

CHAPTER 41 – STATE ENERGY OFFICE

SUBCHAPTER 41A - ORGANIZATION

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History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Made Permanent Eff. July 3, 1978;
Amended Eff. April 1, 1991; May 15, 1979;
Transferred from 04 NCAC 12C .0102, .0104, .0106 Eff. May 15, 2007;
Expired Eff. March 1, 2019 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 41B – GUARANTEED ENERGY SAVINGS CONTRACTS

SECTION .0100 – GENERAL PROVISIONS

01 NCAC 41B .0101 RESPONSIBILITY

History Note: Authority G.S. 143-64.17A(c1); 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.

01 NCAC 41B .0102 SCOPE

This Subchapter shall apply to State governmental units engaging in guaranteed energy savings contracts.

History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A (c1);
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0103 RULE MAKING AUTHORITY

History Note: Authority G.S. 143-64.17A(c1); 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.

01 NCAC 41B .0104 DEFINITIONS

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

- (1) Terms used herein that are defined in G.S. 143-64.17 shall have the same definitions as in G.S. 143-64.17.
- (2) "Agency." A North Carolina State governmental unit that is soliciting, through a Request for Proposals (RFP), to enter into a guaranteed energy savings contract.
- (3) "Annual reconciliation statement." A report disclosing shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during each 12 month term commencing from the time that the energy conservation measures became fully operational.
- (4) "Contract." A guaranteed energy savings contract.
- (5) "Offer." The response to an RFP means the same as "bid" or "proposal."

- (6) "Investment grade audit" or "investment grade analysis." A cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes.
- (7) "Life-cycle cost analysis." A method for estimating the total cost of an energy-using component or building over its useful life, including cost factors such as purchase price, or construction, renovation, or leasing costs, energy use, maintenance, interest, and inflation.
- (8) "Measurement and verification review." An examination of energy measures installed under each contract, using methodology to measure the operation of energy-using systems before and after change, to verify the performance and savings of the installed equipment.
- (9) "Qualified provider." A person, business, or organization experienced in the design, implementation, and installation of energy conservation measures and determined by the administering and contracting agencies to have the capability in all respects to fully perform the contract requirements.

History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A(c1);
 Temporary Adoption Eff. August 1, 2003;
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 Eff. July 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0200 – RESERVED FOR FUTURE CODIFICATION

SECTION .0300 – SOLICITATIONS

01 NCAC 41B .0301 NORTH CAROLINA PRODUCTS

A preference for North Carolina products and services provided by North Carolina residents pursuant to G.S. 143-59 shall apply to Guaranteed Energy Savings Contracts.

History Note: Authority G.S. 143-64.17F;
 Temporary Adoption Eff. August 1, 2003;
 Temporary Adoption Expires April 27, 2004;
 Eff. August 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0302 SOLICITATION DOCUMENTS

- (a) Agencies shall solicit for guaranteed energy savings contracts through a Request for Proposal (RFP).
- (b) Agencies may use the RFP template available from the State Energy Office at MSC 1340, Raleigh, NC 27699-1340.
- (c) Solicitation documents shall include a Treasurer's estimated cost of financing.
- (d) Solicitation documents may allow for qualified provider or third party financing.
- (e) Solicitation documents may include a copy of the Facilities Condition Assessment Program (FCAP) report covering part or all of the facilities subject to the solicitation.
- (f) Solicitation documents shall state the evaluation criteria specified by G.S. 143-64.17A (b) and (d) as well as those in this Chapter. The documents shall also state the criteria weighting defined by the agency for each particular project. Weighting may change from one RFP to another RFP from an agency based upon the particular needs of that agency.
- (g) Solicitation documents shall stipulate that employee or time savings cannot be included in the offer unless a position is eliminated as a result of contract implementation.
- (h) Solicitation documents shall stipulate that the qualified provider is responsible for all costs incurred in preparing the initial proposal.
- (i) Solicitation documents shall stipulate that the contractor cannot include costs or allowances for contingencies in the contract.
- (j) Solicitation documents may include a three-year history of usage and billing for all utilities for the facilities subject to the proposal.

History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0303 TREASURER'S COST ESTIMATE OF FINANCING

Agencies shall obtain an estimate of financing cost from the Director of Debt Management, Office of the Treasurer. This estimate shall not be binding upon the State and is subject to change by the Office of the Treasurer. The Office of the Treasurer may reject any potential contract if the actual cost of financing has exceeded the estimated cost of financing when the contract is submitted to the Office of the Treasurer for approval.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0304 GENERAL FUND PREFERENCE

(a) The agency shall give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources. This preference shall be stipulated in the solicitation documents.

(b) Solicitation documents shall include, when feasible, a breakdown of the source of funds for energy costs and shall direct the vendors to break down savings by source of funds if the aforementioned information is included in the solicitation document.

(c) The Council of State may give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources.

History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0305 PROHIBITION ON FEDERAL FUNDS

The agency shall not solicit proposals for projects that include payment from federal funds unless the agency has obtained, and includes in both the solicitation and contract, documentation from the Federal Government or the Office of State Controller stating that the use of federal funds for payment of the contract is authorized.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0306 ADVERTISEMENT REQUIREMENTS

In addition to advertising requirements stated in G.S. 143-64.17A(a), agencies shall send a copy to the State Energy Office at MSC 1340, Raleigh, NC 27699 and shall include in the notification instructions on how to obtain the complete solicitation.

History Note: Authority G.S. 143-64.17F;

Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0307 CONFERENCES/SITE VISITS

Agencies may conduct vendor conferences and site visits before the Request for Proposals closing date.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .0400 - PRECERTIFICATION OF PROVIDERS

01 NCAC 41B .0401 INFORMATION REQUIRED FOR PRECERTIFICATION

Organizations may establish capability to provide services under performance contracts with state agencies by providing the following information to the State Energy Office:

- (1) past experience with energy performance contracting with a minimum of three years operation and completed installation of a minimum of three projects;
- (2) performance contracting experience and resumes of individuals expected to work on North Carolina projects including a minimum of one professional engineer licensed in North Carolina;
- (3) summary information, with client contact information, on all performance contracting projects in North Carolina during the previous five years listing only completed projects with at least one year in repayment;
- (4) summary information, with client contact information, on all performance contracts with any state government agencies in the United States with a maximum of five projects for each of the previous five years;
- (5) summary information, with client contact information, on any performance contracting projects which resulted in the company paying energy costs to clients;
- (6) summary of the history and operation of the business and organization, including volume, bonding capacity and type of clients; and
- (7) financial statements of the performance contracting organization and (if applicable) parent company for the previous two years.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0402 PRECERTIFICATION EVALUATION

Organizations shall present information required for precertification to the State Energy Office with a request for consideration for inclusion as a precertified entity. The State Energy Office shall offer a precertification period for providers at three-year intervals.

History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 41B .0403 CONTESTING PRECERTIFICATION

(a) If the State Energy Office denies an organization's request for precertification, a written appeal from the organization may be provided by the organization within 60 days after date of notification of the denial. A letter appealing the decision may be filed with:

Director, State Energy Office
North Carolina Department of Administration
1830A Tillery Place MSC 1340
Raleigh, North Carolina 27699-1340

(b) In the event that an organization wishes to contest the case further, contested case hearings are available as provided in G.S. 150B, and petitions for contested case hearings shall be filed in accordance with the provisions of that Chapter.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0404 PUBLISHED LIST OF PRECERTIFIED ENTITIES

Organizations precertified by the State Energy Office to provide services under performance contracts may be included on a list available on the Website of the State Energy Office at <http://www.energync.net>.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0405 PRECERTIFIED ENTITY RESTRICTION

Only precertified organizations may enter into a performance contract with a state governmental agency.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0500 - EVALUATION, SELECTION, AND AWARD

01 NCAC 41B .0501 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the action or inaction of agency personnel. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0502 EXTENSION OF ACCEPTANCE TIME

Companies may be requested to extend the time offered for the acceptance of offers.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0503 ERROR/CLARIFICATION

When an offer contains an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the request for response document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0504 BASIS FOR REJECTION

In soliciting offers, any and all offers received may be rejected. Bases for rejection shall include, but are not limited to, the offer being deemed unsatisfactory as to the quantity, quality, delivery, price or service offered; the offer not complying with conditions in the RFP or with the intent of the proposed contract; lack of competitiveness by reason of collusion; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; or any determination that rejection would be to the best interest of the state.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0505 PUBLIC RECORD

Action in rejecting offers shall be made a matter of record.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expires April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0506 RECIPROCAL PREFERENCE

(a) 01 NCAC 05B .1522(a), (b), (c), (d), and (g) shall apply to this Subchapter.

(b) If the use of the reciprocal preference changes which bidder is the low bidder, the agency may waive the use of the reciprocal preference, after consultation with the Council of State, and after taking into consideration such factors as, competition, price, product origination, and available resources.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0507 PROPOSAL EVALUATION

(a) Evaluation criteria shall include those specified by G.S. 143-64.17A(b) and (d).

(b) Evaluation criteria for the proposal shall also include the following:

- (1) Life cycle cost analysis as defined in G.S. 143-64.15.
- (2) Certification by a registered engineer that the measurement and verification protocol presented in the proposal is capable of measuring actual or projected savings.
- (3) A process of annual third party measurement and verification of savings in accordance with the pre-defined and certified protocol found in 01 NCAC 41B .0510. The cost of this process shall be included in the total cost of the contract.
- (4) The total cost based on Office of Treasurer cost of financing estimate and cost based on Qualified Provider or third party financing in the response.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0508 PRE-AWARD REPORTS

Before the award of a guaranteed energy savings contract, the qualified provider shall provide a report, as part of its proposal, which shall be available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy or operating costs will be reduced.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0509 TABULATIONS AND ABSTRACTS

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004.*

01 NCAC 41B .0510 MEASUREMENT AND VERIFICATION

Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Energy Savings Performance Contracting," the "International Performance Measurement and Verification Protocol," or "ASHRAE 14-2002." If due to existing data limitations or the nonconformance of specific project characteristics, none of the measurement and verification methodologies listed above is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three and mutually agreeable with the agency.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;*

*Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0511 CONTRACT EXECUTION

Contract execution by the successful companies shall occur upon contract award and before the agency sends the documents to the Office of State Budget and Management. Contracts shall stipulate that the execution is contingent upon approval and financing. Upon execution, the agency shall forward the documents to the Capital Improvement Section of the Office of State Budget and Management with a copy to the Director of the State Energy Office.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0600 – RESERVED FOR FUTURE CODIFICATION

SECTION .0700 – APPROVAL

01 NCAC 41B .0701 OFFICE OF STATE BUDGET AND MANAGEMENT CERTIFICATION

The Office of State Budget and Management (OSBM) shall certify, within 10 business days of receipt, expected availability of resources and set up appropriate reserve accounts or other accounting procedures to transfer funds from the agency to the Office of the Treasurer for payment. Upon certification, the OSBM shall forward the documentation to the Office of the Treasurer's Director of Debt Management.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 41B .0702 OFFICE OF THE TREASURER APPROVAL

The Office of the Treasurer shall, within 10 business days of receipt, review the documentation and select the desired financing option. Upon review and selection, the Treasurer shall forward the documentation to the Secretary of the Department of Administration.

*History Note: Authority G.S. 143-64.17F;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SECTION .0800 – RESERVED FOR FUTURE CODIFICATION

SECTION .0900 - POST-APPROVAL PROCEDURES

01 NCAC 41B .0901 ANNUAL REPORTS AND INSPECTIONS

(a) The State Energy Office may inspect any and all documentation and facilities it deems appropriate at the agency to determine the effectiveness of the guaranteed energy savings contract and to provide information to the Council of State and the General Assembly on the effectiveness of the contract.

(b) Agencies failing to provide documentation to the State Energy Office as requested, shall be reported to the Council of State and shall be prohibited from engaging in further energy savings contracts until the deficient documentation is provided to the State Energy Office.

(c) Requested information, by definition, includes timely submission of the "Annual Report of Savings Report" available from the State Energy Office at 1340 MSC, Raleigh, NC 27699-1340.

*History Note: Authority G.S. 143-64.17F; 143-64.17H;
Temporary Adoption Eff. August 1, 2003;
Temporary Adoption Expired April 27, 2004;
Eff. July 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

SUBCHAPTER 41C - ENERGY IMPROVEMENT LOAN PROGRAM

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 41C .0101 DEFINITIONS

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

- (1) "Allowable Costs" means origination 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 shall be incurred after the execution date of the Letter of Intent.
- (2) "Applicant" means any commercial or industrial business, nonprofit organization local government entity, or resident applying for a loan under the Program.
- (3) "Combustion efficiency test" means a test performed as part of a heating system maintenance to measure how well the furnace or boiler is performing.
- (4) "Commercial or industrial business" means a commercial or industrial concern that provides goods or services for profit from a location in North Carolina.
- (5) "Commercially available" means available to the general public and does not include experimental or research-related technologies.
- (6) "Credit worthiness" means the ability of the applicant to meet the lending institution's standard lending criteria.
- (7) "Energy conservation measure" means a commercially available energy efficient device, technique, or technology, designed to reduce energy consumption, peak demand, or utility costs at an existing or proposed commercial or industrial business, nonprofit organization, local government entity, or residence.
- (8) "Financial Services Division" means the Fiscal Management Division within the N.C. Department of Environmental Quality.
- (9) "Letter of Intent" means written notification of the Department of Environmental Quality's intent to originate the loan, subject to the conditions and limitations of the Energy Improvement Loan Program.
- (10) "Payback" means the total energy conservation measure costs (including installation, equipment, and engineering design) divided by the total annual estimated utility cost savings for a period of years.
- (11) "Program" means the Energy Improvement Loan Program.
- (12) "Recycling Projects" means projects that extract and reprocess energy, water, and materials for reuse in buildings, transportation systems, environmental management, consumer products, or outreach.
- (13) "Renewable" means solar, wind, biomass, or hydropower resources.
- (14) "Repayment Schedule" means a schedule of periodic payments based upon 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.
- (15) "State Energy Office" means the State Energy Office, Division of Energy, within the N. C. Department of Environmental Quality.

- (16) "Technical Analysis " means a report identifying and analyzing the cost-effective capital energy conservation improvements that the applicant wishes to implement.
- (17) "Technical Analyst" means a licensed engineer, architect, or certified Home Energy Rating System, "HERS" ®, rater that conducts the technical analysis for the purposes of this Subchapter.
- (18) "Third-Party Technical Analyst" means a Technical Analyst who performs the Technical Analysis and does not have a financial interest in the commercial or industrial business, nonprofit organization, residence or local government entity, or in the sale and installation of any proposed energy conservation measure.
- (19) "Useful life" means the period during which an asset or property is expected by the manufacturer to continue by the manufacturer to function for the purpose for which the asset or property was acquired.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
 Eff. September 1, 2004;
 Readopted Eff. June 1, 2021.

SECTION .0200 – LOANS

01 NCAC 41C .0201 ELIGIBILITY

The following are eligible to apply for loans:

- (1) A 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 that has a lease or management agreement for the proposed building site or building extending beyond the term of the 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.
- (2) A 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 that has a lease or management agreement for such proposed building or building site extending beyond the term of the 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. 143B-344.44(b)(3); 143B-344.44(b)(4);
 Eff. September 1, 2004;
 Readopted Eff. June 1, 2021.

01 NCAC 41C .0202 CRITERIA FOR ENERGY CONSERVATION LOANS

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

- (1) The building site where the measures are to be installed shall be in North Carolina.
- (2) The project shall demonstrate in the Technical Analysis the ability to conserve energy through efficient energy use or the utilization of renewable energy resources that results in energy savings based upon a net reduction in the use of nonrenewable resources. The energy conservation measure shall be based on a Technical Analysis report as defined in Rule .0101 of this Subchapter, conducted within the previous year.
- (3) A maximum total loan indebtedness in accordance with G.S. 143B-344.44(b)(2).
- (4) The project shall utilize commercially available energy conservation measures.
- (5) The installation of the energy conservation measure may, at the discretion of the applicant, commence after the Financial Services Division issues the Letter of Intent; however, the origination of the loan shall still be subject to the conditions and limitations of the Program, pursuant to Rule .0203 of this Section.
- (6) The energy conservation measure shall be demonstrated, within the Technical Analysis, to have a payback of less than one over a period of 20 years or less.
- (7) Each energy conservation measure shall be demonstrated to have a payback of less than one over the useful life of the energy conservation measure.
- (8) 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;
 - (l) other demand-related improvements; and
 - (m) recycling projects.
- (9) The energy conservation measure shall meet applicable State air and water quality standards, in accordance with 15A NCAC 02B, 02D, and 02L, which are incorporated by reference, including all subsequent amendments.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021.

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

(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 one percent deduction with closed loans and no defaults to zero percent;
- (2) loans made to residents and small businesses shall receive a one percent interest rate;
- (3) loans made to nonprofit organizations and local governments projects shall receive a two percent interest rate; and
- (4) loans made to commercial and industrial entities shall receive a three percent interest rate.

(b) Loans shall be 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;
- (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 Energy Loan 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 shall be 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. 143B-344.44;
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.

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. 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 Financial Services Division, the State Energy Office, and the applicant or the applicant's engineer.

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

(d) The applicant shall provide water and air quality permits required for the project.

(e) The applicant shall provide the final Technical Analysis.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.*

01 NCAC 41C .0205 APPLICATION PROCEDURES

The applicant shall complete an application on a form provided by the 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 name and mailing address, including the county, of the applicant;
- (2) the address, building name (where applicable) or site description, including photographs, to locate where the energy conservation measure(s) will be installed;
- (3) the name of a contact person, including title and telephone number;
- (4) the loan amount requested;
- (5) the estimated dates of implementation and completion of the project;
- (6) a copy of the Technical Analysis approved by the State Energy Office;
- (7) identification of the commercial lending institution that is providing the letter of credit, depository, and repayment services;
- (8) commercial or industrial business, nonprofit organizations, or local government entity applicants shall provide financial 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.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.*

01 NCAC 41C .0206 APPLICATION REVIEW

(a) The 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. Additional data may be requested if the initial data is incomplete.
- (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, including the accuracy of energy calculations, engineering principles considered, and labor and material costs relative to the current local market.

(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. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.*

01 NCAC 41C .0207 LOAN APPROVAL

Following the review set forth in Rule .0206 of this Section, the State Energy Office shall approve the application provided:

- (1) the administrative and Technical Analysis reviews satisfy the requirements of this Subchapter;
- (2) the credit worthiness of the applicant is established; and
- (3) funds are available.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.

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 Financial Services Division and the borrower. The loan agreement shall include a promissory note and other documents including security agreements, mortgages, and recordings. It shall also 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, as well as events requiring the acceleration, the 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. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.

01 NCAC 41C .0209 REPORTS

Reports shall be submitted by the borrower as follows:

- (1) progress reports shall be submitted quarterly to the State Energy Office during the period of implementation or while installation is in progress and shall include a description of:
 - (a) the current status;
 - (b) any problems; and
 - (c) a forecast of expectations or deviations from the Technical Analysis, prepared in accordance with Rule .0303 of this Subchapter.
- (2) a final report certified by the Technical Analyst shall be submitted to the State Energy Office upon completion of the project. The report 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. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021.

01 NCAC 41C .0210 MONITORING

The Financial Service Division shall monitor the use of the funds under this program through review of reports. The State Energy Office shall monitor those buildings or projects where the energy conservation projects are in progress to verify the installation of the energy conservation measures conforms to the approved 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. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.

01 NCAC 41C .0211 DEFAULT

If the borrower violates any of the terms of the loan agreement, the Financial Services Division shall place the borrower in default. Borrowers determined to be in default shall be notified by certified mail and the terms of the loan agreement and letter of credit shall be executed.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021.*

SECTION .0300 - TECHNICAL ANALYSIS

01 NCAC 41C .0301 TECHNICAL ANALYSIS REQUIRED

(a) An application for an energy conservation loan shall be accompanied by a Technical Analysis that has been conducted by a third-party Technical Analyst and approved by the State Energy Office as fulfilling the energy aspects of the Program.

(b) The Technical Analysis shall address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be 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. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021.*

01 NCAC 41C .0302 TECHNICAL ANALYST DISQUALIFICATIONS

(a) A third-party 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 third-party Technical Analyst is permitted to provide construction management services to an approved applicant.

(b) An outline of qualifications of the Technical Analyst, documenting previous experience in energy conservation in building construction, mechanical systems, or manufacturing processes shall be submitted in writing to the State Energy Office.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021.*

01 NCAC 41C .0303 REPORT REQUIRED

A third-party 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 shall include the following:

- (1) a description of the facility characteristics and energy data, including the operational characteristics of the energy-using systems;
- (2) a description and engineering analysis of each energy conservation measure, including the following:
 - (a) an estimate of the cost of design, acquisition, and installation, including monitoring equipment to assess the performance of the measure, discussing assumptions as the Technical Analyst deems necessary;
 - (b) an estimate of the annual energy saved and energy cost savings by fuel type, using engineering standards and practices that are recognized by the North Carolina State Board of Examiners for Engineers and Surveyors, including all formulae, data, and assumptions presented in arriving at the estimate;
 - (c) the results of a combustion efficiency test, if furnace or boiler modifications or replacements are being implemented;
 - (d) the payback period of each energy conservation measure; and
 - (e) a proposed construction schedule for each energy conservation measure; and
- (3) the energy use and cost data for each fuel type used for the prior billing period.

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

Readopted Eff. June 1, 2021.

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

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 41D .0101 PURPOSE AND ORGANIZATION

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Repealed Eff. July 1, 2021.*

01 NCAC 41D .0102 DEFINITIONS

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

- (1) "AFV" means the same as defined in G.S.143-58.4.
- (2) "Alternative fuel" means the same as defined in G.S. 143-58.4.
- (3) "B20" means the same as defined in G.S. 143-58.4.
- (4) "Biodiesel Fuel Use Credit" means an EAct credit given by the U.S. Department of Energy (DOE) for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit shall be granted for the petroleum portion of biodiesel fuel blends, pursuant to 10 CFR 490.703.
- (5) "Department" means the same as defined in G.S. 143-58.4. [
- (6) "E85" means the same as defined in G.S. 143-58.4.
- (7) "Energy Policy Act" means the same as defined in G.S. 143-58.4.
- (8) "EAct credit" means the same as defined in G.S. 143-58.4.
- (9) "FFV" means a flexible fuel vehicle that is capable of operating on both E85 and gasoline.
- (10) "LDV" means a light duty vehicle that has less than an 8,500 lb gross vehicle weight rating (GVWR).
- (11) "NC Alternative Fuel Consortium" means a voluntary group of State agencies, institutions, and interested entities that meet quarterly and is hosted by the State Energy Office to coordinate alternative fuel and petroleum displacement activities in North Carolina.
- (12) "OEM" means original equipment manufacturer.
- (13) "SEO" means the State Energy Office.
- (14) "U.S. DOE" means the United States Department of Energy.
- (15) "U.S. EPA" means the United States Environmental Protection Agency.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021.*

SECTION .0200 - CREDIT BANKING AND SELLING PROGRAM PROVISIONS

01 NCAC 41D .0201 BANKING

(a) EActs credits shall be accrued and banked according to the following:

- (1) The U.S. DOE Alternative Fuel Transportation Program 10 CFR Part 490, which is incorporated by reference including subsequent amendments and editions and can be found at no charge at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>, requires that 75% of LDVs acquired by state fleets shall be FFVs, compressed natural gas vehicles, propane vehicles, or electric vehicles;
- (2) One credit shall be earned for each OEM or EPA certified retrofit FFV, compressed natural gas vehicle, propane vehicle, or electric vehicle purchased;
- (3) Credits that exceed the annual minimum State AFV acquisition requirements shall be banked through the U.S. Department of Energy's Alternative Fuel Transportation Program to meet future year requirements or traded;

- (4) State fleet cars 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 shall be 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;
Readopted Eff. June 1, 2021.*

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) the Department of Administration Motor Fleet Management designee;
 - (B) the Department of Transportation Equipment Unit designee;
 - (C) the State Energy Office designee; and
 - (D) the 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, pursuant to G.S. 113B-6(3).
- (c) The State Office shall sell EPAct credits in accordance with the provisions of the Energy Policy Act.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021.*

SECTION .0300 - PROCEEDS AND DISTRIBUTION

01 NCAC 41D .0301 PROCEEDS AND DISTRIBUTION

- (a) Funds generated by the sale or transfer of EPAct credits by the State Energy Office 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) 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
 - (4) The Energy Policy Council shall review and approve the annual plan, pursuant to G.S. 113B-6(3).

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

Readopted Eff. June 1, 2021.

01 NCAC 41D .0302 FUND DISBURSEMENTS

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Repealed Eff. July 1, 2021.*

SECTION .0400 - REPORTS

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, and forecast of expectation or deviation from the project schedule.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021.*

SUBCHAPTER 41E – ENERGY POLICY COUNCIL

01 NCAC 41E .0101 FUNCTIONS

*History Note: Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Made Permanent Eff. July 3, 1978;
Transferred from 04 NCAC 12E .0103 Eff. May 15, 2007;
Expired Eff. March 1, 2019 pursuant to G.S. 150B-21.3A.*