

Fiscal Impacts of Changes to the Energy Loan Fund

Rule Topic: Readopt, Amend, Adopt and Repeal Energy Rules

Agency: Department of Environmental Quality

Rule Citations: 01 NCAC 41 A, C, D, E
04 NCAC 12 C, D

Readopt:

01 NCAC 41C. 0101 Definitions
01 NCAC 41C. 0201 Eligibility
01 NCAC 41C. 0202 Criteria for Energy Conservation Loans
01 NCAC 41D. 0203 Conditions and Limitations
01 NCAC 41C. 0204 Pre-Application Conference
01 NCAC 41C. 0205 Application Procedures
01 NCAC 41C. 0206 Application Review
01 NCAC 41C. 0207 Loan Approval
01 NCAC 41C. 0208 Loan Agreement and Promissory Note
01 NCAC 41C. 0209 Reports
01 NCAC 41C. 0210 Monitoring
01 NCAC 41C. 0211 Default
01 NCAC 41C. 0301 Technical Analysis Required
01 NCAC 41C. 0302 Technical Analyst Qualifications
01 NCAC 41C. 0303 Report Required
01 NCAC 41D. 0101 Purpose and Organization
01 NCAC 41D. 0102 Definitions
01 NCAC 41D. 0201 Banking
01 NCAC 41D. 0202 Selling
01 NCAC 41D. 0301 Proceeds and Distributions
01 NCAC 41D. 0302 Fund Disbursements
01 NCAC 41D. 0401 Reports

04 NCAC 12D. 0102 Petition for Rulemaking Hearings
04 NCAC 12D. 0116 Submission of Request for Ruling
04 NCAC 12D. 0117 Disposition of Request

Amend:

04 NCAC 12D. 0101 Delegation of Authority for Rulemaking Hearings

Adopt:

04 NCAC 12D. 0132 Disposition of Petitions for Rulemaking
04 NCAC 12D. 0133 Procedures for Public Comment for Rulemaking Hearings

04 NCAC 12D. 0202 Submission of Request for Declaratory Ruling

Repeal:

01 NCAC 41A. 0101 Purpose

01 NCAC 41A. 0102 Definitions

01 NCAC 41A. 0103 Scope and Purpose of State Set-Aside

01 NCAC 41E. 0101 Functions

04 NCAC 12C. 0108 Residential Conservation Service Program

04 NCAC 12D. 0103 Contents of Petition

DEQ Office: Energy Program

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Impact Summary: State government: Yes
Local government: Possible
Federal government: No
Substantial impact: Possible but unlikely

Authority: Session Law 2013- 360, Section 15.22(a), G.S. 143B-344.44

Necessity: Session Law 2013 -360 transferred the State Energy Office from the Department of Commerce to the Department of Environmental Quality. The Department of Environmental Quality is designated as the lead State agency in matters pertaining to energy efficiency. Prior to its time in the Department of Commerce, the State Energy Office was transferred from the Department of Administration in 2009 by Session Law 2009-475.

General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. Amendments to these State Energy Office rules will expand the scope of the Energy Loan Fund and modify loan conditions for energy efficiency and renewable energy projects in accordance with Session Law 2009-475. Additional technical amendments will correct outdated and obsolete rules for clarity before they are transferred and codified in Title 15A of the Administrative Code under the Department of Environmental Quality.

I. Proposed Rule Changes

The existing rules cover the purpose of the organization; the general provisions, procedures, applications and technical analysis requirements for the Energy Loan Fund; general provisions for the Energy Policy Act Credit Banking and Selling Program; functions of the Energy Policy Council; and Petitions for Rulemaking and Declaratory Rulings.

The proposed repeals will allow the organization to dispose of outdated rules that pertain to a program from the 1970's and 1980's, which is no longer in existence and update the department and representative name changes. Since rules in 04 NCAC 12 are administrative in nature, proposed amendments, adoptions and repeals are made to align with North Carolina General Statutes in the Administrative Procedure Act and therefore are technical in nature for the purpose of providing clarity. The proposed changes provide little to no financial impacts.

Substantive proposed amendments will include provisions in Session Law 2009-475 (Senate Bill 960) pertaining to the Energy Loan Fund. Senate Bill 960 requires the name change from Energy Improvement Loan Program to the Energy Loan Fund. According to SB 960 and the General Statutes listed, changes to the Energy Loan Fund include:

- General Statute 143-345.18(b) (1) requires the addition of 'residents' of North Carolina to the list of eligible applicants.
- General Statute 143-345.18(b) (2) increases the maximum amount of funds that can be loaned to specified applicants from \$500,000 to \$1,000,000.
- General Statute 143-345.18(c) increases the maximum loan terms from 10 years to 20 years.
- General Statute 143-345.18(d) reduces the minimum interest rate from one percent to zero percent for qualified projects.

The analysis below will focus on these substantive changes with potential economic impact.

II. Purpose and Goals of the Energy Loan Fund

Background

The Energy Loan Fund provides zero to low interest loans for projects that make energy efficiency and energy conservation upgrades. There are many environmental and economic benefits for these types of energy upgrades. Environmentally, better energy efficiency and conservation upgrades can lower greenhouse gas (GHG) emissions and other types of pollutants. Increased energy efficiency and conservation can also decrease water usage. For larger businesses and industrial facilities, these upgrades can mean increased comfort levels, and better indoor air quality for the users of the facilities. Economically, improved energy efficiency and conservation can lower utility bills for individuals and companies.

The Energy Loan Fund has \$3,000,000 available to make energy efficiency and renewable energy loans to the various entities that are eligible to participate in the program. The available

funds in the program are based on an initial amount of funding that was set aside for an energy loan program in the early 1980's, interest accrued on the funds in the program, the amount of funds that have been loaned out to eligible entities, and the amount of loaned funds that is outstanding. The Energy Loan fund was established to meet the demands for a financing mechanism for various sectors to make energy efficiency and renewable energy improvements and upgrades in an affordable way. These loans were provided at an interest rate that was lower than private market loan rates and resulted in energy dollars saved.

The Energy Loan Fund encouraged capital improvements that conserved energy and reduced the dollars spent on energy for entity that may not have qualified for higher interest loans. For example, an industrial facility may lose thousands of dollars for an HVAC or boiler system that was not energy efficient. However, the facility may not have had enough upfront dollars to make the improvements of a more energy efficient HVAC system or boiler system without the Energy Loan Fund. Also, some entities had low profit margins and would need a lower interest loan to keep the industry profitable during the payback period for the loan. This type scenario was also true for the other sectors that were eligible for the Energy Loan Fund.

Expansion of Energy Loan Fund

The main intent and goals of the changes to the Energy Loan Fund from Session Law 2009-475 were to allow the residential sector as eligible applicants and to allow entities to receive Energy Loan Fund for renewable energy projects which usually have a longer than 10-year payback period and cost more than energy efficiency projects.

Before Session Law 2009-475, the Energy Loan Fund was not available to residential customers. During the 1980's and through the early 2000's, the State Energy Office prioritized the commercial and industrial sectors for the Energy Loan Fund. These two sectors were specifically targeted because of a partnership between the State Energy Office and the Industrial Assessment Center at North Carolina State University. The partnership with the Industrial Assessment Center revealed through energy audits that many facilities in these sectors could reduce their energy usage, reduce emissions and save a lot of money on their energy bills if the facilities would invest in energy efficiency upgrades and retrofits. As the State Energy Office started more residential programs in the early 2000's, the Office realized that the residential sector could benefit from the same Energy Loan Fund as the other sectors. Session Law 2009-475 added residents to those that are eligible for the Energy Loan Fund.

Session Law 2009-475 also addresses the need for a longer payback period for some energy improvement loans. In the mid to late 2000's, there were many inquiries made to the State Energy Office about utilizing the Energy Loan Fund for renewable energy projects. All of the inquiries were about large solar and photovoltaic projects. These types of renewable energy projects alone require more than ten years to recover the cost of the renewable installations from the energy savings realized from the project. Therefore, before Session Law 2009-475, any solar or photovoltaic renewable energy projects funded under the Energy Loan fund had to

be combined with an energy efficiency project such as a lighting upgrade. Lighting upgrade projects usually have a quick payback period, and combining it with a solar or photovoltaic project with a longer payback period would help the combined projects meet the previous 10-year loan period. Lighting upgrades and most energy efficiency projects required less than ten years to recover the costs of the upgrades from the annual energy savings. The combination of renewable and energy efficiency projects allowed some small renewable projects to qualify for the Energy Loan Fund. With an increase from ten years to twenty years for the loan period, entities can now apply for a 100% renewable energy project and qualify for the loan funds as long as the payback period does not exceed twenty years. Also, large projects that are 100% renewable energy can be more expensive than the \$500,000 maximum for the loans prior to Session Law 2009-475. Session Law 2009-475 increased the maximum loan amount to \$1,000,000.

The amended rules set the interest rates at 1% for residents and small business, 2% for non-profits and local government, and 3% for commercial and industrial entities. These interest rates were determined to encourage residents and small businesses with the lower interest rates to make energy upgrades with the Energy Loan Fund. Historically, the commercial and industrial sector were the sectors that utilized the Energy Loan Fund program the most and the majority of those loans were made at 3% interest rates. Previously, there were a few small businesses that used the Energy Loan Fund program to make energy efficiency upgrades. These small businesses would qualify for the 1% interest rates and could also qualify for a 1% reduction in their interest rates if all previous loan conditions were successfully satisfied. This 1% reduction means that those businesses would qualify for 0% interest rate loans.

We anticipate the changes to the eligibility requirements and loan conditions will increase the demand for the Energy Loan Fund for two types of projects specifically. First, the demand for 100% renewable energy projects that require longer than a ten-year payback period. These projects previously did not qualify for the Energy Loan Fund because the energy savings from the installations required closer to a twenty-year payback period. Secondly, we anticipate an increase in demand for those in the residential sector seeking to make various energy improvements. Whether those improvements include: upgrading to a more energy efficiency HVAC system; installing a solar hot water heater; installing foam insulations to prevent energy leaks; or lighting improvements, the residential sector's demand for these energy funds will increase. This increase in demand will not come without some challenges and barriers to deployment.

III. Program Status and Challenges to Full Deployment of Funds

The Energy Loan Fund has had thirteen (13) active loans over the last fifteen (15) years. All 13 of these loans were initiated between 2005 and 2011, no new loans were started in 2012 through 2020. The loans were granted to fitness facilities, a child care facility, hotels, a private college, small and large businesses and industrial facilities. Of these loans, the smallest loan was \$31,700 at a small business and the largest loan was \$500,000 at a large hotel. The

average amount of the 13 loans was \$176,635. The State Energy Office had additional inquiries about the Energy Loan Fund from 2012 to 2020, but none of those inquiries produced active loans.

Currently, the status of the Energy Loan Fund is that the State Energy Office has no active loans and there have been no new loans made within the last ten years. There are several factors that impact the status and deployment of the Energy Loan Fund. First, current economic conditions have a huge impact on the Energy Loan Fund deployment rate. The current low private interest rates mean that private funding is cheaper and the interest rates offered by the Energy Loan Fund are less attractive compared to the attractiveness of the loan program during earlier years. During the 1980s and 1990s, private interest rates for energy improvement type loans could exceed the interest rates of the Energy Loan Fund by more than 7%. With the maximum interest rate for the Energy Loan Fund being 3% versus a 10% or higher private interest rate, the Energy Loan Fund was very attractive to entities seeking to make capital improvements to conserve energy and reduce energy bills. Fast forwarding to where economic conditions are now in 2020, private interest rates are almost as low as the low interest rates offered by the Energy Loan Fund. This makes the current program less attractive because there are other options from private entities offering low interest loans.

A second factor that effects the status and deployment of the Energy Loan Fund is that banks have to secure the loans made by the State Energy Office. Current rules require that all loans provided by the Energy Loan Fund must be secured by a Bank Letter of Credit. This means that there are no financial risks of losing the funds on the State Energy Office, but all of the financial risks is borne by the bank. Since the banks are bearing all of the financial risks and they currently offer loans with interest rates that are almost equal to or not substantially higher than the rates offered by the Energy Loan Fund, banks will sometimes cut out the Energy Loan Fund program and offer loans for the energy improvements directly to the requesting entity at the same low interest rate as the Energy Loan Fund. Also, with the current economic conditions causing a higher demand for the lower interest rates offered by private lending companies, banks may be less likely to secure the loans than they were in the past in exchange for the 1% administrative fee that they currently receive for securing the projects funded by the Energy Loan Fund. This scenario could change in the future as private interest rates rise.

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Another factor that impacts the status and full deployment of the funds is a lack of awareness of the program. The Energy Loan Fund historically has not been fully utilized when eligible entities were not fully made aware of the availability of these funds. In order for there to be full deployment of the Energy Loan Fund, there will have to be a marketing campaign to let eligible entities or individuals know that these funds are available. The marketing campaign for the Energy Loan Fund will include adding information about the program on websites that promote and share information about incentives for renewable and energy efficiency programs. These websites include but are not limited to the North Carolina State University's Database of

State Incentives for Renewables and Efficiency, the U. S. Department of Energy, the American Council for an Energy Efficient Economy and the Department of Environmental Quality's websites. The State Energy Office will also develop marketing material such as factsheets and promotional information to share about the Energy Loan Fund at conferences, tradeshow and meetings.

The requirement to have a third-party professionally licensed engineer or licensed architect certify that the loan funds for the project will recover the value of the loan within the time period of the loan is another potential barrier to deployment. The additional cost of this third party analysis is a barrier from some applicants. These analysis' can range from \$500 to more than \$5,000 depending on the type of project and the individual or company providing the energy analysis. There will have to be a readily available list of vetted professionally licensed engineers and architects with competitive fees to reduce the impact of this barrier to deployment of the loan funds.

IV. Impact Analysis Scenarios

With the changes to the Energy Loan Fund from Session Law 2009-475 and the challenges to full deployment mentioned above, there are two very different impact analysis scenarios that can occur. First, if the challenges to full deployment of the funds overshadows the effect of the rule changes from Session Law 2009-475, the effect of the rule changes and demand for the Energy Loan Fund does not increase. In the second scenario, the expansion of eligibility and the offering of more generous loan terms from Session Law 2009-475 causes the demand for the Energy Loan Fund to increase. Based on historically knowledge of the Energy Loan Fund, the current economic situations and challenges to full deployment, the State Energy Office does not expect the Energy Loan Fund to be fully subscribed even with the rule changes. We anticipate that the Energy Loan Fund will operate under the first scenario.

In the first scenario, the challenges to full deployment of the Energy Loan Fund will cause interest in the program to remain low. Low interest in the Energy Loan Fund will cause the funds available for the program to just set in an account and not be used for the intended purpose of providing low interest loans for energy improvement and renewable energy projects. If low interest in the loan program lingers for an extended period of time, the loan funds may be dissolved into grant funds for these same type energy projects. Since grant funds are not revolving and once spent they are no longer available, then these funds would eventually be depleted. If this scenario is realized, this would cause the agency to lose an energy financing program that would not be available for the public once all of the grant funds were distributed. This would cost the agency the value of the loan and all of the interest that is earned from issuing loans from 1% to 3%, and for the 0% loans, it would cost the agency the value of the loan that would have been returned to the revolving loan fund. This scenario would cost the general public and the entities that are eligible for the loan to have a continuous, revolving fund available for energy improvement projects. There are no benefits to

the agency in this scenario. However, the benefit to the public that is able to access the funds before they are depleted is that they would get grant funds to make energy improvements and install renewable energy projects without having to pay the money back to the agency.

In the second scenario, demand for the Energy Loan Fund increases. Prior to Session Law 2009-475, the applicant pool did not include residents. With the addition of the residential sector to the eligibility, there could be a significant increase in the number of loans that are made. Residents can apply for loans of up to \$50,000 to make energy improvements and to install renewable energy projects. We anticipate residential energy projects will include but are not limited to: rooftop solar, solar water heating, HVAC upgrades, energy efficient window and door upgrades, lighting upgrades, foam insulation and geothermal systems. The smaller amount for these type residential loans means that there is funding available to do more loans than if the loans were being made to the other eligible entities which could potentially qualify for \$1,000,000. When comparing the same type of projects on the residential scale to projects in the other sectors, the return of investment for the residents and the other eligible entities is the same.

The inclusion of residents to the eligible applicants relates to specific recommendations that have been included in recent energy policy and energy plan documents. First, in October of 2018, Governor Roy Cooper issued Executive Order 80 (EO 80) to address North Carolina's commitment to address climate change and to transition the state to a clean energy economy. In EO 80, NC Department of Environmental Quality was charged with the development of the NC Clean Energy Plan (CEP), which was developed and submitted to the Governor in September of 2019. Recommendations in the NC CEP include increasing financing opportunities for energy measures and making clean energy options available to individuals in underserved and low-income communities. Other energy plans such as the NC Energy Efficiency Roadmap that was completed in 2019 by the Duke Nicholas Institute and the 2020 NC Energy Policy Council Biennial Report include similar recommendations for the residential sector. Although the proposed changes extend financing opportunities to residents, some of the challenges mentioned above in the "Challenges to Full Deployment" section will still hinder the agency from reaching the targeted population in the residential sector.

If interest in the Energy Loan Program and deployment of funds does increase due to the rule changes, the magnitude of the energy cost savings and environmental benefits per dollar invested will depend on the types of projects that are funded. Each energy efficiency or renewable energy project will be unique in terms of the net amount of energy use reduction achieved, and the timing and duration of those energy use reductions. The energy use reduction potential, timing, and useful life of the project – not necessarily the project's size or sector – determine the energy savings per dollar invested.

A large pool of applicants across multiple sectors and project types would give the agency the opportunity to optimize and maximize the program benefits and reach target populations

based on these and other relevant criteria. In absence of significant renewed interest, loans will be awarded on a first-come-first-served basis.

Since the residential sector was not historically included in the Energy Loan Fund, the agency has no exact way of knowing how much interest will be shown in the program by the residential sector. However, the agency has researched data on energy consumption in the State of North Carolina. Data from the Energy Information Administration shows that 25.9% of energy in North Carolina is consumed by the residential sector. Based on this data, the agency will reserve 25% of the Energy Loan Fund for the residential sector. The remaining 75% of funds for the other eligible entities will be prioritized based on a first-come, first-served basis.

If there is renewed interest in the Energy Loan Fund and the challenges are overcome, the workload of staff members could greatly increase and the costs for the staff member who directly oversees the Energy Loan Fund will increase also. Historically, one agency staff member handles the administrative and financial requirements of the Energy Loan Fund. This particular individual also distributes the technical documents related to the loans to technical staff members in the office to review the projects for technical feasibility. The cost associated with the technical staff review is minimal due to the small amount of time required to review the technical aspect of the loan. Historically, the agency staff member that oversees the Energy Loan Fund spends an average of 120 hours on each loan from the beginning of the process to the closing of the loan for a ten-year loan agreement. The average salary of the employee who oversees the Energy Loan Fund (allowing for salary increases) is \$60,000 annually. If we assume that the average life of all loans made with the changes from Session Law 2009-475 will be 15 years and that the average number of hours dedicated for each loan is 180 hours, the cost per loan for the agency staff member that oversees the loan program is approximately \$5,200.

V. Conclusions

The proposed rules expand the Energy Loan Fund in accordance with Session Law 2009-475 to include residential sector energy efficiency projects and to allow for large renewable energy projects with longer payback periods. Other changes to the rules in this package are technical in nature with no impact. The changes to the Energy Loan Fund are listed in the table below.

	Energy Loan Fund Before Session Law 2009-475, SB 960	Changes to Energy Loan Fund due to Session Law 2009-475, SB 960
Eligibility	Local Government Organization, Nonprofit Organization, Commercial and Industrial Business	Local Government Organization, Nonprofit Organization, Residents, Commercial and Industrial Business
Maximum Total Loan Indebtedness for Non-Residential Applicants	\$500,000 (Five Hundred Thousand dollars)	\$1,000,000 (One Million dollars)
Maximum Loan Total Loan Indebtedness for Residents	N/A	\$50,000 (Fifty Thousand dollars)
Maximum Loan Terms	10 years	20 years
Minimum Interest Rate	One percent (1%)	Zero percent (0%)

The Energy Loan Fund has not issued any loans in the past 10 years. The proposed changes to the loan conditions may increase interest in the program, especially for newly-eligible residential projects and large-scale solar panel and PV projects. However, existing challenges are likely to outweigh the effect of the proposed changes to the loan program:

- Current economic conditions and low interest rates make the Fund less attractive for applicants and banks;
- The Bank Letter of Credit required to secure the loan limits access to larger and wealthier applicants with the lowest risk and to those that have an existing relationship with a financial institution;
- The cost of the study conducted by an engineer or architect; and
- Lack of awareness of the program.

Based on historically knowledge of the Energy Loan Fund, the current economic situations and challenges to full deployment, the State Energy Office does not expect a significant increase in number of loans that will be deployed without future changes to address the challenges identified above.

CHAPTER 41 – STATE ENERGY OFFICE

SUBCHAPTER 41A - ORGANIZATION

01 NCAC 41A .0101 IS PROPOSED FOR REPEAL THROUGH READOPTIONS AS FOLLOWS:

01 NCAC 41A .0101 PURPOSE

- ~~(a) The Energy Division administers the U.S. Department of Energy's regulations as they relate to the State of North Carolina.~~
- ~~(b) It develops and coordinates research and studies to provide facts upon which to base energy related policy recommendations, provides early warning of impending energy shortages and prepares plans for such contingencies.~~
- ~~(c) It initiates energy related policy recommendations in cooperation with other state agencies and cooperates with federal, regional and neighboring state authorities on energy matters of mutual concern.~~
- ~~(d) It coordinates state government agency energy conservation measures and, as appropriate, effects coordination between state government and the private sectors in promoting energy conservation.~~
- ~~(e) The Energy Division provides staff support to the Energy Policy Council.~~

~~History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Transferred from 04 NCAC 12C .0102 Eff. May 15, 2007.~~

01 NCAC 41A .0102 IS PROPOSED FOR REPEAL THROUGH READOPTIONS AS FOLLOWS:

01 NCAC 41A .0102 DEFINITIONS

The following definitions apply to this Chapter:

- ~~(1) "End user" means any firm which is an ultimate consumer of an allocated product other than a wholesale purchaser consumer.~~
- ~~(2) "Wholesale purchaser consumer" means any firm that is an ultimate consumer and who:~~
- ~~(a) is classified agricultural production and purchases more than 20,000 gallons of allocated product per year;~~
- ~~(b) is classified multi-family residence and purchases more than 50,000 gallons of allocated product per year; or~~
- ~~(c) purchases more than 84,000 of allocated product per year.~~
- ~~(3) "Wholesale purchaser reseller" means any firm which purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.~~
- ~~(4) "Prime supplier" is a supplier or producer who makes the first sale of any allocated product which is subject to state set aside into the state distribution system for consumption within the state.~~
- ~~(5) "State set aside" is that amount of an allocated product made available from the total supply of a prime supplier for utilization by the state to resolve emergencies and hardships due to shortages.~~
- ~~(6) "Base Period" shall be the 12 month period immediately preceding the months in which an applicant applies for state set aside product, or such other time as may be determined by the Energy Division in the event that the 12 month base period is not applicable.~~

- (7) ~~"Emergency" is a situation or set of circumstances which require immediate remedial action.~~
- (8) ~~"Hardship" exists when a wholesale purchaser-consumer or end-user is adversely affected by his inability to obtain a sufficient quantity of an allocated product.~~
- (9) ~~"Energy crisis" will exist upon a finding by the Governor with the advice and consent of the Legislature, that there is an actual or impending shortage or curtailment of usable, necessary energy resources to the extent that the maintenance of necessary services; and protection of public health, safety and welfare; or the maintenance of a sound basic state economy is imperiled, as defined and authorized by G.S. 113B-20.~~
- (10) ~~"Market area" means a one-mile radius around a retail sales outlet selling gasoline and diesel fuel. [This definition may be used as a factor for determining an applicant's eligibility for state set aside fuel if no other retail sales outlet is within this radius to serve customers.]~~
- (11) ~~"Customer/supplier relationship" will exist between an end-user, wholesale purchaser-consumer or wholesale purchaser-reseller and a supplier after a business relationship has existed for a 30-day period.~~
- (12) ~~"Firm" means any association, company, corporation, estate, individual, joint venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, federal government, state and local governments and any other instrumentalities.~~
- (13) ~~"Agricultural production" means all activities classified under the industry code numbers specified in Subparagraph (a) of this Paragraph, as set forth in the Standard Industrial Classification Manual, latest edition, except those industry code numbers listed in Subparagraph (b) of this Paragraph, which are excluded:~~
- (a) ~~Activities:~~
- (i) ~~All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in Subparagraph (b) of this Paragraph;~~
- (ii) ~~All industry code numbers included in Major Group 20 and 21, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in Subparagraph (b) of this Paragraph;~~
~~and~~
- (iii) ~~All the following other industry code numbers:~~
- (A) ~~1474 Potash, Soda and Borate Minerals (Potash mining only);~~
- (B) ~~1475 Phosphate Rock;~~
- (C) ~~2141 Tobacco Stemming and Drying;~~
- (D) ~~2411 Logging Camps and Logging Contractors;~~
- (E) ~~2819 Industrial Inorganic Chemicals not elsewhere classified (dicalcium phosphate only);~~
- (F) ~~2873 Nitrogenous Fertilizers;~~
- (G) ~~2874 Phosphatic Fertilizers;~~
- (H) ~~2875 Fertilizers, Mixing Only;~~
- (I) ~~2879 Pesticides and Agricultural Chemicals not elsewhere classified;~~
- (J) ~~4212 Local Trucking Without Storage (farm to market hauling and log trucking only);~~

~~(K) — 4971 Irrigation Systems (for farm use; and~~

~~(L) — 5462 Retail Bakeries, Baking and Selling.~~

~~(b) — Activities excluded:~~

~~(i) — All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:~~

~~(A) — 0181 Ornamental Floriculture and Nursery Products;~~

~~(B) — 0271 Fur Bearing Animals and Rabbits (except rabbit farms);~~

~~(C) — 0272 Horses and Other Equines;~~

~~(D) — 0279 Animal Specialties not elsewhere classified (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);~~

~~(E) — 0742 Veterinary Services for Animal Specialties;~~

~~(F) — 0752 Animal Specialty Services;~~

~~(G) — 0781 Landscape Counseling and Planning;~~

~~(H) — 0782 Lawn and Garden Services;~~

~~(I) — 0783 Ornamental Shrub and Tree Services; and~~

~~(J) — 0849 Gathering of Forest Products, not elsewhere classified.~~

~~(ii) — All the following industry code numbers, otherwise listed under Major Groups 20, Food and Kindred Products, of Division D, Manufacturing, are excluded from the definition;~~

~~(A) — 2047 Dog, Cat and Other Pet Food;~~

~~(B) — 2067 Chewing Gum;~~

~~(C) — 2084 Wines, Brandy, and Brandy Spirits; and~~

~~(D) — 2085 Distilled, Rectified and Blended Liquors.~~

~~(14) — "Emergency Services" means law enforcement, fire fighting and emergency medical/ambulance services.~~

~~(15) — "Energy Production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods.~~

~~(16) — "Sanitation Services" means the collection and disposal of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.~~

~~(17) — "Telecommunication Services" means the emergency or essential installation, repair, operation and maintenance of voice, data, telegraph, video and similar communications services to the public by a communications common carrier, excluding sales and administrative activities.~~

~~(18) — "Passenger Transportation Services" means publicly and privately owned air and surface operations for transporting members of the general public, bus transportation of pupils to and from school (but not including elective extra curricular activities), and vanpool operations, and includes facilities necessary to support such operations.~~

- (19) ~~"Truck" means a motor vehicle for transportation with a gross weight in excess of 20,000 pounds.~~
- (20) ~~"Health Service Facilities" means hospitals, psychiatric facility, rehabilitation facility, long term care facility, kidney disease treatment center, intermediate care facility for mentally retarded, home health agency, chemical dependence treatment facility and ambulatory surgical facility.~~

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Authority G.S. 143B 429; 143B 430; 143B 431; 143B 449;
Made Permanent Eff. July 3, 1978;
Amended Eff. April 1, 1991; May 15, 1979;
Transferred from 04 NCAC 12C .0104 Eff. May 15, 2007.

01 NCAC 41A .0103 IS PROPOSED FOR REPEAL THROUGH READOPTON AS FOLLOWS:

01 NCAC 41A .0103 SCOPE AND PURPOSE OF STATE SET-ASIDE

(a) ~~Control of certain products, may from time to time be designated by the state. The products are to be allocated by the state for the purpose of alleviating hardships and/or emergencies within the state. Issuance of the state set aside, based upon proof of hardship and/or emergency will follow the priority rules and any special rule as set forth in this Chapter or issued by the Energy Division. The application must clearly set forth the consequences which will result from one or more end users not being able to obtain sufficient product. The following are examples of consequences which could result from one or more end users not being able to obtain sufficient products. Such examples of consequence as filed by the applicant may include, but are not limited to:~~

- (1) ~~plant closings;~~
- (2) ~~employee lay offs;~~
- (3) ~~inability to harvest crops, or~~
- (4) ~~curtailments of vital community services.~~

(b) ~~The state set aside may be used for:~~

- (1) ~~end users and wholesale purchaser consumers who are unable to obtain adequate products and thereby sustain a hardship or emergency as defined in this Chapter;~~
- (2) ~~wholesale purchaser resellers seeking an assignment to meet an emergency or hardship requirement on behalf of end users and wholesale purchaser consumers.~~

(c) ~~Allocations granted under the state set aside program must be used to supply wholesale purchaser consumers and end users described in the application for state set aside.~~

(d) ~~Who May Apply for State Set Aside. Any wholesale purchaser consumer or wholesale purchaser reseller may apply for, or on behalf of, end users who are eligible under Paragraphs (b)(1) and (2) of this Rule.~~

(e) ~~First priority for set aside shall go to wholesale purchaser consumers and end users involved in the following activities (order of priority to be determined by the Energy Division after review of the circumstances then in effect):~~

- (1) ~~agricultural production;~~
- (2) ~~aviation ground support vehicles and equipment;~~
- (3) ~~cargo, freight and mail hauling by truck and mail carries;~~
- (4) ~~emergency services;~~
- (5) ~~energy production;~~
- (6) ~~health care services;~~
- (7) ~~passenger transportation services;~~
- (8) ~~sanitation services;~~
- (9) ~~telecommunication services.~~

(f) ~~What Must Be Filed for State Set Aside. All applications must be filed on a Form NC ED 100, "Application to State for Exceptional Hardship Assistance." Any information submitted on the above listed~~

~~form which the applicant desires to be treated as confidential must be designated as such on the form and a second form (copy) must be filed deleting the information considered confidential by the applicant.~~

~~(g) Where to File an Application for State Set Aside:~~

- ~~(1) All applications [except those listed in Subparagraph (g) (2) of this Rule], shall be filed with the local County Emergency Management Coordinator and are processed through the North Carolina Department of Economic and Community Development, Energy Division, P.O. Box 25249, Raleigh, North Carolina 27611.~~
- ~~(2) In the event the applicant's county of domicile does not have a County Emergency Management Coordinator assigned, applications may be filed directly with the Energy Division. The Energy Division may, from time to time, designate other applicants, such as fire, police, rescue, and other essential government provided services, which will file applications for state set aside product directly with the Energy Division.~~

~~(h) Request for Confidential Treatment~~

- ~~(1) If any person filing a document with the local County Emergency Management Coordinator or the Energy Division claims that some or all the information contained in the document is exempt from the mandatory public disclosure requirement of the Freedom of Information Act [5 U.S.C. 552 (1970)], or is otherwise exempt by law from public disclosure, and if such person requests the local County Emergency Management Coordinator and the Energy Division not to disclose such information, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the Energy Division may assume that there is no objection to public disclosure of the document in its entirety.~~
- ~~(2) The Energy Division retains the right to make its own determination with regard to any claim of confidentiality. Should the Energy Division deny a claim to confidentiality, the applicant may require the return of all copies of the disputed document(s) with notification to the applicant that the withdrawal of necessary data from consideration may tend to prejudice his application pending before the Energy Division.~~

- ~~(i) Limitations on Filing an Application for State Set Aside. Applications must be filed within the month the hardship exists and should be filed with the local County Emergency Management Coordinator not later than the 15th day of the month for which set aside product is requested. The State Emergency Management System will ensure that applications are received by the Energy Division not later than ten calendar days before the end of the month. In cases where additional information is requested, this information must be received by the local County Emergency Management Coordinator and forwarded to the Energy Division prior to five calendar days before the end of the month. In cases of disapproval, the applicant will be notified within ten days as to why his application was not approved.~~

~~(j) Release of set aside product. The Energy Division, upon determining to its satisfaction that there will be little or no need for any set aside product not allocated, may release the remainder to the suppliers for distribution through their normal North Carolina distribution channels.~~

~~(k) Supplier's Responsibilities:~~

- ~~(1) Each prime supplier shall designate a representative to act for and in behalf of the prime supplier with respect to state set aside assignments. The Energy Division may, to the maximum extent possible, consult with the prime supplier's representative prior to issuing~~

~~any authorizing documents affecting the state set aside volumes to be provided by the supplier.~~

- (2) ~~Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set aside assignment has been made.~~

All prime suppliers shall supply products from their state set aside volume each month, as directed by the Energy Division, not to exceed the total state set aside volume for each product for that month. That portion of a prime supplier's state set aside volume for a particular month which is not allocated by the Energy Division during that month, or which is not subject to an authorizing document issued no later than the last day of that month, shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the allocation procedure set forth in the allocation regulations. The Energy Division may designate certain geographical areas within the state as suffering from an intra-state supply imbalance. When this occurs the Energy Division may order some, or all, of the prime suppliers servicing the geographical areas to release part, or all, of their set aside volume through their normal distribution systems to increase the fuel supply of their customers. Orders issued pursuant to the set aside program shall be in writing and effective immediately upon presentation to the prime supplier's designated state representative. Such order shall represent a call on the prime supplier's set aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

(1) ~~Procedures for Appeal:~~

- (1) ~~Whenever the rights, duties, or privileges of the applicant or other substantially affected persons are being determined by the administration of the state set aside, within the Energy Division, through the granting or denial of a hardship application, such person(s) may, within ten days of service of the order, file a written request for an appointment with the Director of the Energy Division. Such request(s) must be sent to the Director, Energy Division, North Carolina Department of Economic and Community Development, 430 N. Salisbury St., Raleigh, North Carolina 27611.~~
- (2) ~~At the meeting, the aggrieved party may informally review the application and have answered questions concerning the application as may be permitted without violating a confidentiality claim.~~
- (3) ~~The Director of the Energy Division shall have five working days from the date of the meeting to arrive at a decision.~~
- (4) ~~All appeals from the decision of the Director of the Energy Division rest with the Secretary of the Department of Economic and Community Development or his designee as provided for under Chapter 1 of this Title.~~
- (5) ~~At the time of a final decision by the Departmental secretary, the Departmental appeals procedures will have been deemed exhausted. Any further appeals shall be made by petition to the Office of Administrative Hearings.~~
- (6) ~~Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies may petition either the Superior Court of Wake County or the Superior Court of the county where the person resides.~~
- (7) ~~Nothing in this Rule shall preclude an application from reapplying for an allocation in lieu of pursuing the appeals process.~~

History Note: ~~Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978; Authority G.S. 143B 429; 143B 430; 143B 431; 143B 449; Made Permanent Eff. July 3, 1978; Amended Eff. May 1, 1991; May 15, 1979; Transferred from 04 NCAC 12C .0106 Eff. May 15, 2007.~~

SUBCHAPTER 41C - ENERGY IMPROVEMENT LOAN PROGRAM

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 41C .0101 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0101 DEFINITIONS

For the purposes of this ~~Chapter, Subchapter,~~ the following definitions apply:

- (1) ~~"Allowable Costs,"~~ "Costs" means origination cost, ~~up front cost,~~ letter of credit fee (first year), engineering design fee, and implementation of an eligible energy conservation measure. All allowable costs to be included in the loan ~~must~~ shall be incurred after the execution date of the Letter of ~~Intent;~~ Intent.
- (2) ~~"Applicant,"~~ "Applicant" means any commercial or industrial ~~business;~~ business, nonprofit institution, local government entity, or resident applying for a loan under the ~~Program;~~ Program.
- (3) ~~"Btu,"~~ "Btu" means British thermal unit; the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 39.2 degrees ~~F;~~ F.
- (4) ~~"Btu/sq. ft./yr.,"~~ "Btu/sq. ft./yr." means Btu per square foot per year; an index of building energy use, calculated by dividing the total annual energy use of a building by its square foot ~~area;~~ area.
- (5) ~~"Commercial or industrial business,"~~ "business" means a commercial or industrial concern ~~which that~~ provides goods or services for profit from a location in North Carolina.
- (6) ~~"Commercially available"~~ means available to the general public and does not include ~~experimental or research-related technologies.~~
- ~~(6)~~(7) ~~"Credit worthiness,"~~ "worthiness" means ability of applicant to meet lending institution's standard lending ~~criteria;~~ criteria.
- ~~(7)~~ ~~"DOA Fiscal Department,"~~ the Fiscal Management Department, N. C. Department of ~~Administration;~~
- (8) ~~"Energy conservation measure,"~~ "measure" means a commercially available energy efficient device, technique or technology, designed to reduce energy consumption, peak demand, or ~~as~~ utility costs at an existing or proposed commercial or industrial ~~business;~~ business, nonprofit institution, local government entity, or residence.
- ~~(9)~~ ~~"Financial Services Division"~~ means the Fiscal Management Department, within the N.C. ~~Department of Environmental Quality.~~
- ~~(9)~~(10) ~~"Letter of Intent,"~~ "Intent" means written notification of the ~~intent of the Department of Environmental Quality's intent~~ to originate the ~~Loan;~~ loan, subject to the conditions and limitations of the ~~Program;~~ Energy Improvement Loan Program.
- ~~(10)~~(11) ~~"Payback,"~~ "Payback" means the total energy conservation measure costs (including installation, equipment and engineering design) divided by the total annual estimated utility cost savings; ~~savings~~ for a period of years.
- ~~(11)~~(12) ~~"Program,"~~ "Program" means the Energy Improvement Loan ~~Program;~~ Program.
- ~~(12)~~(13) ~~"Recycling Projects,"~~ "Projects" means projects which extract and reprocess energy, water and materials for reuse in buildings, transportation systems, environmental management, consumer ~~products and/or outreach;~~ products, or outreach.
- ~~(13)~~(14) ~~"Renewables,"~~ "Renewables" mean solar, wind, ~~biomass;~~ biomass, or hydropower ~~resources;~~ resources.
- ~~(14)~~(15) ~~"Repayment Schedule,"~~ "Schedule" means a schedule of periodic payments based upon ~~simple~~ payback as projected in the Technical Analysis rounded to the next quarter. Prepayments shall reduce the term of the loan with periodic payments remaining ~~unchanged;~~ unchanged.
- ~~(15)~~(16) ~~"State Energy Office"~~ means, the State Energy Office, Division of Energy, within the N. C. Department of ~~Administration;~~ Environmental Quality.
- ~~(16)~~(17) ~~"Technical Analysis ("TA")"~~, "TA" means a report ~~that identifies and analyzes~~ identifying and analyzing the cost-effective capital energy conservation

improvements that the applicant wishes to implement. ~~The Technical Analysis need address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be the subject of a single recommendation incorporating technical and economic analyses of the measure, considering building, process and equipment characteristics and energy use patterns pertinent to the improvement. The Technical Analysis must shall include the estimated cost of the implementation, a construction schedule, and expected energy savings;~~

- (17)(18) ~~"Technical analyst,"~~"Analyst" means a ~~person with experience in energy conservation~~licensed engineer, architect, or certified Home Energy Rating System, "HERS" ®, rater to conduct~~that conducts the technical analysis for the purposes of this article;~~Subchapter.
- (18)(19) ~~"Third Party Technical Analyst",~~"Analyst" means a ~~technical~~Technical analysis performed by an agency or someone~~Analyst, who performs the Technical Analysis and does not have has neither a financial interest in the commercial business, or industrial business, nonprofit institution, or local government institution, entity, or industrial business nor~~or in the sale and installation of any proposed energy conservation measure; measure, however, the Technical Analyst is permitted to provide construction management services to an approved applicant;
- (19)(20) ~~"Unallowable costs,"~~"costs" means costs associated with Technical Analysis preparation, costs associated with pre-application conference, costs incurred prior to the execution date of the Letter of Intent, or costs associated with loan application (i.e., application, i.e., consultation fees, or Technical Analysis modifications); and~~modifications.~~
- (20) ~~"Up front cost," means the prepaid charge, if any, at a rate to be determined by the DOA Fiscal Department Financial Services Division sufficient to cover the costs of administering and servicing the program.~~
- (21) ~~"Useful life" means the period during which an asset or property is expected to continue to function for the purpose for~~in~~which the asset or property was acquired.~~

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004.

SECTION .0200 – LOANS

01 NCAC 41C .0201 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0201 ELIGIBILITY

The following ~~classes of applicants~~ are eligible to apply for loans:

- (1) ~~A local government organization, nonprofit organization, commercial or industrial business~~commercial or industrial business, nonprofit organization, local government entity, or resident located in North Carolina that owns the existing building or site of planned construction where the energy conservation measures will be made, or ~~which that~~ has a lease or management agreement for ~~such~~the proposed building site or building extending beyond the term of the loan; provided, however, that where the owner of the building authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.
- (2) ~~A Nonprofit organization, commercial or industrial business~~commercial or industrial business, nonprofit organization, local government entity, or resident relocating to North Carolina that owns the site of planned construction where the energy conservation measures will be made, or ~~which that~~ has a lease or management agreement for such proposed building or building site extending beyond the term of the ~~loan; provided, however, that where~~loan. However, when the owner of the building or building site authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.

History Note: Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
 Eff. September 1, 2004.

01 NCAC 41C .0202 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0202 CRITERIA FOR ENERGY CONSERVATION LOANS

Energy conservation projects for which the loans are desired ~~must~~shall meet the following criteria:

- (1) The building site where the measures are to be installed ~~must~~shall be in North Carolina;
- (2) The project ~~must~~shall demonstrate in the Technical Analysis the ability to conserve energy through efficient energy use or the utilization of renewable energy resources ~~which that results in energy savings based upon a net reduction in the use of nonrenewable resources; resources.~~
- (3) A maximum total loan indebtedness ~~of five hundred thousand dollars (\$500,000) for a single local government organization, nonprofit organizations, commercial business or industrial business at any given time;~~ in accordance with G.S. 143B-344.44(b)(2).
- (4) The project ~~must~~shall utilize commercially available ~~technologies~~ energy conservation measures.
- ~~(5) Experimental or research related technologies are not eligible for funding;~~
- ~~(6)(5) Each energy conservation measure must shall address energy efficiency; efficiency.~~
- ~~(7)(6) The installation of the energy conservation measure may, at the discretion of the applicant, commence after DOA Fiscal Office the Financial Services Division issues the Letter of Intent; however, the applicant places itself at risk and is reminded that origination of the Loan loan is shall still be subject to the conditions and limitations of the Program; Program, pursuant to Rule .0203 of this Section.~~
- ~~(8)(7) The energy conservation measure must shall be demonstrate demonstrated, within the Technical Analysis, to have a payback of less than one over a period of 20 years or less. a simple payback period of 10 years or less;~~
- ~~(9)(8) Each energy conservation measure must shall be demonstrated to have a payback less than one over the useful life of the energy conservation measure. have a useful life at least equal to its estimated simple payback; payback.~~
- ~~(10)(9) Eligible energy conservation measures shall fall under one of the following categories:~~
 - (a) lighting systems;
 - (b) heating, ventilation, and air conditioning systems;
 - (c) electrical distribution systems (motors, variable speed drives, fans, etc.);
 - (d) energy management systems;
 - (e) boiler efficiency systems;
 - (f) energy recovery systems, including on-site generation of electricity;
 - (g) alternate/renewable energy systems;
 - (h) building envelope (doors, windows, roofs, etc.);
 - (i) industrial process or fabrication systems;
 - (j) load management systems;
 - (k) fuel conversion ~~projects; projects; provided that the simple payback calculations shall be based on the cost of the current fuel;~~
 - (l) other ~~cost effective demand related or rate based~~ improvements; and
 - (m) recycling ~~projects; projects.~~

~~(11)~~(10) The energy conservation measure shall meet applicable state air and water quality standards; ~~and standards, in accordance with 15A NCAC 02B, 02D, and 02L, which are incorporated by reference, including all subsequent amendments.~~

~~(12)~~(11) The energy conservation measure shall be based on a ~~current~~ Technical Analysis report as defined in Rule .0101 of this ~~Subchapter~~.~~Subchapter~~, conducted within the ~~perevious~~ year.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. September 1, 2004.

01 NCAC 41C .0203 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0203 LOAN PERCENTAGE AND CONDITIONS AND LIMITATIONS

Loans are made subject to the following conditions and limitations:

- ~~(1) Interest shall be charged at the rate of three percent per annum and one percent for renewable and recycling projects;~~
- ~~(2) The amount of the loan shall not exceed allowable costs;~~
- ~~(3) The repayment schedule shall be based on the estimated payback as shown in the Technical Analysis report;~~
- ~~(4) Payments shall be made at a frequency of not less than once per month;~~
- ~~(5) The total amount of the loan, or any portion thereof may be repaid at any time without penalty;~~
- ~~(6) Rebates received through other program offerings of the State Energy Office Program for projects undertaken from loan proceeds shall be used to reduce the amount of principal;~~
- ~~(7) The borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes and standards;~~
- ~~(8) Project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the revolving fund;~~
- ~~(9) Loans shall not be used to replace an existing loan;~~
- ~~(10) Loan payments or drafts shall be sent or delivered to the DOA Fiscal Department at its current address as stated in the loan agreement;~~
- ~~(11) A letter of credit from a bank approved to do business in North Carolina shall secure the loan against non payment and also serve as a quarterly drafting mechanism for loan repayment from the bank; and~~
- ~~(12) No loans shall be forgiven.~~

~~(a) The interest rate on the loan shall be set pursuant to G.S. 143B-344.44(c) by the State Energy Office based on the following:~~

- ~~(1) previous State Energy Office loan recipients get 1% deduction with closed loans and no defaults to a minimum of zero percent~~
- ~~(2) loans made to residents and small businesses shall receive a 1% interest rate;~~
- ~~(3) loans made to non-profits and local governments shall receive a 2% interest rate; and~~
- ~~(4) loans made to commercial and industrial entities shall receive a 3% interest rate.~~

~~(b) Loans are made subject to the following conditions:~~

- ~~(1) the repayment schedule shall be based on the estimated payback as shown in the Technical Analysis Report, pursuant to Rule .0303 of this Subchapter;~~
- ~~(2) the commercial or industrial business, nonprofit organization, local government entity, or resident shall make payments at least once a month;~~
- ~~(3) the total amount of the loan, or any portion thereof, may be repaid at any time before the total amount is due, without penalty;~~
- ~~(4) rebates received through other program offerings of the State Energy Office for projects undertaken from loan proceeds shall be used to reduce the amount of principal;~~

- (5) the borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes and standards;
- (6) project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the Alternative Fuel Revolving Fund;
- (7) loan payments or drafts shall be sent or delivered to the Financial Service Division, in accordance with 04 NCAC 12D .0101; and
- (8) a letter of credit from a bank approved to do business in North Carolina shall secure the loan against non-payment and also serve as a quarterly drafting mechanism for loan repayment from the bank.

(c) Loans are made subject to the following limitations:

- (1) the amount of the loan shall not exceed allowable costs;
- (2) loans shall not be used to replace an existing loan; and
- (3) no loans shall be forgiven.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4); 143B-344.44(e);~~
Eff. August 1, 2004.

01 NCAC 41C .0204 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0204 PRE-APPLICATION CONFERENCE

(a) The potential applicant shall schedule a pre-application conference with the State Energy Office by email, telephone or office visit at least one week prior to submission of a project application. ~~the State Energy Office shall convene a pre-application conference by email, telephone or office visit. During the pre-application conference, the parties shall:~~

- (1) ensure the application procedures are understood; and
- (2) reach an understanding among all parties that the project is eligible for approval in accordance with Rule .0202 of this Section.

(b) Parties present at the pre-application conference shall include representatives from the ~~DOA Fiscal Division, Financial Services Division,~~ the State Energy Office, and the applicant or the applicant's engineer.

~~(c) The purpose of the conference is to help ensure the application procedures are understood and that the application and technical analysis, when accepted, shall be complete.~~

~~(d)~~(c) The applicant shall offer verbal, and if available, written project descriptions.

~~(e)~~(d) The applicant shall address provide applicable water and air quality permits required for environmental impact of the project.

~~(f)~~(e) When final, ~~copies of water and air permits shall be provided by the applicant in addition to the technical analysis.~~ The Technical Analysis shall be provided by the applicant.

~~(g) Another purpose of this conference shall be to reach an understanding among all parties that the project is of the type that may be considered for approval.~~

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

01 NCAC 41C .0205 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0205 APPLICATION PROCEDURES

The applicant shall complete an application on a form provided by the ~~DOA Fiscal Department Financial Service Division,~~ which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>. The application shall contain the following information:

- (1) ~~The~~the name and complete mailing address, including the county, of the applicant;

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- (2) ~~The~~the address, building name (where applicable) or site ~~description~~description, including ~~photographs~~photographs, to locate where the energy conservation measure(s) will be installed;
- (3) ~~The~~the name of a contact person, including title and telephone number;
- (4) ~~The amount of the loan requested;~~the loan amount requested;
- (5) ~~The~~the estimated dates of ~~start~~implementation and completion of the project;
- (6) ~~A~~a copy of the Technical Analysis approved by the State Energy Office; ~~as fulfilling the energy aspects of the proposed energy conservation measures;~~
- (7) ~~Identification~~identification of the commercial lending institution that is providing the letter of credit, depository and repayment services;
- (8) ~~All applicants~~commercial or industrial business, nonprofit organizations, or local government entity applicants shall provide financial ~~data~~data, including financial statements from the last five years and profit and loss statements, on which to base a determination of the applicant's creditworthiness. Residential applicants shall provide a credit report. ~~Documentation shall include the following:~~
 - (a) ~~Financial statements from the last five years; and~~
 - (b) ~~Profit and loss statements.~~

History Note: Authority G.S.—143-345.18(b)(2a);—143-345.18(b)(3); 143B-344.44(b)(3);143B-344.44(b)(4);
Eff. August 1, 2004.

01 NCAC 41C .0206 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0206 APPLICATION REVIEW

Application review shall consist of the following phases:

- (1) ~~The administrative review shall be conducted by the DOA Fiscal Department and may include any data or information needed to complete that review.~~
- (2) ~~The technical review shall be conducted of the Technical Analysis by the State Energy Office.~~
- (3) ~~The technical review may occur concurrently with application submittal to the DOA Fiscal Department.~~
- (4) ~~The technical review shall consider each energy conservation measure for which funding is requested and shall include the accuracy and sufficiency of calculations, engineering principles considered, and labor and material costs relative to the current local market.~~
- (5) ~~Following acceptance, the State Energy Office will approve those Energy Conservation Measures that were found to meet the energy aspects of the Program.~~
- (6) ~~No application shall be accepted for consideration by the DOA Fiscal Department without the acceptance of the Technical Analysis by the State Energy Office.~~

(a) The ~~Division~~ Department shall conduct concurrent administrative and Technical Analysis reviews as follows:

- (1) the administrative review shall be conducted by the Financial Services Division and may include any financial data or information needed to complete the review;
- (2) the Technical Analysis review shall be conducted by the State Energy Office and shall consider each energy conservation measure for which funding is requested, include the accuracy and sufficiency of calculations, engineering principles considered, and labor and material costs relative to the current local market. This review shall be conducted concurrently with the Financial Services Division's administrative review.

(b) Following the reviews in Paragraph (a) of this Rule, the State Energy Office shall approve those energy conservation measures that were determined to meet the requirements of this Subchapter.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

01 NCAC 41C .0207 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0207 LOAN APPROVAL

~~Applications shall be considered for loan approval upon completion of the administrative and technical review. Approval shall be based upon the following:~~ Following the review set forth in Rule .0206 of this Section, the State Energy Office shall approve the application provided:

- (1) ~~Results~~ the administrative and technical ~~Technical Analysis reviews satisfy the requirements of this Subchapter; documenting energy efficiency; and~~
- (2) ~~Creditworthiness~~ the creditworthiness of the applicant is established; and
- (3) ~~_____ funds are available.~~

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

01 NCAC 41C .0208 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0208 LOAN AGREEMENT AND PROMISSORY NOTE

~~After an application for a loan is approved, a loan agreement shall be executed between the DOA Fiscal Department Financial Services Division and the borrower. The loan agreement shall include a promissory note and other necessary documents including, but not limited to, security agreements, mortgages, recordings; and shall contain the covenants and representations as to the borrower's qualification to borrow for the loan, intended use of the loan proceeds, conditions under which the loan will be repaid and events requiring the acceleration, rights and responsibilities of the parties and the terms and conditions of the loan. The requirements to secure the loan shall be included in the loan agreement. Loans shall be secured through bank Letter of Credit.~~

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

01 NCAC 41C .0209 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0209 REPORTS

~~Reports must~~ shall be submitted as follows:

- (1) ~~Progress~~ progress reports ~~must shall~~ be submitted quarterly to the State Energy Office during the period of implementation or ~~while construction~~ installation is in progress and ~~must~~ shall include a description of:
 - (a) the current status;
 - (b) any problems; and
 - (c) a forecast of expectation or deviations from the Technical Analysis, prepared in accordance with Rule .0303 of this Subchapter.
- (2) ~~A~~ a final report certified by the technical analyst ~~must~~ shall be submitted to the State Energy Office upon completion of the project. ~~The report must~~ shall include a description of:
 - (a) the measures implemented;
 - (b) the actual cost of each measure; and
 - (c) the adjusted estimated payback, based on the actual cost.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. September 1, 2004.

01 NCAC 41C .0210 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0210 MONITORING

The ~~DOA Fiscal Department~~ Financial Service Division shall monitor the use of the funds under this program through ~~continuous~~ review of reports. The State Energy Office shall monitor those ~~buildings/projects~~ buildings or projects where the energy conservation projects are in progress to verify the installation of the energy conservation measures conforms to the original Technical Analysis. At least one visit shall be made to the site of each energy conservation project during the life of the loan.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

01 NCAC 41C .0211 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0211 DEFAULT

If the borrower violates any of the terms of the loan agreement, the ~~DOA Fiscal Department~~ Financial Service Division ~~may~~ shall place the borrower in default. Borrowers determined to be in default shall be notified by certified mail and the terms of the letter of credit shall be executed. ~~provided as security shall be used to protect the interest of the State of North Carolina.~~

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. August 1, 2004.

SECTION .0300 - TECHNICAL ANALYSIS

01 NCAC 41C .0301 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41C .0301 TECHNICAL ANALYSIS REQUIRED

An application for an energy conservation loan ~~must~~ shall be accompanied by a Technical Analysis that has been conducted by a third party ~~technical analyst~~ Technical Analyst and certified by the State Energy Office as fulfilling the energy aspects of the Program. The Technical Analysis need address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be the subject of an individual recommendation incorporating technical and economic analyses of the measure, considering building, process and equipment characteristics, and energy use patterns pertinent to the improvement. The Technical Analysis shall include the estimated cost of the implementation, a construction schedule, and expected energy savings.

History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. September 1, 2004.

01 NCAC 41C .0302 IS PROPOSED FOR READOPTION AS FOLLOWS:

Fiscal Note for Proposed Rules _____

01 NCAC 41C .0302 TECHNICAL ANALYST QUALIFICATIONS DISQUALIFICATIONS

A Technical Analyst shall not have a financial interest in the commercial or industrial business, nonprofit organization, local government entity, or residence or in the sale and installation of any proposed energy conservation measure, however, the Technical Analyst is permitted to provide construction management services to an approved applicant.

~~To be qualified to conduct the Technical Analysis required by this article, a technical analyst must meet the following requirements:~~

- ~~(1) Have experience in energy conservation in building construction, mechanical systems or manufacturing processes;~~
- ~~(2) Have neither financial interest in the commercial business, non-profit institution, local government institution, or industrial business nor in the sale and installation of any proposed energy conservation measure; however, the Technical Analyst is permitted to provide construction management services to an approved applicant.~~

*History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. September 1, 2004.*

01 NCAC 41C .0303 IS PROPOSED FOR READOPTION AS FOLLOWS:**01 NCAC 41C .0303 REPORT REQUIRED**

A qualified third party ~~technical analyst~~ Technical Analyst shall submit three copies of the results of a Technical Analysis in writing on a form provided by the State Energy Office, which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>. ~~The report must~~ shall include the following:

- (1) ~~A~~ A description of the facility characteristics and energy data, including the operational characteristics of the energy-using systems;
- (2) ~~A~~ A description and engineering analysis of each identified energy conservation measure, including the following:
 - (a) ~~An~~ An estimate of the cost of design, acquisition, and installation, including monitoring equipment to assess the performance of the measure, ~~discussing assumptions as necessary;~~ the Technical Analyst deems necessary.
 - (b) ~~An~~ An estimate of the annual energy saved and energy cost savings by fuel ~~type~~ type, using ~~generally accepted~~ engineering standards and practices, practices, that comply with standards recognized by the North Carolina Professional Engineering Licensing Board, including all formulae, ~~data~~ data, and assumptions ~~clearly~~ presented in arriving at the estimate;
 - (c) ~~The~~ the results of a combustion efficiency test, if furnace or boiler modifications or replacements are being implemented;
 - (d) ~~The simple~~ the payback period of each energy conservation ~~measure;~~ measure; and calculated by dividing the estimated total cost of the measure by the estimated ~~annual energy cost saving;~~ annual energy cost saving;
 - (e) ~~A~~ A proposed construction schedule for each energy conservation measure; ~~and~~
 - (f) ~~The~~ The payback period of each energy conservation measure;
- (3) ~~The~~ the energy use and cost data for each fuel type used for the prior ~~12-month period,~~ by month or in accordance with the usual billing cycle; ~~billing period;~~
- (4) ~~An~~ An outline of qualifications of the ~~analyst~~ Technical Analyst, documenting previous experience in energy conservation in building construction, mechanical systems, ~~and/or~~ or manufacturing processes.

*History Note: Authority G.S.—~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4);~~
Eff. September 1, 2004.*

SUBCHAPTER 41D - ENERGY POLICY ACT CREDIT BANKING AND SELLING PROGRAM

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 41D .0101 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0101 PURPOSE AND ORGANIZATION

(a) Pursuant to G.S. 143-58.4 the State Energy Office has established a credit banking and selling program to allow State departments, institutions, and agencies to use monies generated by the sale of EAct credits to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles.

(b) Pursuant to G.S. 143-58.5, the State Energy Office has established an Alternative Fuel Revolving Fund generated from the sale of EAct credits. These funds may be used to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles for use by State departments, institutions, and agencies.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

01 NCAC 41D .0102 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0102 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "AFV" means the same as defined in 143-58.4.
- (2) "Alternative fuel" means the same as defined in 143-58.4.
- (3) "Biodiesel Fuel Use Credit" means an EAct credit given by the U.S. DOE for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit is granted for the petroleum portion of biodiesel fuel blends.
- (4) "B20" means the same as defined in 143-58.4.
- (5) "Department" means the Department of ~~Environmental Quality Administration.~~
- (6) "Energy Policy Act" means the same as defined in 143-58.4.
- (7) "EAct credit" means the same as defined in 143-58.4.
- (8) "EPC" means the Energy Policy Council, created pursuant to G.S. Chapter 113B, Article 1.
- (9) "E85" means the same as defined in 143-58.4.
- (10) "FFV" means a flexible fuel vehicle that is capable of operating on both E85 and gasoline.
- (11) "Incremental fuel cost" means the same as defined in 143-58.4.
- (12) "Incremental vehicle cost" means the same as defined in 143-58.4. difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.
- (13) "LDV" means a light duty vehicle that has less than an 8,500 lb gross vehicle weight rating (GVWR).
- (14) "NC Alternative Fuel Consortium" means a voluntary group of state agencies, institutions and interested entities that meet at least quarterly and is hosted by the State Energy Office to coordinate alternative fuel and petroleum displacement activities in North Carolina.
- (15) "OEM" means original equipment manufacturer.
- (16) "SEO" means the State Energy ~~Office.~~
- (17) "U.S. DOE" means the United States Department of Energy.
- (18) "U.S. EPA" means the United States Environmental Protection Agency.

History Note: Authority G.S. 143-58.4; 143-58.5;

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Eff. May 1, 2007.

SECTION .0200 - CREDIT BANKING AND SELLING PROGRAM PROVISIONS

01 NCAC 41D .0201 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0201 BANKING

- (a) EPAct credits shall be accrued and banked according to the following:
- (1) The U.S. DOE Alternative Fuel Transportation Program (10 CFR Part 490) requires that 75% of LDVs acquired by state fleets shall be FFVs, compressed natural gas vehicles, propane vehicles or electric vehicles;
 - (2) One credit is earned for each OEM or EPA certified retrofit FFV, compressed natural gas, propane or electric vehicle purchased;
 - (3) Credits that exceed the annual minimum state AFV acquisition requirements may be banked through the U.S. DOE Office of Freedom Car and Vehicle Technologies Program to meet future year requirements or traded;
 - (4) State fleets can earn Biodiesel Fuel Use Credits to meet 50% of their annual AFV acquisition requirements by purchasing and using biodiesel; and
 - (5) Biodiesel Fuel Use Credits cannot be traded or banked.
- (b) Credits are determined by state agencies in cooperation with the State Energy-Office in the following manner:
- (1) Each year by December 1st every State department, institution and agency subject to EPAct requirements shall provide the State Energy Office with the types of vehicles purchased, the vehicle identification numbers and the dates of purchase to determine the number of EPAct credits generated by the State; and
 - (2) The SEO shall submit an annual EPAct credit report to the U.S. DOE by December 31st.
- (c) The following provisions shall be used in determining credits:
- (1) EPAct credits eligible for sale include FFVs if the FFVs are operating on E85;
 - (2) EPAct credits generated through the use of B20 are not eligible for sale or transfer, however, they shall be used by the State to meet 50% of Energy Policy Act requirements; and
 - (3) State agencies and institutions that purchase FFVs shall record the use of E85 for the FFVs.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

01 NCAC 41D .0202 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0202 SELLING

- (a) The State Energy Office shall form a Credit Selling Work Group to determine the number of excess credits to be sold as follows:
- (1) The Credit Selling Work Group shall consist of:
 - (A) Department of Administration Motor Fleet Management designee;
 - (B) Department of Transportation Equipment Unit designee;
 - (C) State Energy Office designee; and
 - (D) Designees of other state agencies and institutions that generate EPAct credits; and
 - (2) The Credit Selling Work Group shall determine the asking price for credits.
- (b) The State Office shall obtain approval from the Energy Policy Council prior to selling EPAct credits.
- (c) The State Office shall sell EPAct credits in accordance with the provisions of the Energy Policy Act.

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*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

SECTION .0300 - PROCEEDS AND DISTRIBUTION

01 NCAC 41D .0301 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0301 PROCEEDS AND DISTRIBUTION

(a) Funds generated by the sale or transfer of EPAAct credits by the Department shall be deposited into the Alternative Fuel Revolving Fund.

(b) The following shall be undertaken to determine the distribution of proceeds from the Alternative Fuel Revolving Fund:

- (1) The State Energy Office shall annually inform the NC Alternative Fuel Consortium of the amount of revenue accrued to the Alternative Fuel Revolving Fund and the percentage of these funds that were generated by participating state agencies, institutions or entities;
- (2) The State Energy Office shall organize meetings of the NC Alternative Fuel Consortium and the Credit Selling Work Group to discuss and prioritize distribution of funds;
- (3) Fund distribution shall be prioritized based on maximizing benefits to the State for the purchase of alternative fuel, related refueling infrastructure and AFV purchases;
- (4) An annual plan for the dispersion of Alternative Fuel Revolving Funds shall be prepared by the State Energy Office based on recommendations of the Alternative Fuels Consortium and the Credit Selling Work Group; and
- (5) The Energy Policy Council shall review and approve the annual plan.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

01 NCAC 41D .0302 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0302 FUND DISBURSEMENTS

All state departments, institutions and agencies are eligible to utilize Alternative Fuel Revolving Funds.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

SECTION .0400 – REPORTS

01 NCAC 41D .0401 IS PROPOSED FOR READOPTION AS FOLLOWS:

01 NCAC 41D .0401 REPORTS

(a) Progress reports shall be submitted biannually by State departments, agencies, and institutions that receive funds from the Alternative Fuel Revolving Fund.

(b) The progress report shall include a description of the current project, number of gallons of alternative fuel or vehicles purchased, challenges and successes, and forecast of expectation or deviation from the planned schedule.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007.*

~~SUBCHAPTER 41E — ENERGY POLICY COUNCIL~~

01 NCAC 41E .0101 IS PROPOSED FOR REPEAL THROUGH READOPTION AS FOLLOWS:

~~01 NCAC 41E .0101 — FUNCTIONS~~

~~The Energy Policy Council serves as the central energy policy planning body of the state. Its responsibilities are: to advise and make recommendations on energy policy to the Governor and the General Assembly; to conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy and to encourage the efficient use of all such forms in a manner consistent with state energy policy; to coordinate all state government research, education and management programs relating to energy matters; and continually educate and inform the general public regarding energy matters.~~

~~*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978; Statutory Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449; Made Permanent Eff. July 3, 1978; Transferred from 04 NCAC 12E .0103 Eff. May 15, 2007.*~~

SUBCHAPTER 12C - ORGANIZATION

04 NCAC 12C .0108 is proposed for repeal through readoption as follows:

04 NCAC 12C .0108 RESIDENTIAL CONSERVATION SERVICE PROGRAM

~~The Department of Commerce, Energy Division, has adopted a State Plan for the Residential Conservation Service Program, revised effective January 6, 1983, pursuant to Title II, Part I of the National Energy Conservation Policy Act of 1978 (NECPA), Public Law 95-619, 92 Stat. 3206 et seq., as amended by Title V, Subtitle B of the Energy Security Act of 1980 (ESA), Public Law 96-294, 94 Stat. 611 et seq. This revised State Plan is adopted in this Rule by reference as if written herein word for word. Copies of the State Plan may be obtained from the North Carolina Department of Commerce, Energy Division, Post Office Box 25249, Raleigh, North Carolina 27611.~~

History Note: ~~Filed as an Emergency Amendment [(e)] Eff. November 3, 1980 for a period of 120 days to expire March 3, 1981;~~

~~Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 150B-12;~~

~~Title II, Part I (NECPA); P.L. 95-619; 92 Stat. 3206; Title V, Subtitle B (ESA),~~

~~P.L. 96-294, 94 Stat. 611;~~

~~Eff. October 1, 1980;~~

~~Emergency Amendment [(e)] Expired Eff. March 3, 1981;~~

~~Amended Eff. March 1, 1983; August 6, 1981.~~

~~Repealed Eff. xxxxxx~~

SUBCHAPTER 12D – PETITION FOR RULEMAKING AND ADMINISTRATIVE HEARINGS DECLARATORY RULINGS

04 NCAC 12D .0101 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

04 NCAC 12D .0101 DELEGATION OF AUTHORITY FOR RULEMAKING HEARINGS AND STATE ENERGY OFFICE CONTACT INFORMATION

(a) ~~The Secretary of Commerce~~ the Department of Environmental Quality designates the State Energy Director of the Energy Division ~~or his or her designee~~ as the hearing officer to conduct rulemaking hearings in matters pertaining to rules and regulations of the State Energy Division Office.

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(b) All notices required by the rules in this Subchapter to be submitted to the State Energy Office or the Financial Services Division shall be made to: The North Carolina State Energy Office, 1613 Mail Service Center, Raleigh, NC 27699-1613. The physical address of the State Energy Office is 217 W. Jones St., Raleigh, NC 27603.

*History Note: Authority G.S.—143B-429; —143B-430; —143B-431; —143B-449; 143-58.4(c); 143B-344.44(b)(3);150B-20;
Emergency Rule Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.
October 3, 2017.
Amended Eff. xxxxxx*

04 NCAC 12D .0102 IS PROPOSED FOR READOPTION AS FOLLOWS:

04 NCAC 12D .0102 ~~PETITION FOR RULEMAKING HEARINGS~~ PETITION FOR RULEMAKING ~~SUBMISSION AND~~ CONTENTS OF PETITION FOR RULEMAKING

(a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by the ~~Secretary of Commerce~~ State Energy Office, within the Department of Environmental Quality shall petition the State Energy Director by submitting the information required in Paragraph (b) of this Rule. The petitioner shall send the petition in accordance with Rule .0101 of this Section. ~~address a petition to: Director, Energy Division, North Carolina Department of Commerce, 430 North Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611. The outside envelope containing the petition should clearly display the notation: RULEMAKING PETITION RE~~ and then the subject area or an indication of any other area over which the Secretary of Commerce may have rulemaking authority.

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for the adoption of a proposed rule(s), amendment or repeal of existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) any documents and data supporting the proposed rule(s);
- (5) the name(s) and addresses(es) of petitioner(s); and
- (6) a request to present the petition to the hearing officers in accordance with Rule .0101 of this Section, if desired.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rule(s);

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(2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);

(3) a statement explaining the computation of the costs factors; and

(4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

(d) The State Energy Director shall return petitions that do not contain the information required by Paragraph (b) of this Rule to the petitioner.

History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;

Statutory Authority G.S. ~~143B-429; 143B-430; 143B-431; 143B-449;~~ 143-58.4(c); 143B-344.44(b)(3); 150B-20;

Made Permanent Eff. July 3, 1978.

Readopted Eff. xxxx

04 NCAC 12D .0103 IS PROPOSED FOR REPEAL THROUGH READOPTION AS FOLLOWS:

04 NCAC 12D .0103 CONTENTS OF PETITION

The petition should include the following information:

- ~~(1) an indication of the subject areas to which the petition is directed;~~
- ~~(2) either a draft of the proposed rule or a summary of its contents;~~
- ~~(3) reasons for the proposal;~~
- ~~(4) the effect on existing rules or orders;~~
- ~~(5) any data supporting the proposal;~~
- ~~(6) effect of the proposed rule on existing practices in the area involved, including cost factors;~~
- ~~(7) names of those most likely to be affected by the proposed rule, with addresses if reasonably known;~~
- ~~(8) name(s) and addresses(es) of petitioner(s).~~

History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on

July 3, 1978;

Statutory Authority G.S. ~~143B-429; 143B-430; 143B-431; 143B-449;~~

Made Permanent Eff. July 3, 1978.

Repealed Eff. xxxxx

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04 NCAC 12D .0132 IS PROPOSED FOR ADOPTION AS FOLLOWS:**04 NCAC 12D .0132 DISPOSITION OF PETITIONS FOR RULEMAKING**

- (a) If the State Energy Director determines the petition to be complete in accordance with Rule .0102 of this Section, the Director shall notice a hearing at least 15 days before the hearing's scheduled date.
- (b) The petitioner shall be afforded the opportunity to present the petition to the Director if so requested in accordance with Rule .0102(b)(6) of this Section. The State Energy Office may also make a presentation to the Director.
- (c) The Director shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Director shall determine whether additional interested persons are permitted to make oral presentations during the hearing. Interested persons shall request the opportunity to make a presentation to the Director through the State Energy Office, in accordance with Rule .0101 of this Section, at least five days prior to the scheduled hearing. The request shall:
- (1) state the interest of the person in the petition for rulemaking;
 - (2) state the person's position on the petition; and
 - (3) be accompanied by any supporting materials.

History Note: Authority G.S.-143-58.4(c); 143B-344.44(b)(3);150B-20;

Adopted Eff. xxxx

04 NCAC 12D .0133 IS PROPOSED FOR ADOPTION AS FOLLOWS:**04 NCAC 12D .0133 PROCEDURES FOR PUBLIC COMMENT FOR RULEMAKING HEARINGS**

- (a) Any person desiring to comment on the proposed rulemaking action may do so either in writing during the comment period or by oral presentation at the hearing held to take public comments. Any person may file a written statement or argument concerning the proposed rulemaking action prior to the close of the record on the date indicated in the notice published in the North Carolina Register.
- (b) The Director or hearing officer designated by the Director in accordance with Rule .0101 of this Section shall collect all written and oral submissions and submit recommendations concerning the proposed rulemaking action to the State Energy Office following the close of the record as provided in Paragraph (a) of this Rule.
- (c) Requests for a statement of the Department's reasons for adoption of the proposed rule or against adoption of the proposed rule shall be responded to in accordance with G.S. 150B-21.2(h).

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;150B-21.2;

Adopted Eff. xxxx

04 NCAC 12D .0116 IS PROPOSED FOR READOPTION AS FOLLOWS:**04 NCAC 12D .0116 SUBMISSION OF REQUEST FOR RULING ISSUANCE OF DECLARATORY RULINGS**

All requests for declaratory rulings shall be directed to the Secretary of Commerce and mailed to the Director of the Energy Division, 430 N. Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611. The outside envelope containing the request should display the notation: REQUEST FOR DECLARATORY RULING.

The request must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so, the reason therefor.

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Secretary of the Department of Environmental Quality may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Statutory Authority G.S. ~~143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-344.44(b)(3); 150B-3;~~
Made Permanent Eff. July 3, 1978.
Readopted Eff. XXX

04 NCAC 12D .0133 IS PROPOSED FOR ADOPTION AS FOLLOWS:**04 NCAC 12D .0133 SUBMISSION OF REQUEST FOR DECLARATORY RULING**

(a) All requests for a declaratory ruling shall be filed in accordance with Rule .0101 of this Section.

(b) All requests for declaratory rulings shall include the following:

- (1) the name and address of petitioner(s);
- (2) the statute, rule, or order upon which a ruling is desired;

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- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a statute, rule, or order to a given factual situation;
- (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order, or by its potential application to the petitioner;
- (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the desired outcome; and
- (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an oral argument.

(c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or on the validity of a Department rule. The petitioner may request both types of declaratory ruling in a single request. A request on the applicability of a statute, rule, or order shall include a detailed statement of the facts and documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to determine the validity of a Department rule shall state the petitioner's reason(s) for the request and a written argument, in addition to the requirements of Paragraph (b) of this Rule.

(d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. The State Energy Director shall determine whether to grant the motion to intervene in accordance with Rule 24 of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-3;

Eff. xxxx

04 NCAC 12D .0117 IS PROPOSED FOR READOPTION AS FOLLOWS:

04 NCAC 12D .0117 DISPOSITION OF REQUEST FOR DECLARATORY RULING

~~(a) When the Secretary of Commerce deems it appropriate to issue a declaratory ruling, he shall issue such declaratory ruling within 60 days of receipt of the petition.~~

~~(b) A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.~~

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~~(c) Whenever the secretary believes "for good cause" that the issuance of a declaratory ruling is undesirable, he may refuse to issue such ruling. When good cause is deemed to exist, he will notify the petitioner of his decision in writing, stating the reasons for the denial of the declaratory ruling.~~

~~(d) For purposes of Subpart (c) of this Rule, the Secretary of Commerce will ordinarily refuse to issue a declaratory ruling:~~

- ~~(1) — unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;~~
- ~~(2) — unless the petitioner shows that the agency did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;~~
- ~~(3) — where there has been a similar controlling factor determination in a 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;~~
- ~~(4) — where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.~~

(a) The State Energy Director shall make a determination on the completeness of the request for a declaratory ruling based on Rule .0133 of this Section.

(b) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory ruling, the Director shall determine if additional information or presentation(s) are needed and if so:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the State Energy Office staff or any other person; and
- (3) hear oral arguments from the petitioner(s), interveners, and the State Energy Office staff or their legal counsel.

(c) The Director shall decline to issue a declaratory ruling if any of the following are found:

- (1) that there has been a similar determination in a previous contested case or declaratory ruling;
- (2) that the matter is the subject of a pending contested case, hearing, or litigation in any North Carolina or federal court;
- (3) that no genuine controversy exists as to the application of a statute, rule, or order to the specific factual situation presented; or

(4) that the factual situation presented as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;

(d) The Department shall keep a record of each request for declaratory ruling, which shall include the following items;

(1) the request for a ruling;

(2) any written submission by a party;

(3) the facts on which the ruling was based;

(4) any transcripts of oral proceedings, if available, and recordings of oral arguments;

(5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Director in the making of the decision; and

(6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.

(e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory ruling, including the basis for the decision.

(f) 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 repealed or the relevant provisions of the statute or rule are amended or altered;

(2) any court of the Appellate Division of the General Courts of Justice construes the statute or rule that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or

(3) any court sets aside the declaratory ruling in litigation between the Department and the party requesting the ruling.

(g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.

(h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.

(i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to issue a ruling on the merits of the request.

(k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a)(1).

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Statutory Authority G.S. ~~143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-344.44(b)(3);~~
150B-4;
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Readopted Eff. xxxx