



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

March 18, 2021

Jennifer Everett
Environmental Management Commission
Sent via email only to: Jennifer.Everett@ncdenr.gov

Re: Extension of the Period of Review for Rules 01 NCAC 41C .0101, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0303; 41D .0101, .0102, .0201, .0202, .0301, .0302, and .0401.

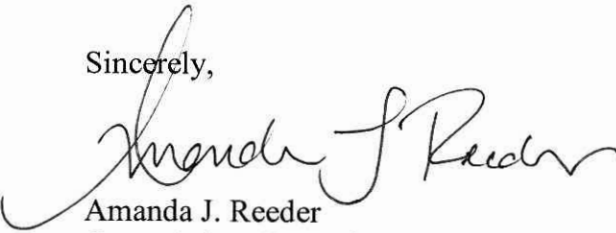
Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Star Hodge, NC DEQ

Julian Mann, III, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

An Equal Employment Opportunity Employer

1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
www.oah.nc.gov

Burgos, Alexander N

Subject: FW: RRC Request for Technical Changes to 01 NCAC 41C and 41D

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Monday, March 8, 2021 4:15 PM

To: Reeder, Amanda J <amanda.reeder@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hodge, Starlette <Star.Hodge@ncdenr.gov>

Subject: Re: RRC Request for Technical Changes to 01 NCAC 41C and 41D

Hi Amanda,

DEQ is kindly requesting a period of extension of review in order to allow additional time for staff to address your technical change requests.

Thank you. Let me know if you have any questions.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0101

DEADLINE FOR RECEIPT: Friday, March 12, 2021

NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

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

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

In Item (2), lines 9-10 and elsewhere within this Rule, you refer to a "nonprofit institution" However, in G.S. 143B-344.44(f)(2), it refers to a "nonprofit organization" Should the term be the same here?

I do not see that you use the terms defined in Items (3), (4), or (20) of this Rule within this Subchapter. I know you are planning to recodify these Rules after approval; will the terms be used in the newly recodified Subchapter? If not, then it does not appear you need to retain these, or at least Items (3) and (4).

Assuming you need to retain them, in Item (3), line 11, state "... means British Thermal Unit, which is..." Make a conforming change to Item (4), line 13.

In Item (7), line 19, insert a "the" before "ability" "applicant" and "lending" so it reads "means the ability of the applicant to meet the lending institution's"

What will these lending criteria be? Won't the Department be establishing them? Or is this to address State-regulated financial institutions in G.S. 143B-344.44(b)(3)?

End Item (7) with a period, not a semicolon.

In Item (8), line 24, insert a comma after "technique"

In Item (9), if this is actually a Department, why isn't it referred to as such in the rules, rather than defining it as a Division?

On line 27, delete the comma after "Department"

In Item (11), line 33, insert a comma after "equipment"

In Item (13), Page 2, line 1, replace "which" with "that"

On line 1, insert a comma after "water"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 2, 2021

In Item (16), line 9, delete the comma after “means”

In Item (17), do you use the acronym “TA” within these Rules?

Assuming you need to retain the acronym, on line 11, remove the quotation marks and just state “(TA)”

In Items (18), line 19, and (19), line 23, this is not the proper way to capitalize a word. As it was published correctly in the Register, use that formatting.

In Item (19), I believe “Third-party” should be hyphenated. If you do that, please be sure to make conforming changes to the term wherever it is used within these Rules.

On line 23, delete the comma after “Analyst”

And so that I’m clear – this individual can have a financial interest in a residence? It appears from the language in Rule 41C .0302 that this is forbidden, but it is not stated here.

In Item (20), line 30, delete the comma after “consultation fees”

In Item (21), line 35, expected by whom? The manufacturer?

In the History Note, strike the laws that have been recodified.

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

01 NCAC 41C .0101 is readopted as published in 35:08 NCR 831 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" means 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 someoneAnalyst, 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~~ 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 which the asset or property was acquired.

1 *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);*
2 *Eff. September 1, 2004;*
3 *Readopted Eff. April 1, 2021.*
4

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0201

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In Items (1), line 6, and (2), line 14, you refer to a "nonprofit organization" but in Rule 41C .0101, it's "nonprofit institution" Should the terms be the same here?

In Item (1), line 9, end the sentence after "loan" Then recite the language in (2) and state "However, when the owner of the building..."

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 2, 2021

01 NCAC 41C .0201 IS READOPTED AS PUBLISHED IN 35:08 NCR 831AS 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~~ such the 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~~ where 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0202

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

End Item (1), line 5, with a period.

In Item (2), line 7, I take it you are using "efficient" to mirror the statutory use of the language?

In Item (7), line 23, insert an "of" before "less than" to mirror the language in Item (6).

On line 25, simply remove the term that is both underlined and struck. As you did not publish that in the Register, you do not need to show it as a change.

In Item (8), does your regulated public know what these terms means, especially as it includes homeowners?

In Sub-Item (8)(I), Page 2, line 3, what are "demand related improvements"? Also, should this be hyphenated as "demand-related"?

In Item (9), line 5, capitalize "State" as you mean "NC"

Delete the blank line space between lines 7 and 8.

In Item (10), lines 8-9, why do you have "as defined in Rule .0101 of this Subchapter" here? If you need the cross-reference, shouldn't you insert it in Item (2), where it is first used?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 2, 2021

01 NCAC 41C .0202 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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) Each energy conservation measure must address energy efficiency;~~
- ~~(7)(5)~~ 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)(6)~~ 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)(7)~~ 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)(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~~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)(9)~~ 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)(10)~~ 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 previous 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;
Readopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0203

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

G.S. 143B-344.44(d) states:

(d) Notwithstanding subsection (c) of this section, the State Energy Office shall adopt rules to allow loans to be made from the revolving loan fund and by State-regulated financial institutions at interest rates as low as zero percent (0%) per annum for certain renewable energy, recycling, and energy efficient and conservation projects to encourage their development and use.

I do not see that section of the statute addressed in this Rule. Is that intentional? Is it addressed elsewhere?

G.S. 143B-344.44(c) states:

(c) The annual interest rate charged for the use of the funds from the revolving fund established pursuant to subdivision (b)(2) of this section shall be a percentage not to exceed three percent (3%) per annum, to be established by the State Energy Office, excluding other fees required for loan application review and origination. The term of any loan originated under this section may not be greater than 20 years.

So I take it that you are relying upon this authority to establish the interest rate reduction in (a)(1)?

Please end (a)(1), line 28, with a semicolon. As the semicolon was published in the Register, do not show it as a change; simply do it.

In (a)(3), line 30, why is "non-profits" hyphenated? It is not elsewhere. And should this be a full term, such as "nonprofit organization" (as spelled out in (b)(2)?)

In (b), line 32, and (c), Page 2, line 15, state "Loans shall be made..."

In (b)(2), line 36, rules set minimum standards, so generally the use of "at least" or "minimum" is not favored in rule language. However, I take it you need to retain "at least" here?

In (b)(5), Page 2, line 6, will the regulated public know the building codes and standards? What are the standards and how do they differ from the building codes? Are you referring to ordinances?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 2, 2021

In (b)(6), line 8, what are “arbitrage profits”?

Also on line 8, what is the “Alternative Fuel Revolving Fund”? Is it the one referred to in Rule 41D .0101?

In (b)(7), is this cross-reference to Paragraph (b) of the Rule that includes the address?

In (b)(8), line 13, what do you mean by “serve as a quarterly drafting mechanism for loan repayment”? Is this what is contemplated in Rule .0205(7)?

In the History Note, line 20, please simply insert a semicolon after the citation.

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

01 NCAC 41C .0203 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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 projects 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;

- 1 (3) the total amount of the loan, or any portion thereof, may be repaid at any time before the total
2 amount is due, without penalty;
3 (4) rebates received through other program offerings of the State Energy Office for projects
4 undertaken from loan proceeds shall be used to reduce the amount of principal;
5 (5) the borrower shall warrant that all work or construction done with the proceeds of a loan under
6 this program shall comply with all building codes and standards;
7 (6) project implementation shall begin within 90 days after approval of the application. If delays are
8 encountered following loan closing, any arbitrage profits will be repaid to the Alternative Fuel
9 Revolving Fund;
10 (7) loan payments or drafts shall be sent or delivered to the Financial Service Division, in accordance
11 with 04 NCAC 12D .0101; and
12 (8) a letter of credit from a bank approved to do business in North Carolina shall secure the loan
13 against non-payment and also serve as a quarterly drafting mechanism for loan repayment from
14 the bank.

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

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

20 *History Note: Authority ~~G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44~~*
21 *Eff. August 1, 2004;*
22 *Readopted Eff. April 1, 2021.*
23
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0204

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (a), is this addressing how to schedule (using phone, email, or visit) or how the scheduled pre-application conference will be held?

How will the individual know how to contact you all via phone or email? Rule 04 NCAC 12D .0101 only includes the physical and mailing addresses.

On line 5, please insert a comma after "telephone"

In (d), line 16, simply delete the "~~the~~" after "The" As this language was not published in the Register, do not show it as a change – simply remove it.

On line 16, remove the errant dash between "provide" and "applicable"

Also on line 16, who will decide what is "applicable" here?

In (e), line 18, when what is final? The conference? The Technical Analysis? If it's the Technical Analysis, why not state "The applicant shall provide the final Technical Analysis."

If you need to retain the sentence as structured, then be sure to insert a "the" before "Technical"

On line 19, do not underline and strike the same language.

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

01 NCAC 41C .0204 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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~~ 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0205

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (1), line 7, what is "complete" here? Is it street name and number, county, and zip code?

In (6), line 13, how is the Technical Analysis approved? I see that it is submitted in Rule .0204, but that does not speak to approval. When is this done? Is this part of the review in Rule .0206(a)(2)?

In (7), line 16, insert a comma after "depository"

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

01 NCAC 41C .0205 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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;
- (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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0206

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (a)(1), are you saying that the Division may ask the applicant for additional financial data or information beyond what was submitted in the application? If so, I think this should be clarified.

In (a)(2), is this the "approval" of the Technical Analysis that is mentioned in Rule .0205?

On line 21, change "include" to "including"

On lines 21-22, what is "accuracy and sufficiency" here? How will this be determined?

On line 23, what is the "current local market"? How will this be determined and by whom?

Delete the sentence on lines 23-24, as it duplicates the language line 17.

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

01 NCAC 41C .0206 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0207

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

How is the language on lines 5 – 9 of this Rule different from the language in Rule .0206? Why do you need this language both places?

In (2), you defined the term as “credit worthiness” (two words) in Rule .0101. Please be consistent with the term.

So that I’m clear from Item (3) – if the funds are not available, the application will not be approved?

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

1 **01 NCAC 41C .0207 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41C .0207 LOAN APPROVAL**

4 ~~Applications shall be considered for loan approval upon completion of the administrative and technical review.~~

5 ~~Approval shall be based upon the following:~~Following the review set forth in Rule .0206 of this Section, the State
6 Energy Office shall approve the application provided:

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

11
12 *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);~~*
13 *Eff. August 1, 2004;*
14 *Readopted Eff. April 1, 2021.*
15
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0208

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

Rule names are not within the RRC's purview. However, given the changes to this Rule, shouldn't you remove "And Promissory Note" from the name? If so, then please submit a new Submission for Permanent Rule form with the new name in Box 2.

To ensure I understand this – the entire point of this Rule is to say that if the loan is approved, the Division and the borrower will enter into a contract?

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

1 **01 NCAC 41C .0208 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41C .0208 LOAN AGREEMENT AND PROMISSORY NOTE**

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

11
12 *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);~~*
13 *Eff. August 1, 2004;*
14 *Readopted Eff. April 1, 2021.*
15
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0209

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

On line 4, I take the borrower must submit these reports? If so, I suggest stating that. "Reports shall be submitted by the borrower as follows:"

In (1), line 5, will the determination of the quarters be made depending upon when the loan was made? And "quarterly" means every three months?

In (1)(b), line 9, who will determine whether there are "problems"? The borrower?

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

01 NCAC 41C .0209 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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 of:
 - (a) the current ~~status~~, status;
 - (b) any ~~problems~~, problems; and
 - (c) a forecast of expectations or deviations from the ~~planned schedule and~~, 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~~, 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0210

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

So that I'm clear – the extent of the monitoring by the State Energy Office will be a site visit?

And what will determine if there are more than one site visit?

On line 7, you refer to the "original" Technical Analysis. Given the language in other rules, should this be "approved" Technical Analysis?

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

1 **01 NCAC 41C .0210 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41C .0210 MONITORING**

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

9
10 *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);*
11 *Eff. August 1, 2004;*
12 *Readopted Eff. April 1, 2021.*
13
14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0211

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

On line 4, the name is "Financial Services" (plural)

On line 5, please simply remove the errant underlining before "Borrowers"

On line 6, what is the "letter of credit"? It appears that your amendments to Rule .0208 has removed that. Should this state "terms of the promissory note"?

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

1 **01 NCAC 41C .0211 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41C .0211 DEFAULT**

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

8
9 *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);~~*
10 *Eff. August 1, 2004;*
11 *Readopted Eff. April 1, 2021.*
12
13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0301

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

I recommend making this a two-paragraph rule, with Paragraph (a) being the existing language and (b) the new language.

On line 5, what do you mean by "certified" Is this "approved"? Does it mean something different here?

On line 6, what do you mean by "need address only"? Why not state "shall address"? Or are you allowing them to submit additional information beyond what is necessary?

On line 7, what do you mean by "shall be the subject of"?

On line 9, insert a comma after "process" unless the term is "process and equipment characteristics"

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

01 NCAC 41C .0301 is readopted as published in 35:08 NCR 831 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0302

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

On the Submission for Permanent Rule form, Box 2, the name does not match the name on the Rule itself. As I believe the error is on the form, please correct the name and resubmit the form.

Based upon the definitions in Rule .0101, did you mean to state on lines 4 and 6, "A third party Technical Analyst"? Because the prohibition in Rule .0101 seems to apply only to a third-party Technical Analyst, not all Technical Analysts.

On line 6, end the sentence after "measure." Then state, "However, the..."

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

01 NCAC 41C .0302 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:

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;
Readopted Eff. April 1, 2021.*

v REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41C .0303

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

So that I'm clear – is the Technical Analysis required by Rule .0301 to be submitted at the time of application, and the Technical Analysis required by this Rule the progress report required by Rule .0209(1)?

On line 4, what do you mean by “qualified”? Based upon what? Determined by whom?

On line 5, I take it the contents of the form are what are spelled out in Items (1) through (4)?

In (1), line 8, what is an “energy-using system”?

In (2), line 9, what do you mean by “identified”?

In (2)(a), line 12, this is not the proper way to insert a comma after “measure” Please properly show the change.

On line 13, replace the period after “necessary” with a semicolon

In (2)(b), line 15, remove the comma after “practices”

On line 16, what Board is this? Do you mean the State Board of Examiners for Engineers and Surveyors, established by G.S. 89C-4? If so, please update the name. And what are these standards?

In (2)(c), line 19, what is a “combustion efficiency test”? Does your regulated public know?

In (3), line 27, what is a “billing period”? Are you referring to the last bill received?

Why is Item (4) here, rather than in Rule .0302?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 2, 2021

01 NCAC 41C .0303 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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, 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;~~
 - (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;
Readopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0101

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

What is the purpose of this Rule? It appears to simply partially recite statute. What does this do that the statutes do not?

In (a), line 4, insert a comma after "G.S. 143-58.4"

Also on line 4, delete the "has" before "established"

On lines 6 and 9, insert a comma after "infrastructure"

In (b), G.S. 143-58.5 states:

§ 143-58.5. Alternative Fuel Revolving Fund.

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. **The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases.** To the extent possible, benefits from the sale of EPAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) **The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the**

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 2, 2021

development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Environmental Quality shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than October 1 of each year a report on the expenditures from the Fund during the preceding fiscal year. (2005-413, s. 1; 2009-237, s. 2; 2017-57, s. 14.1(a); 2017-102, s. 20.1(a).)

It appears that Paragraph (b) is only including the expenditures mandated by G.S. 143-58.5(b) and not the mandates of G.S. 143-58.5(c). What is the agency's authority to do this?

On line 7, delete the "has" before "established"

On line 8, as the expenditure is required by statute, change "may" to "shall"

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

01 NCAC 41D .0101 is readopted as published in 35:08 NCR 831 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 E Pact 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 E Pact credits. These funds may to 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;
Readopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0102

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In Item (3), line 7, as this is the first time you use this acronym, please spell out "US Department of Energy" here.

On line 8, please replace "is" with "shall be" And is there a federal requirement denying this credit?

Please put Item (4) above Item (3) and Item (9) above Item (6).

In Item (5), as this is now the statutory definition, why not use the language for other terms and say, "means the same as defined in G.S. 143-58.4"?

I note that Items (8), (11), and (12) are not used elsewhere in this Chapter. Do you need to retain them or should they be deleted?

If you need to retain it, in Item (12), delete the language after "G.S. 143-58.4." from lines 18 to line 21.

In Item (14), line 24, capitalize "State" if you mean "NC"

Also on line 14, insert a comma after "institutions"

On line 25, what are "interested entities" here? Is this a stakeholder group?

On line 25, do you need to retain "at least"?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 2, 2021

01 NCAC 41D .0102 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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 G.S.143-58.4.
- (2) "Alternative fuel" means the same as defined in G.S. 143-58.4.
- (3) "Biodiesel Fuel Use Credit" means an EPA 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 G.S. 143-58.4.
- (5) "Department" means the Department of ~~Environmental Quality Administration~~.
- (6) "Energy Policy Act" means the same as defined in G.S. 143-58.4.
- (7) "EPA credit" means the same as defined in G.S. 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 G.S. 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 G.S. 143-58.4.
- (12) "Incremental vehicle cost" means the same as defined in G.S.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;
Eff. May 1, 2007;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0201

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (a)(1), line 5, remove the parenthesis from the citation. And if you are relying upon this to provide guidance, please properly incorporate the CFR by reference, as required by G.S. 150B-21.6

In (a)(1), lines 6-7, you refer to "compressed natural gas vehicles, propane vehicles or electric vehicles" but in (a)(2), lines 8-9, you do not use the term "vehicles" Assuming these refer to the same thing, please use the same term both places.

On line 6, insert a comma after "propane vehicles"

In (a)(2), line 8, please replace "is" with "shall be"

On line 8, how is this certification done? What are the guidelines for the EPA certification? If it's a CFR, please include the citation.

Also on line 8, insert a comma after "propane" (or "propane vehicle" if you add vehicle to be consistent with (a)(1))

In (a)(3), line 10, what are the "annual minimum state AFV acquisition requirements"? Where are those located?

On line 10, please capitalize "state" if you mean "NC"

Also on line 10, you say the excess credits "may" be banked. Who will determine whether or not to bank them? Or should this say "shall" be banked?

On line 11, it does not appear that the "US DOE Office of Freedom Car and Vehicle Technologies Program" still exists. Should this reference be updated?

In (a)(4), line 13, do you mean "State fleet cars"?

In (b), line 16, replace "are" with "shall be"

On line 16, please capitalize "state" if you mean NC

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 2, 2021

Also on line 16, remove the errant hyphen between “Energy” and “Office”

And to clarify – in (b), you are saying that the agencies will work with the SEO to determine credits, rather than the SEO making the determination?

In (b)(1), line 17, insert a comma after “1st” or state “By December 1st of each year, every State...”

On line 17, insert a comma after “institution”

Also on line 17, what agencies are not subject to the EAct requirements?

On line 19, insert a comma after “numbers”

How does (c)(1) differ from (c)(3)?

In (c)(2), line 24, either change the comma after “transfer” to a semicolon or begin a new sentence. “... transfer. However, they...”

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

01 NCAC 41D .0201 is readopted as published in 35:08 NCR 831 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;
Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0202

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

To whom are these credits being sold? Other states?

Please begin (a)(1)(A) through (D) with articles.

In (a)(1)(D), line 10, please capitalize "state"

In (a)(2), what will this group use to determine the asking price? Is there a formula or other information that they will use that needs to be included in this Rule?

In b), what authority are you relying upon to require Council approval? Is it G.S. 113B-6(3)? If so, state that.

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

1 **01 NCAC 41D .0202 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41D .0202 SELLING**

4 (a) The State Energy Office shall form a Credit Selling Work Group to determine the number of excess credits to be
5 sold as follows:

6 (1) The Credit Selling Work Group shall consist of:

7 (A) Department of Administration Motor Fleet Management designee;

8 (B) Department of Transportation Equipment Unit designee;

9 (C) State Energy Office designee; and

10 (D) Designees of other state agencies and institutions that generate EAct credits; and

11 (2) The Credit Selling Work Group shall determine the asking price for credits.

12 (b) The State Office shall obtain approval from the Energy Policy Council prior to selling EAct credits.

13 (c) The State Office shall sell EAct credits in accordance with the provisions of the Energy Policy Act.

14
15 *History Note: Authority G.S. 143-58.4; 143-58.5;*

16 *Eff. May 1, 2007;*

17 *Readopted Eff. April 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0301

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (a), line 4, is the Department selling the credits? I note that in Rule .0202(c), it refers to the SEO making the sale. While I know that the SEO is located in the Department, shouldn't the rules refer to the same entity?

In (b)(1), line 10, capitalize "state"

On line 10, insert a comma after "institutions"

In (b)(3), I know this is a partial restatement of G.S. 143-58.5(b). But what about the mandates of G.S. 143-58.5(c)?

On line 14, insert a comma after "infrastructure"

In (b)(5), what authority are you relying upon to require the approval of the Energy Policy Council?

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

1 **01 NCAC 41D .0301 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

2
3 **01 NCAC 41D .0301 PROCEEDS AND DISTRIBUTION**

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

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

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

19
20 *History Note: Authority G.S. 143-58.4; 143-58.5;*
21 *Eff. May 1, 2007;*
22 *Readopted Eff. April 1, 2021.*
23
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0302

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

What is the purpose of this Rule? What does it accomplish that the governing statute does not? And won't ability to utilize the funds be contingent upon being approved under Rule .0301?

If you need it, on line 4, capitalize "State"

On line 4, insert a comma after "institutions"

Replace "are" with "shall be"

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

01 NCAC 41D .0302 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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;

Readopted Eff. April 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0401

DEADLINE FOR RECEIPT: Friday, March 12, 2021

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

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

In (a), so that I'm clear – it's just twice a year, with no schedule? So, theoretically, an agency can send you a report on May 15 and again on May 30 and satisfy the requirement?

In (b), line 7, define "challenges and successes"

On line 7, what is this "planned schedule"? Where is that set out?

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

01 NCAC 41D .0401 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 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;

Readopted Eff. April 1, 2021.