated seven vacant positions at Tryon Palace, for a total of 25 positions. (T. pp. 92, 129-30) Petitioner's position was not eliminated by the General Assembly. (T. p. 93) The remainder of the \$966,067 was to be cut by Tryon Palace. (T. pp. 92-93)

34. Due to previous budget cuts, Tryon Palace had operating funds to pay only for utilities, telephone service, and insurance. (T. pp. 83, 126) Tryon Palace staff began working in the third or fourth week of June 2011 to implement the Department's reduction-in-force [hereinafter

“RIF”] plan. (T. p. 82) In identifying areas to cut, Tryon Palace staff looked at efficiencies where duties could be combined to accomplish the same thing. (T. pp. 82-83)

35. Kay Williams, Director of Tryon Palace, testified that they evaluated “what programs were kind of stand-alone programs and would not dramatically affect the overall program if it were eliminated.” (T. p. 83)

36. Philippe Lafargue, Deputy Director of Tryon Palace, testified that they started looking for “a program that we can let go that would have the least impact.” (T. p. 131) Williams met with Philippe Lafargue, Deputy Director, and Nancy Perlman, Director of Business Services and Human Resources, to develop a list of stand-alone programs. (T. pp. 86-87) They identified four stand-alone programs to eliminate: a full-time permanent employee handling all of the telephone business, a membership coordinator of the Council of Friends, an assistant accounting position dealing primarily with the cash counting role, and the blacksmith program consisting of Petitioner’s position. (T. pp. 86-87, 94)

37. Williams felt it important to get input from the heads of all of the departments. (T. p. 87) She held a branch meeting and asked each branch head to identify programs that could be eliminated and still allow them to carry on all of their other functions. (T. pp. 87-88; 130-31) Williams did not share with the branch heads the list of programs she identified with Lafargue and Perlman. (T. pp. 87-88) The next day, Williams met with each branch head to listen to their independent choices. (T. pp. 88, 93)

38. Anderson identified Petitioner’s position as one to be eliminated. (T. p. 94) He did not know that Petitioner’s position was on the list contemplated by Williams, Lafargue, and Perlman. (T. p. 94)

39. Williams, Lafargue, and Perlman met again to compare their choices with those of the branch heads. (T. p. 88) The branch heads confirmed what Williams, Lafargue, and Perlman had identified. (T. pp. 88, 131)

40. Donnell Adams, Human Resources Director for the Department, testified that, once a facility manager or director has identified a position to be considered for a RIF, Human Resources [hereinafter “HR”] “conduct[s] an analysis to see what the demographics are and how it affects the workforce” (T. pp. 99-100) HR uses demographics to determine if the individuals being RIF’d are in one classification, such as gender, ethnicity, and age. (T. pp. 101-02)

41. In June 2011, HR created a RIF plan that identified the age and gender of individuals affected by RIFs. (Resp’t Ex. 1; T. pp. 102, 104) Adams did not identify any demographic areas that needed to be addressed in the June RIF plan. (T. p. 105)

42. HR also tries to identify a comparable position in the same salary grade that a RIF candidate with the right skill set could laterally transfer into to minimize the impact a RIF would have on the workforce. (T. p. 100, 101) Adams testified that a lateral move is within the same salary grade. (T. p. 100) Adams testified that one of the problems in 2011 was that there was nowhere to move employees because vacant positions had been eliminated by the General Assembly. (T. p. 102)

43. If no skill set is identified, then HR generates a RIF notification letter and information to present to the employee to be RIF'd. (T. p. 100)

44. Three positions were RIF'd at the end of July and one at the end of December. (T. p. 89)

45. Lafargue testified that he was not familiar with the RIF plan and was unsure about the information contained in the plan, T. p. 152, but that he believed one employee was a white female between the ages of 60 and 69. (T. pp. 150, 152) Petitioner was a white male between the ages of 40 and 49. (T. p. 151) One was a white female between the ages of 50 and 59. (T. pp. 151-52)

46. Petitioner testified that he thought Wolf is a male of unknown creed or age, but approximately in his fifties and older than Petitioner. (T. pp. 68-69) Wolf indicated on the demographic sheet he submitted with his application for the Historic Interpreter I position that he was a 59-year-old white male at the time of the application. (Resp't Ex. 5; T. pp. 114-15)

47. Petitioner testified that Anderson is a male of unknown creed or age, but approximately in his late twenties. (T. p. 69) Petitioner testified that Philippe Lafargue is a male of unknown creed or age, but approximately Petitioner's age. (T. pp. 69-70)

Failure to Receive Priority Consideration

48. Petitioner's position as a costume design assistant was a salary grade 56. (T. pp. 60-61) The Historic Interpreter I position was a salary grade 58. (Pet'r Ex. 13; T. pp. 61, 111)

49. Petitioner testified that he did not feel that the Costume Design Assistant position description fully described his daily work because he spent only a couple of weeks annually sewing and designing costumes. (T. pp. 44-45) Petitioner also testified that the duties of the Historic Interpreter I position were substantially the same as the duties he had been performing as a Costume Design Assistant, with the exception of selling tickets at the History Center. (T. pp. 21; 34)

50. Since being hired as a Costume Design Assistant in 2000, Petitioner never requested that his salary grade be reallocated upward from a 56 to a 58 because he was doing the job of a Historic Interpreter I. (T. pp. 60-61, 122)

51. The Historic Interpreter I position posted in July required the following knowledge, skills and abilities: "Must be able to communicate to a variety of audiences, and be dedicated to good customer service. Must possess knowledge of North Carolina history & use basic research skills. Must have knowledge of or willingness to learn 18th and 19th century crafts and trades. Should have knowledge of or willingness to learn first-person interpretation and theatrical skills. Knowledgeable and skilled in the use of computerized ticketing systems, and able to balance and reconcile figures and adhere to procedures for safe guarding cash. Must be able to lift 50 pounds and work in unheated, un-air conditioned spaces." (Pet'r Ex. 13)

52. Candidates were interviewed by a committee of three employees, Philippe Lafargue, Brandon Anderson, and Alison Rhodes, who asked the same questions of all candidates. (Resp't

Ex. 6, 7; T. pp. 133-34, 141) Rhodes is the Visitor Services manager and oversees ticketing operations and the museum store. (T. pp. 153-54)

53. Interviewers documented answers on a log. (Resp't Exs. 6, 7; T. pp. 133-34) After the interviews, the interview committee met to discuss the candidates and rank them on an Applicant Selection Decision Form—Most Qualified. (Resp't Ex. 8; T. pp. 137, 139-41, 158, 164-65)

54. All three of the interviewers independently selected Wolf as the first choice and Petitioner as the second choice. (Resp't Ex. 6, 7; T. pp. 137, 139, 141, 146, 155-56, 159, 162, 163-64, 165)

55. Rhodes testified that Wolf had more of the needed skills and knowledge than the other candidates. (T. p. 157) Rhodes also testified that Wolf "had experience at ticket-selling operations, and he was already knowledgeable in the system that we used." (T. p. 157)

56. Tryon Palace uses a computerized point of sale system to sell tickets. (T. p. 157) Specifically, Tryon Palace used Vista software for ticket sales and ICVerify for credit card machines, and Keystroke for the History Navigators that visitors rent to tour the site. (T. pp. 157-58)

57. Anderson testified that Wolf was the best candidate to fill dual roles of working with ticketing software and as a historic interpreter because he already had the skills and knowledge in those areas. (T. pp. 165-66) Wolf also had knowledge of all the historic buildings at the site and the History Center. (T. p. 166) Wolf worked as a historic interpreter as a temporary employee before accepting a full-time position as a ticket seller in December 2010. (Resp't Ex. 4; T. p. 166, 181) Wolf was a permanent employee at the time of his application. (T. p. 122)

58. Petitioner had experience in customer service and in orienting visitors. (T. p. 78) Although Petitioner had some experience in giving tours, his experience was limited to only certain buildings and tasks. (T. pp. 58-60)

59. Petitioner never sold tickets at Tryon Palace. (T. p. 22) He did not have any experience in point of sale systems. (T. p. 79) Petitioner sold tickets using an electric cash register at a museum he worked at approximately 20 to 25 years ago. (T. p. 22) It did not require the use of software. (T. pp. 55-56) Petitioner testified that he was not aware of what was entailed in ticket selling. (T. p. 56)

60. On 11 August 2011, Lafargue wrote a letter to Adams documenting the interview process for the Historic Interpreter I position. (Resp't Ex. 9; T. pp. 142-44) The same day, Lafargue also wrote a justification for hiring Wolf because of the hiring freeze. (Resp't Ex. 11; T. pp. 145-46) The Department had implemented a hiring freeze so that vacant positions could not be filled except in cases where there were special needs. (T. pp. 92, 95) A packet of information, including the interview logs, applicant selection form, and personnel action request, was also sent to the Department's HR office in Raleigh for review. (Resp't Exs. 6, 7, 8, 10; T. pp. 134-35, 142, 145, 146, 165)

61. HR in Raleigh approved the hiring of Wolf as a Historic Interpreter I, T. pp. 146-47, and Richard Wolf was ultimately hired into the position of Historic Interpreter I. (Resp't Ex. 10; T. pp. 26, 146-47)

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapter 126 of the General Statutes, and the Office of Administrative Hearings has jurisdiction over both the parties and the subject matter as such.

Discrimination

2. In *Dep't of Correction v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983), the Supreme Court of North Carolina adopted the Federal Guidelines for examining discrimination cases.

3. In discrimination cases the following standards apply: (1) The petitioner carries the initial burden of establishing the prima facie case of discrimination. (2) The burden shifts to the employer to articulate some legitimate non-discriminatory reason for the applicant's rejection. (3) If a legitimate non-discriminatory reason for rejection has been articulated, the claimant has the opportunity to show that the stated reason for rejection was, in fact, a pretext for discrimination. However, at all times, the burden of persuasion is on the Petitioner to prove intentional discrimination. *See id.*

4. "[T]he prima facie case in an age discrimination reduction-in-force case requires proof that the claimant who is in the protected age group was discharged or demoted, was performing his job at the time of discharge at a level that met his employer's expectations, and that either persons outside the protected class were retained in the same position, or that [the employer] did not treat age neutrally in selecting the claimant for layoff." *Conkwright v. Westinghouse Elec. Corp.*, 933 F.2d 231, 234 (4th Cir. Md. 1991) (citing *EEOC v. Western Elec. Corp.*, 713 F.2d 1011, 1015 (4th Cir. 1983)).

5. The substantial and competent evidence of record supports a conclusion that Petitioner failed to establish a prima facie case for discrimination based on age, sex, or creed. Petitioner offered no evidence that persons outside these protected classes were retained. Petitioner also failed to offer evidence that the Department did not treat age, sex, or creed neutrally in selecting Petitioner's position for a RIF. At hearing, Petitioner showed only that the four employees whose positions were RIF'd were white and above the age of 40. He offered no evidence that the Tryon Palace employees whose positions were not RIF'd were anything other than white and above the age of 40.

6. Petitioner's reliance on a sample size of four employees is insufficient to support his contention that the Department did not treat age neutrally in selecting Petitioner's position for a RIF. "[A]bsent an appropriate basis for comparison, statistical evidence of . . . disparity alone cannot establish any element of a discrimination claim. *United States v. Venable*, 666 F.3d 893, 903 (4th Cir. 2012) (citing *United States v. Olvis*, 97 F.3d 739, 745 (4th Cir. 1996)). "There is not 'a presumption that unexplained statistical evidence of racial disparity proves racial animus.'

Instead, it is the [Petitioner] who bears the burden of making a credible showing that the statistical evidence amounts to some evidence of discriminatory intent.” *Id.* (citations omitted).

7. Even if Petitioner had established a prima facie case of discrimination, the substantial and competent evidence of record supports a conclusion that Petitioner failed to meet his burden of showing that the RIF of his position was a pretext for intentional discrimination.

8. The substantial and competent evidence of record supports a conclusion that the RIF was necessitated by funding cuts and that the blacksmith program was a stand-alone program that could be eliminated without affecting other operations at Tryon Palace.

9. Petitioner did not meet the “ultimate burden of persuading the trier of fact that the [Respondent] intentionally discriminated against the [Petitioner].” *Gibson*, 308 N.C. at 138.

Failure to Receive Priority Consideration

The substantial and competent evidence of record supports a conclusion that Petitioner signed for and dated his RIF letter on 30 June 2011, Pet’r Ex. 10; therefore, G.S. § 126-7.1 as it was written prior to the 1 July 2011 amendment applies. *See* 2011 Sess. Laws 512-13.

10. G.S. § 126-7.1(c1) provides in pertinent part that if an employee who has been given notice of imminent separation due to RIF: 1) applies for a position “equal to or lower in salary grade than the position held by the employee at the time of notification or separation”; and 2) is qualified for that position; then the employee receives priority consideration over all other applicants but receives equal consideration when other applicants are current State employees not affected by the RIF. N.C. Gen. Stat. § 126-7.1(c1) (2010).

11. The substantial and competent evidence of record supports a conclusion that Petitioner was a salary grade 56 when he applied for the Historic Interpreter I position, which was a salary grade 58.

12. The substantial and competent evidence of record supports a conclusion that Petitioner did not have a RIF priority as an applicant for the Historic Interpreter I position.

Just Cause

13. Having concluded that the Petitioner’s position was RIF’d, the issue of just cause is not properly before the Office of Administrative Hearings and is dismissed. N.C. Gen. Stat. § 126-34.1 (2011); *Jailal v. NC Dep’t of Pub. Instruction*, 196 N.C. App. 90, 675 S.E.2d 79 (2009); *UNC-CH v. Feinstein*, 161 N.C. App. 700, 590 S.E.2d 401 (2003).

On the basis of the above-noted Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION


Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner has not established a prima facie case showing that the Department discriminated against him in eliminating his position. Even if Petitioner had established a prima facie case, Petitioner has failed to show by the evidence that Respondent's legitimate nondiscriminatory reasons for eliminating Petitioner's position amounted to a pretext to conceal intentional discrimination against him on the basis of his sex, age, or creed.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to Decision and to present written arguments to those in the agency who will consider this Decision. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 10th day of August, 2012.

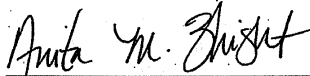

Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 10th day of August, 2012.



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