

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 38 .0103

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Is the assignment document a contract between the Division and the agency using the vehicle? If it is not, please provide how this rate will be set.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 38 .0103 is readopted as published in 34:01 NCR 2 as follows:

01 NCAC 38 .0103 MILEAGE RATES

~~(a) Rates charged for the use of the Division vehicles are established by the Department of Administration pursuant to G.S. 143-341(8)(i)(6).~~

~~(b) Agencies will reimburse the Department of Administration at the end of each calendar month, on a mileage basis at the rate set by the Department of Administration.~~

~~(c) Permanently and agency assigned vehicles will be billed for 1,050 miles per month or actual mileage, whichever is greater. Vehicle usage will be reviewed to determine if the assignment is cost effective and serves the best interest of the assigned agency and the Division.~~

~~(d) Temporarily assigned vehicles will be billed for actual mileage or 60 miles for each day's usage, whichever is greater. If the vehicle is checked out after 5:00 p.m., no minimum fee will be assessed for the day the vehicle is checked out. If the vehicle is returned before 8:00 a.m., no minimum fee will be assessed for the day the vehicle is returned. However, a minimum fee of 60 miles will be assessed for each temporary assignment made for less than 24 hours.~~

Agencies shall reimburse the Department of Administration ("Department") for the use of Motor Fleet Management Division ("Division") vehicles at the end of each month at the rate set by the Department. This rate shall be set out in the assignment documents and based upon the total cost of ownership of the vehicle.

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992.

Readoption Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 38 .0201

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Was the intent here to break these out into Paragraphs (I think that it makes sense to do so)?

On line 16, please consider changing this to be a directive in active voice. Perhaps something like "The individual and agency to whom a Motor Fleet vehicle is assigned shall maintain and make any necessary repairs to Division vehicles. Maintenance shall include (examples of maintenance.)"

Note that currently line 16 doesn't have repairs. Should it?

On line 17, would it make sense to say something like "Prior to any maintenance and or repairs, the individual or the agency shall seek prior authorization by contacting the dedicated..."

Under what circumstances would the unauthorized repair expenses be invoiced to the agencies? What factors will be considered? Is this a "shall" vs. a "may"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 38 .0201 is readopted as published in 34:01 NCR 2 as follows:

SECTION .0200 - MAINTENANCE AND CARE OF VEHICLES

01 NCAC 38 .0201 GENERAL REPAIRS AND MAINTENANCE

~~(a) The maintenance of permanent assigned and agency assigned vehicles is the responsibility of the individual and agency to whom the vehicle is assigned. The driver or agency may obtain any required maintenance at any Division motor pool or any state-owned facility or any approved commercial facility. Charges for this maintenance are billed to the Division.~~

~~(b) The maintenance of temporarily assigned vehicles is the responsibility of the Division.~~

~~(c) All maintenance and repairs must have prior authorization by calling 1-800-277-8181 or 733-4043 (in Raleigh calling area) with the details of the maintenance and an estimate of the cost. Authorized charges for maintenance or repairs shall be billed to the Division for payment. In case of holidays, nights or weekends, an authorization request must be left with the Division's answering service. Any unauthorized repair expense will be billed to the agency to which the vehicle is assigned.~~

Maintenance of Division vehicles is the responsibility of the individual and Agency to whom the vehicle is assigned. All maintenance and repairs shall have prior authorization by contacting the dedicated repair authorization line provided in the assignment document with the details of the maintenance and an estimate of the cost. Authorized charges for maintenance or repairs shall be billed to the Division for payment. The Division may invoice agencies for any unauthorized repair expenses to which the vehicle is assigned.

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992.

Readoption Eff. November 1, 2019

01 NCAC 38 .0205 is readopted as published in 34:01 NCR 3 as follows:

01 NCAC 38 .0205 ACCIDENT REPORTING

~~All accidents involving state vehicles or other property damage, regardless of amount of damage, must be reported by calling 1 800 277 8181 or 733 4043 (in Raleigh calling area). Information which must be obtained from the other driver involved in the accident is: name, address, telephone number, license plate number, insurance company, and policy number. An Accident Report Form FM 16 must be completed and forwarded immediately to the Division. All accidents involving injury or damage to a state vehicle must be reported to Travelers Insurance Company, promptly as follows:~~

~~(1) — In North Carolina, call 1 800 762 3804 except in the following counties: Bertie, Currituck, Hertford, Pasquotank, Camden, Dare, Hyde, Perquimans, Chowan, Gates, Martin, and Washington. In these counties call 804 330 4788, collect.~~

~~(2) — On weekends, after hours and holidays when there is any injury or death, call immediately 1 800-243-3840.~~

(a) A police report shall be obtained at the time of the accident by the local law enforcement on all accidents involving Division vehicles.

(b) All accidents involving Division vehicles or other property damage, regardless of amount of damage, shall be reported by contacting the dedicated accident reporting agencies provided in the assignment documents.

(c) All accidents involving personal injury to a third party or damage to a third party's property shall be reported to Traveler's Insurance Company at the contact information provided in the assignment documents.

History Note: Authority G.S. 143-341(8)i;

Eff. November 2, 1992.

Readoption Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 38 .0302

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

How will the Secretary make the approval determination? What factors will he or she use?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 38 .0302 is readopted as published in 34:01 NCR 3 as follows:

SECTION .0300 - ASSIGNMENT OF VEHICLES

01 NCAC 38 .0302 REQUESTS FOR ASSIGNMENT OF VEHICLES

~~(a) Temporary assignment requests for temporary assignment of vehicles shall be made on Form FM 2 signed by the proper agency supervisor and presented to the dispatcher at the assigning motor pool. Forms shall be provided by the Division to all requesting agencies.~~

~~(1) Before a vehicle may be picked up, a valid North Carolina driver's license shall be presented to the motor pool dispatcher by the assigned driver and all other passengers who are subject to drive the vehicle during its temporary assignment.~~

~~(2) Temporary assignments are intended to meet the needs of state employees who require transportation on a short term (one to thirty days) basis. All temporarily assigned vehicles shall be returned immediately upon completion of trip or at end of use.~~

~~(3) Temporary assignments shall not be renewed.~~

~~(4) If the vehicle assignment is originally requested for a period in excess of 30 calendar days, the request must be processed as a permanent assignment (see "Permanent Assignments" in this Rule).~~

~~(5) All temporarily assigned vehicles shall be returned to the motor pool from which it was originally dispatched. During the temporary assignment, the driver should make note of any malfunctions encountered and any repairs and adjustments needed and report them to a fuel pump attendant upon returning the vehicle to the motor pool.~~

~~(b) Permanent Assignments. Requests for vehicles to be assigned to individuals or agencies on a permanent or indefinite basis or for a period in excess of 30 calendar days shall be made on Form FM 30, signed by the department head or his/her designee, and forwarded to the Division at least 10 calendar days prior to date of need. A photocopy of the permanently assigned driver's valid North Carolina driver's license shall be submitted with the FM 30. All permanently assigned vehicles shall be returned to Motor Fleet Management on Blue Ridge Road, Raleigh, at the end of assignment unless otherwise instructed by the Division. The Division shall not approve requests for assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non job-related reason. A reassignment (a transfer of a vehicle from one employee to another) may occur when filling vacant positions to which a vehicle is assigned. A form FM 30 must be submitted by the requesting agency and approved by the Division before the vehicle may be reassigned. The requesting agency must attach a memorandum to the FM 30 explaining the request for reassignment. If approved, a Division approved copy of the FM 30 will be sent to the agency granting permission for the new driver to take possession of the vehicle. All exchanges of lower mileage and/or better quality vehicles to senior or higher ranking employees and higher mileage and/or lower quality vehicles to junior employees will be denied.~~

~~(c) The Division will not assign "special use" vehicles such as four wheel drive vehicles or law enforcement vehicles to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary of the Department of Administration.~~

~~(1) All assignments of four wheel drive and law enforcement vehicles must be reviewed. A memorandum, accompanied by historical data, must be sent to the Division for each individual vehicle assigned.~~

~~(2) All requests for "special use" vehicles must be on a completed FM 30 accompanied by a memorandum explaining the intended use of the vehicle. Attached to the memorandum should be evidence substantiating the necessity for this type of vehicle, which must be verified by historical data.~~

~~(3) The agency or individual to whom the vehicle is assigned is responsible for forwarding this information to the Division. The Division will forward all justification requests to the Secretary of the Department of Administration.~~

~~(4) The agency will be notified, in writing, of the Secretary's decision. If the assignment request is denied, the requesting agency will be notified by the Division of a date for the return of the vehicle to the Division.~~

(a) Permanent Assignments. Requests for Division vehicles to be assigned to individuals or agencies shall be on the Division form and shall include:

(1) contact information on the requesting individual and the Agency;

(2) copy of a valid North Carolina driver's license;

(3) description of the requesting individual or Agency's vehicle needs and planned usage; and

(4) signature by the Agency's Director or his or her designee.

(b) "Special Use" Assignments. In addition to the requirements set forth in Paragraph (a) of this Rule, written justification, verified by historical data shall be included on the official Division form for each "special use" vehicle assigned. All assignments of "special use" vehicles shall be reviewed and approved by the Secretary.

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 38 .0305

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Overall, what is your authority for this Rule? 143-341(8)(i)(7a) appears to provide for the revocation of the assignment and sets the circumstances upon which they "shall" occur.

*If you do have the authority for this Rule, on line 4, by "may", do you mean "shall"?
If you mean "may", what factors will you use in making this determination?*

In Items (1) and (2), by "violation", do you mean "conviction"?

In Item (2), I don't understand the reference to 143-341(8)(i)(7a). Please review and clarify.

In Item (3), add an "or" before "destruction of the..."

In Item (4), delete "willful"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 38 .0305 is readopted as published in 34:01 NCR 4 as follows:

01 NCAC 38 .0305 REMOVAL OF VEHICLES FROM INDIVIDUAL AND AGENCY ASSIGNMENT

Permanent vehicle assignment to individuals or agencies may be revoked if any of the following occur:

- ~~(1) If the vehicle is used for any purpose other than official state business.~~
- ~~(2) If reports are not submitted to the Department of Administration, or if the report is inaccurate, incomplete or correction is not made within 30 days of request.~~
- ~~(3) If false information is willfully submitted on any report or application.~~
- ~~(4) If reports or forms are not signed properly and correction is not made within 30 days of a request to do so.~~
- ~~(5) If vehicle abuse occurs. Abuse includes, but is not limited to, improper care and maintenance of the vehicle willful damage to the vehicle (destruction of interior or exterior, ordinary wear and tear excepted).~~
- ~~(6) If the vehicle is not being driven the 3,150 miles quarterly minimum mileage requirement and lower mileage cannot be justified.~~
- ~~(7) If violations of Motor Vehicle laws are committed.~~
- ~~(8) Any other willful violation of these Rules.~~
- (1) a violation of G.S. 20 or other state motor vehicle laws in which the vehicle is traveling;
- (2) any violation of G.S. 143-341(8)(i)(7a) is committed;
- (3) any vehicle abuse which may include not providing maintenance in accordance with the assigned maintenance schedule set for the vehicle, not providing repairs when needed, destruction of the interior or exterior not due to the natural aging of the vehicle; and
- (4) any other willful violation of the Rules of this Section.

*History Note: Authority G.S. 143-341(8)i;
Eff. October 1, 1992.
Readopted Eff. November 1, 2019*

01 NCAC 38 .0308 is readopted as published in 34:01 NCR 4 as follows:

01 NCAC 38 .0308 RETURN OF ASSIGNED VEHICLES

~~(a) Vehicles assigned on a temporary basis shall be returned to the motor pool at the end of the assignment period. See 1 NCAC .0302.~~

~~(b) The Division will schedule replacement vehicles based on mileage, time in service, economy and nature of use of each vehicle. If turn-in or replacement is required, all permanently assigned vehicles must be returned to the Division's Garage on Blue Ridge Road. When returning a permanently assigned vehicle, all credit cards assigned to that vehicle, vehicle registration, travel log book, and any other materials issued by the Division must be returned. Drivers must turn their cars in to assignment personnel or the turn-in will not be recognized by the Division, and the agency will continue to be charged for the assignment until the matter is handled properly.~~

~~(c) All cases of damages or excessive wear due to vehicle misuse or abuse will be billed to the driver's agency (ordinary wear and tear excepted).~~

(a) Replacement vehicles shall be assigned by the Division as necessary based on mileage, time in service, economy and nature of use of each vehicle.

(b) If turn-in or replacement is required, all permanently assigned vehicles, including all keys, credit cards assigned to that vehicle, vehicle registration, travel log book, and any other materials issued by the Division, shall be returned to the Division Office. The Agency shall continue to be charged for the assigned vehicle until the vehicle has been received by the Division's Vehicle Assignment staff and all of the requirements of this Paragraph are met.

(c) The driver's Agency shall pay for all damages due to vehicle neglect, misuse or abuse.

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 38 .0401

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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In reviewing this Rule, the staff recommends the following technical changes be made:

How will the Secretary make the approval determination? What factors will he or she use?

In (a), what is meant by "official state business"? Is this defined or otherwise made clear elsewhere in rule or statute?

In (b)(1), what is meant by "by virtue of his or her position, the employee is entitled to use the vehicle and is so approved..." How will this approval be made? What is the process and what factors will be used?

In (b)(2), I don't understand the reference to "commuting purposes in accordance with G.S. 143-341(8)(i)(7a)." Please review and clarify.

In (b)(4), add "the" before "state-owned"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 38 .0401 is readopted as published in 34:01 NCR 5 as follows:

SECTION .0400 - VEHICLE USE

01 NCAC 38 .0401 OFFICIAL USE ONLY

(a) State-owned ~~passenger-carrying~~ vehicles shall be driven only by state employees and used for official state business ~~only, except in accordance with this Rule. It shall be unlawful for any state employee to use a state-owned vehicle for any private purpose whatsoever. Commuting privileges approved by the Division are not considered a private purpose.~~

(b) An employee ~~with an individual permanently assigned vehicle~~ may drive the vehicle to and from ~~his/her~~ his or her home when one or more of the following conditions exist:

- (1) ~~By~~ by virtue of ~~his/her~~ his or her position, the employee is entitled to use the vehicle and is so approved and authorized by the Secretary of ~~Administration.~~ Administration;
- (2) ~~See G.S. 143-341(8)(i)(7a).~~ commuting purposes in accordance with G.S. 143-341(8)(i)(7a);
- (3) ~~Employee's home is his/her~~ the employee's home is his or her official work station and the vehicle is parked at home when not being used for official ~~business.~~ business; or
- (4) ~~State-owned~~ state-owned vehicle is required for a trip the following workday and employee's home is closer to the destination than the ~~regular~~ official work station, and the employee does not have to report to ~~his/her regular~~ his or her work station before beginning the trip. ~~Frequent occurrence of this situation would require the Division's approval.~~

(c) ~~Temporary and agency assigned vehicles may not be driven to an employee's home unless one of the above four conditions apply.~~

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

Readopted Eff. November 1, 2019

01 NCAC 38 .0407 is readopted as published in 34:01 NCR 5 as follows:

01 NCAC 38 .0407 RELATIVES

~~Spouses~~ No spouses and children of state employees may accompany them in state-owned vehicles. ~~vehicles if sufficient space is available and all travel is strictly for official state business.~~ No family pets are permitted in state-owned vehicles. Service animals are excluded from this restriction.

History Note: Authority G.S. 143-341(8)i;

Eff. October 1, 1992.

Readopted Eff. November 1, 2019

01 NCAC 43A .0307 is readopted as published in 34:01 NCR 5 as follows:

SUBCHAPTER 43A - STATE SURPLUS PROPERTY AGENCY

SECTION .0300 - DISPOSAL OF SURPLUS PROPERTY

01 NCAC 43A .0307 PUBLIC SALE

Unless otherwise disposed of, ~~of in accordance with G.S. 143-64.03 or Rule .0305 of this Section,~~ State Surplus Property shall be offered for public sale. ~~Public sale of weapons is limited to licensed firearms dealers.~~ Public sale is through sealed competitive bids, competitive bids, electronic bids, negative bids, auction, and retail sales. ~~other methods.~~

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

01 NCAC 43A .0308 is readopted as published in 34:01 NCR 6 as follows:

01 NCAC 43A .0308 FIRST-COME FIRST-SERVED

~~State surplus property is available on a first come, first served basis. This applies to retail sales to the general public as well as transfers to state agencies, political subdivisions or non profit tax exempt organizations.~~

State surplus property shall be sold on a first-come, first served basis when:

(1) the property is sold at a retail store to the general public; or

(2) the property is transferred to state agencies, political subdivisions, or non-tax exempt organizations.

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0309

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), what is meant by "Any and all bids may be rejected"? In accordance with these Rules? If in the best interests of the state? Please either delete this language or provide some additional information as to how this determination will be made.

In (b), what is the difference between (a) and (b)? Here, do you mean something like Bids may be rejected in whole and in part for any of the reasons listed in (b) and for any other reason if in the best interests of the State? If so, consider deleting (a), deleting "also" and add that language as Subparagraph (7).

What is the difference in (b)(1) and (2)? They appear to cover the same thing.

In (b)(3), delete "fully"

In (b)(4), what is meant by "legible"? Please provide some additional, clarifying information.

In (b)(4), what is meant by "inaccurate, incomplete, or needs verification"? How is this determined? Wouldn't this be covered by (b)(3)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0309 is readopted as published in 34:01 NCR 6 as follows:

01 NCAC 43A .0309 REJECTION OF BIDS

(a) Any and all bids may be rejected.

(b) Bids may also be rejected in whole or in part if:

- (1) The bidder has failed to pay for or pick up surplus property awarded;
- (2) The bid is submitted by an ineligible bidder pursuant to Rule .0315 of this Section;
- (3) The bid does not fully comply with the terms and conditions of the ~~request/solicitation for bid;~~ State Surplus Property Agency;
- (4) The bid is not legible or ~~lacks completeness;~~ the information provided is inaccurate, incomplete or needs clarification;
- (5) The bid does not comply with the ~~bid policies of State Surplus Property Agency;~~ requirements of the request and solicitation as set forth in the bid; or
- (6) Bid rejection is recommended by the State Capitol Police, State Bureau of Investigation, Federal Bureau of Investigation, or other Homeland Security entity. In such cases, the security entity must provide a written statement requesting rejection and that the recommendation is based on homeland security concerns. In the event of receipt of a security based bid rejection recommendation, the State Surplus Property Agency shall reject the bid without further supporting documentation.

~~(b) If a bid is rejected in whole or part, the subject property may be re-advertised, sold at the highest bidder's amount, the next higher bid accepted, or sale negotiated, in the best interests of the State, without recourse to further bidding.~~

(c) If a bid is rejected in whole or in part, State Surplus Property may:

- (1) re-advertise the property;
- (2) award the property to the next highest bidder from the initial bid; or
- (3) negotiate the sale of the property in the best interest of the State.

*History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. July 1, 2007.
Readopted Eff. November 1, 2019*

01 NCAC 43A .0310 is readopted as published in 34:01 NCR 6 as follows:

01 NCAC 43A .0310 RECEIPT OF BIDS

~~It is the responsibility of the bidder to have the bid properly~~ The bidder shall ensure that the bid is received in the State
Surplus Property Agency by the time and date set forth in the bid. ~~specified time and date of bid opening.~~

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0311

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please consider breaking this Rule out into Paragraphs.

On line 9, you've said "all property is sold "as is" and "where is" in .0312. Please delete this language in .0311 or .0312.

On lines 9 and 14, change "will" to "shall"

On line 11, what is meant by "Once the award is made, the bidder shall assume all liability"? This appears to be a legal conclusion. What is your authority to make this determination?

What is meant by lines 13-14 ("Descriptions by the custodian... disputing an award"? Please review and clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0311 is readopted as published in 34:01 NCR 6 as follows:

01 NCAC 43A .0311 INSPECTION OF PROPERTY

~~Bidders are urged to inspect property prior to submitting bids. All property is sold "as is" and "where is." Any property descriptions provided by the State are solely as an aid to identification. Verbal communications by custodians of property cannot be deemed reliable, and will not be considered by the State Surplus Property Agency. Reasonable opportunity will be afforded for inspection up to the time for opening bids, but no labor will be furnished for such purpose. The purchaser assumes all liability for the property after award is made.~~

All property is sold "as is" and "where is." Bidders may inspect property prior to submitting bids. Opportunity will be afforded for inspection up to the time a bid is awarded, but no labor or materials shall be furnished to a bidder for such purpose. Once the award is made, the bidder shall assume all liability for the property. Photographs and descriptions are provided for the purpose of aiding the bidder to identify the property and shall not be used to determine quality or condition of the property. Descriptions by the custodian of the property shall not be considered by the State Surplus Property Agency nor will they be grounds for disputing an award.

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0312

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In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), you've already said "all property is sold "as is" and "where is" in .0311. Please delete this language in .0311 or .0312.

In (b), when will they withdraw the offer? Please provide some additional information as to when this may occur.

In (c), is this the bidder or the winning bidder?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0312 is readopted as published in 34:01 NCR 6 as follows:

01 NCAC 43A .0312 STATE DOES NOT GUARANTEE

~~The description of the property offered for sale is compiled from available information. All property is sold "as is" and "where is." In addition, all property offered for sale or a portion thereof is subject to withdrawal prior to the bid opening date. A refund or an adjustment will not be made on account of property not meeting expectations, a bidder's failure to inspect prior to sale, or change of condition of property from the time of award to the time of pickup. Any cost of weighing, packaging, crating, loading or hauling property is assumed by the bidder unless otherwise provided.~~

(a) The description of the property offered for sale is compiled from information available to the State Surplus Property Agency at the time the bid is prepared. All property is sold "as is" and "where is."

(b) State Surplus Property Agency may withdrawal the offer to sell prior to the award date.

(c) The bidder shall be responsible for any cost of weighing, packaging, crating, loading or hauling of property.

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0313

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Was the intent here to break this into Paragraphs? I think it would make sense to do so.

On line 8, (1), not meeting expectation of whom? The bidder?

On line 12, how will the Surplus Property Officer make a change in value determination? What factors will be used?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0313 is readopted as published in 34:01 NCR 6-7 as follows:

01 NCAC 43A .0313 REFUNDS

~~Refunds or adjustments due to change in condition from time of inspection until time of award are limited to the change in value as determined by the State Surplus Property Officer. In such cases, the State Surplus Property Officer may remove the property from bid or reverse the award and re-bid the property.~~

No refund shall be made upon the following:

- (1) property not meeting expectation;
- (2) bidder's failure to inspect prior to sale; or
- (3) change of condition of property from the time of award to the time of pickup.

No refund shall be given unless a change in value has occurred from the initial inspection of the property until the time of the award as determined by the State Surplus Property Officer.

History Note: Authority G.S. 143-64.01; 143-64.04;
Eff. June 1, 2007.
Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0314

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Was the intent here to break this into Paragraphs? I think it would make sense to do so.

On line 4, by "may", do you mean "shall"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0314 is readopted as published in 34:01 NCR 7 as follows:

01 NCAC 43A .0314 EXTENSION TO PAY OR REMOVE PROPERTY

Extensions to pay or remove property may be granted under the following conditions:

- (1) ~~The~~ the purchaser's inability to pay or remove property ~~was~~ is due to the actions or inactions of the State Surplus Property Agency or the custodian of the ~~property~~, property; and
- (2) ~~In the case of removal of property,~~ the State Surplus Property Officer determines that space is ~~available.~~ available to allow a delay in the removal of property.

The purchaser ~~waives all rights to recourse for~~ shall not be eligible for refund for the change in the condition of the property as a condition of the extension.

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0315

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Do you want to add some reference to .0314 for purposes of clarify. Perhaps something like "unless extended in accordance with .0314..." How will the Secretary make the approval determination? What factors will he or she use?

Should (b) instead be included in 0313?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0315 is readopted as published in 34:01 NCR 7 as follows:

01 NCAC 43A .0315 FAILURE TO PAY OR REMOVE PROPERTY

(a) If the ~~successful~~ bidder fails to pay in full for the property by the time and date indicated on the notice of award, the award shall be rescinded, ~~the property resold~~, and the defaulting bidder shall be charged with loss to the State, if any, together with all expenses of the sale.

(b) If the ~~successful~~ bidder does not remove the property purchased by the time and date indicated on the notice of award, the State Surplus Property Agency shall retain the purchase ~~price~~ price, and resell the property a second time and retain all proceeds therefrom.

(c) ~~Successful bidders~~ Bidders who fail to pay shall be ineligible for award of future bids.

History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0316

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

When would this Rule be applicable? What is your specific authority to allow for bonds?

In (a), change "requires" to "require."

In (e), is it a "letter verifying compliance" when there is a request to keep some or all of the bond? It seems to me that this letter would be outlining deficiencies or damage.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0316 is readopted as published in 7 NCR # as follows:

01 NCAC 43A .0316 BOND

(a) The selling ~~agency entity~~ or the State Surplus Property Agency may require performance bonds for the purchase of ~~commodities~~. commodities when hazards to the environment may occur on property and requires additional costs.

(b) The selling ~~agency entity~~ or the State Surplus Property Agency shall set the amount and terms of the ~~bond~~. based on an assessment of the property and estimated value.

(c) Selling agencies shall document the need for performance bonds.

(d) Selling agencies shall request a bond release from the State Surplus Property Agency once the requirements of the bond have been met by the ~~successful~~ bidder.

(e) Selling agencies shall submit a ~~justification~~ a letter verifying compliance with the terms of the bond to the State Surplus Property Agency for any retention in whole or in part of the performance bond.

(f) The State Surplus Property Agency ~~is the final authority~~ shall make a determination on releasing the performance ~~bond~~. based on the bidder's level of compliance with the terms of the bond.

History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0317

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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In reviewing this Rule, the staff recommends the following technical changes be made:

In (b), who is responsible for sending out bid forms? Please also change this to the active voice and who shall send the requests for bids.

In (b), how are the interested parties known? How are they to get on this list?

In (c), is there a cross-reference to the Council approval requirement?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0317 is readopted as published in 34:01 NCR 7 as follows:

01 NCAC 43A .0317 DEMOLITION OF STATE BUILDINGS

(a) The State Surplus Property Agency ~~may, if in the best interest of the State, be responsible for handles~~ bids and awards of contracts for the demolition of state ~~buildings~~ buildings, including those of universities, hospitals, and other state ~~agencies, entities~~.

(b) Requests for bid ~~forms~~ are sent to ~~interested, contractors and are further available upon request.~~ any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office.

(c) The owning ~~agency entity~~ shall submit ~~the requirements for permits, insurances, performance bonds and any other applicable requirements from local, state or federal authorities~~ a letter of approval from the Counsel Council of State regarding the demolition of a state building to the State Surplus Property Agency.

(d) The ~~successful bidder is responsible for obtaining~~ shall obtain all necessary permits, insurances, licenses, performance bonds and other requirements to complete the demolition.

*History Note: Authority G.S. 143-64.01; 143-64.04; 143-64.05;
Eff. June 1, 2007.
Readopted Eff. November 1, 2019*

01 NCAC 43A .0318 is readopted as published in 34:01 NCR 7 as follows:

01 NCAC 43A .0318 TIMBER SALES, PINESTRAW, AND FOREST COMMODITIES SALES

~~The State Surplus Property Agency shall dispose of timber. Timber, pine straw, and other forest commodities owned by state agencies are disposed of by the State Surplus Property Agency on a competitive bid basis. through a public sale. A request for bid form shall be sent to any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office. Office compiled from individuals who have previously expressed an interest in similar sales.~~

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0319

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

I'm having a bit of a hard time with the statutory authority regarding this Rule. I read 143-63.1(b) to say that you all may sell surplus weapons to county or local governmental units and law enforcement agencies in the State and (d) to say that Highway Patrol, DPS, and the SBI may sell their own weapons to "federally licensed firearm dealers" in accordance with your Rules (not that you all sell them for them.) Given 143-63.1, I'm very confused as to what your Rule is regulating and exactly what is going on. Please review and clarify.

I also don't understand "Subject to 20-187.2" in (a).

What is the intent of (c)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0319 is readopted as published in 34:01 NCR 7-8 as follows:

01 NCAC 43A .0319 SURPLUS WEAPONS AND FIREARMS

(a) Subject to G.S. 20-187.2, Surplus weapons and firearms possessed by the North Carolina State Highway Patrol, North Carolina Department of Correction, North Carolina State Bureau of Investigation, State Capitol Police, and other non-military armed state security agencies shall be sold through the State Surplus Property Agency upon notification in writing from the selling entity to the State Surplus Property Agency that such weapons or firearms are surplus.

(b) The notification in writing from the selling entity shall ~~list each weapon by description and serial number.~~ include the following information:

(1) weapon by description;

(2) serial number of each weapon; and

(3) any federal or state restrictions on the sale of non-firearm weapons.

(c) Weapons and firearms are subject to transfer between non-military armed state security agencies.

~~(d) The selling agency is responsible for notifying the State Surplus Property Agency of any federal or state restrictions on sale of non-firearm weapons.~~

~~(d)(e)~~ The State Surplus Property Agency, if requested, shall make available to federally licensed firearms dealers a list of firearms to be sold and a statement of the times and locations at which they may be inspected.

~~(e)(f)~~ Surplus weapons and firearms sales shall be made by ~~competitive bids.~~ public sale.

~~(f)(g) When payment has been received in full by the State Surplus Property Agency, the~~ The State Surplus Property Agency shall authorize the release of the weapons to the ~~successful bidder; provided, however, that no weapons shall be released to any person without the production of satisfactory proof of identification and, in the case of firearms, a valid federal firearms license.~~ bidder upon receipt of the following information:

(1) payment in full;

(2) proof of identification; and

(3) a valid federal firearms license, if the weapon is a firearm.

History Note: Authority G.S. 143-63.1; 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Administration

RULE CITATION: 01 NCAC 43A .0320

DEADLINE FOR RECEIPT: Wednesday, October 9, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), what is meant by "payment methods as approved by the Department of Administration Fiscal Officer"? Please either way what these are or provide how this determination will be made.

In (c), rather than "all other property purchases" say something like "all purchases other than those made as a retail site"

In (g), please end the sentence after "surplus property agency", delete "said" and begin a new sentence with "entity."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: September 25, 2019

01 NCAC 43A .0320 is readopted as published in 34:01NCR 8 as follows:

01 NCAC 43A .0320 PAYMENT

(a) All payments ~~must~~ shall be in the form of cash (~~retail sales only~~), ~~credit, debit~~, cashier's or certified check, postal money order, or other electronic payment methods as approved by the Department of Administration Fiscal Officer.

(b) Payment for retail sales items ~~must~~ shall be made at the time of ~~purchase~~, purchase and shall be made at the retail site where the property is located.

(c) Payment in full for all other property purchases ~~must~~ shall be made by the time and date indicated on the notice of ~~award~~, award and shall be made directly to the State Surplus Property Agency.

(d) Entities shall not accept payments on behalf of the State Surplus Property Agency.

(e) Extensions to pay or remove property ~~must~~ shall be in accordance with 01 NCAC 43A. 0314.

(f) No property may be removed by the ~~successful~~ bidder prior to full payment of the purchase price. ~~Payments for retail sales shall be made at the retail site where the property is located. All other payments must be made directly to the State Surplus Property Agency. Agencies are not authorized to accept payments on behalf of the State Surplus Property Agency.~~

(g) ~~If an agency releases~~ Entities shall not release property prior to ~~receiving documentation~~ verifying that payment in full has been made to the State Surplus Property Agency said ~~agency~~ entity shall assume all liability related to the release.

History Note: Authority G.S. 143-64.01; 143-64.04;

Eff. June 1, 2007.

Readopted Eff. November 1, 2019