

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01A - ORGANIZATION

SECTION .0100 - GENERAL IDENTIFICATION AND PURPOSES

04 NCAC 01A .0101 NAME AND ADDRESS

History Note: Authority G.S. 143A-171; 150B-10;
Eff. February 1, 1976;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

04 NCAC 01A .0102 GENERAL PURPOSES

History Note: Authority G.S. 143A-6(b),(c); 143A-8; 143A-171; 143A-172; 150B-10;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0200 - STRUCTURE OF THE SECRETARY'S OFFICE

- 04 NCAC 01A .0201 GENERAL STRUCTURE**
- 04 NCAC 01A .0202 POLICY SETTING DIVISION**
- 04 NCAC 01A .0203 PERSONNEL DIVISION**
- 04 NCAC 01A .0204 BUDGET DIVISION**

History Note: Authority G.S. 113A-153; 143A-6(c); 143A-9; 143A-172; 150B-10;
Eff. February 1, 1976;
Amended Eff. July 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0300 - AGENCIES OF THE DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT

- 04 NCAC 01A .0301 ALCOHOLIC CONTROL BOARD**
- 04 NCAC 01A .0302 BANKING COMMISSION: COMMISSIONER OF BANKS**
- 04 NCAC 01A .0303 BURIAL COMMISSION**
- 04 NCAC 01A .0304 CEMETERY COMMISSION**
- 04 NCAC 01A .0305 CREDIT UNION COMMISSION: CREDIT UNION DIVISION**
- 04 NCAC 01A .0306 EMPLOYMENT SECURITY COMMISSION**
- 04 NCAC 01A .0307 INDUSTRIAL COMMISSION**
- 04 NCAC 01A .0308 MILK COMMISSION**
- 04 NCAC 01A .0309 RURAL ELECTRIFICATION AUTHORITY**
- 04 NCAC 01A .0310 SAVINGS AND LOAN COMMISSION: SAVINGS AND LOAN DIVISION**
- 04 NCAC 01A .0311 UTILITIES COMMISSION**

History Note: Authority G.S. 18A-1; 18A-10; 18A-15; 36-61; 53-92; 53-104; 53-168; 53-194;
54-24; 54-29; 54-44.3; 54-109.10; 54-109.11; 58-241.6; 62-2; 62-10; 62-12; 65-36.2; 65-53;
65-57; 65-58; 96-3; 96-4; 97-77; 97-80; 106-266.7; 106-266.8; 117-1; 117-2;
143A-173 through 143A-182; 143A-184; 143A-185;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SUBCHAPTER 01B - RULE-MAKING HEARINGS: EMERGENCY RULES: AND DECLARATORY RULINGS

SECTION .0100 - RULE-MAKING HEARINGS AND EMERGENCY RULES

04 NCAC 01B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Secretary's Office of the Department of Commerce shall address a petition to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

(b) The petition should contain the following information:

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

History Note: Authority G.S. 150B-16;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0102 DISPOSITION OF PETITIONS

(a) The secretary will determine, based on a study of the facts stated in the petition whether the public interest will be served by granting it. Prior to making this determination, he may request additional information from the petitioner(s); he may contact interested person(s) likely to be affected by the proposed rule and request comments; he may use any other appropriate method for obtaining information on which to base his determination. He will consider all the contents of the submitted petition, plus any additional information he deems relevant.

(b) Within 30 days of submission of the petition, the secretary will render a final decision. If the decision is to deny the petition, the secretary will notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, within 30 days of submission and the final decision, the secretary will initiate a rule-making hearing by issuing a rule-making notice as provided in these rules.

History Note: Authority G.S. 150B-16;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0103 NOTICE

(a) Upon a determination to hold a rule-making hearing, either in response to a petition or otherwise, the Secretary will give at least 10 days notice to all interested parties of a public hearing on the proposed rule.

(b) Any person or agency desiring to be placed on the mailing list for the Department of Commerce secretary's office rule-making notices may file such request in writing, furnishing his name and mailing address to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

The request must state the subject areas within the authority of the secretary's office for which the notice is requested. The secretary may require reasonable postage and stationery costs to be paid by persons receiving such notices.

(c) In addition to notices sent to persons requesting them, public notice of rule-making hearings will usually be by publication in three newspapers of general circulation in different parts of the state.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0104 HEARINGS: LOCATION OF

Unless otherwise stated in a particular rule-making notice, hearings before the Secretary of the Department of Commerce will be held at the secretary's office, in Raleigh, North Carolina.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0105 REQUEST TO PARTICIPATE

(a) Any person desiring to present oral data, views, or arguments on the proposed rule must, at least five days before the hearing, file a notice with:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

Notice of this presentation may be waived or a failure to give the notice may be excused by the secretary for good reason. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation prior to or at the meeting.

(b) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual intends to speak. Presentations may not exceed 10 minutes unless, upon request, either before or at the hearing, the secretary grants an extension of time, for good reason.

(c) Upon receipt of the request to make an oral presentation the secretary will acknowledge receipt of the request, and inform the person requesting of the imposition of any limitations deemed necessary to the end of a full and effective public hearing on the proposed rule.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0106 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments, after publication of a rule-making notice up to, and including, the day of the hearing unless a longer period is stated in the particular notice or an extension of time is granted for good reason following notice. Written submissions, except when otherwise stated, must be sent to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

Such submissions must clearly state the rule(s) or proposed rule(s) to which the comments are addressed. Upon receipt of such written comments prompt acknowledgement will be made.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0107 PRESIDING OFFICER: POWERS AND DUTIES

The presiding officer at the hearing shall have complete control of the proceedings, including: extensions of any time requirements, recognition of speakers, time allotments for presentations, direction of the flow of the discussion and management of the hearing. The presiding officer at all times shall ensure that each person participating in the hearing is given a fair opportunity to present views, data and comments.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01B .0108 STATEMENT OF REASONS FOR DECISION

Any interested person desiring a concise statement of the principal reasons for and against the adoption of the rule by the secretary's office and the factors that led to overruling the considerations urged against its adoption, may submit a request addressed to:

Secretary, Department of Commerce
Mail Service Center
Raleigh, North Carolina 27699-4301.

Such request must be submitted in writing prior to the adoption of the rule or within 30 days thereafter.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.

04 NCAC 01B .0109 RECORD OF PROCEEDINGS

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

04 NCAC 01B .0110 TEMPORARY RULES

History Note: Authority G.S. 150B-13;
Eff. February 1, 1976;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

SECTION .0200 - DECLARATORY RULINGS

04 NCAC 01B .0201 REQUEST FOR A DECLARATORY RULING

(a) Any person substantially affected by a statute administered or rule promulgated by the secretary's office of the Department of Commerce may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation; or
- (2) whether a particular agency rule is valid.

(b) The secretary has the power to make such declaratory rulings. All requests for declaratory rulings shall be submitted in writing to:

Secretary, Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301.

(c) All requests for a declaratory ruling must include the following information:

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

*History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. January 1, 2020.*

04 NCAC 01B .0202 DISPOSITION OF REQUESTS

- (a) Whenever the secretary believes for good reason that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good reason for refusing to issue a declaratory ruling is deemed to exist, the secretary will notify the petitioner of this decision in writing, stating reasons for the denial of a declaratory ruling.
- (b) For purposes of Paragraph (a) of this Rule, the secretary will ordinarily refuse to issue a declaratory ruling:
- (1) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;
 - (2) unless the petitioner shows that the agency did not give a full consideration to the factors specified in the request for a declaratory ruling at the time the rule was issued;
 - (3) where there has been a similar controlling factual determination in a contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rule-making record; or
 - (4) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.
- (c) Where a declaratory ruling is deemed appropriate, the secretary will issue a ruling within 60 days of receipt of the petition.
- (d) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

*History Note: Authority G.S. 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01B .0203 RECORD OF DECISION

A record of all declaratory ruling proceedings will be maintained in the secretary's office for as long as the ruling is in effect and for one year thereafter. This record will contain: the petition, the notice, all written submissions filed in the request, whether filed by the petitioner or any other person, and a record or summary of oral presentations, if any. Records of ruling proceedings will be available for public inspection during the regular office hours of the Department of Commerce.

*History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01B .0204 DEFINITION

For purposes of Rule .0203 of this Section, a declaratory ruling shall be deemed to be "in effect": until the statute or rule interpreted by the declaratory ruling is amended, altered or repealed; until the Department of Commerce changes the declaratory ruling prospectively for good reasons; or until any court sets aside the ruling in litigation between the Department of Commerce and the party requesting the rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

*History Note: Authority G.S. 150B-12; 150B-17;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SUBCHAPTER 01C - PERSONNEL RULES

SECTION .0100 - AFFIRMATIVE ACTION PROGRAM

04 NCAC 01C .0101 POLICY STATEMENT

(a) The policy of this department is to provide equal employment opportunities to all applicants for state employment and to provide training, compensation, promotion, and all other attributes of employment to current employees without regard to race, religion, national origin, sex, age or physical handicap, except where sex, age or physical requirements are essential, documented, occupational qualifications.

(b) This department's commitment to equal career opportunity requires a continuing program of affirmative action in order to assure that all personnel policies and practices relevant to total employment will guarantee equal opportunities for all persons of the state. Through planning and instruction, positive steps will be taken to implement an affirmative action program designed to meet the needs of each agency.

History Note: Authority G.S. 126-16; 143A-6;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

- 04 NCAC 01C .0102 DEPARTMENTAL ORGANIZATION FOR IMPLEMENTATION
- 04 NCAC 01C .0103 RECRUITMENT
- 04 NCAC 01C .0104 HIRING
- 04 NCAC 01C .0105 MODIFICATIONS TO THE AFFIRMATIVE ACTION POLICY
- 04 NCAC 01C .0106 UTILIZATION OF SKILLS OF PRESENT EMPLOYEES
- 04 NCAC 01C .0107 PERFORMANCE EVALUATION AND RESPONSE

History Note: Authority G.S. 126-4; 126-16; 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0200 - GRIEVANCE PROCEDURES

- 04 NCAC 01C .0201 GENERAL POLICIES
- 04 NCAC 01C .0202 DISCUSSION WITH IMMEDIATE SUPERVISOR
- 04 NCAC 01C .0203 CONSIDERATION BY AGENCY HEAD
- 04 NCAC 01C .0204 AGENCY GRIEVANCE COMMITTEE
- 04 NCAC 01C .0205 DEPARTMENTAL GRIEVANCE COMMITTEE
- 04 NCAC 01C .0206 APPEAL TO STATE PERSONNEL COMMISSION
- 04 NCAC 01C .0207 DIRECT APPEAL TO STATE PERSONNEL COMMISSION

History Note: Authority G.S. 126-34; 126-37; 143A-6;
Eff. February 1, 1976;
Amended Eff. July 1, 1976;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0300 - ORIENTATION PROGRAM

- 04 NCAC 01C .0301 PURPOSE
- 04 NCAC 01C .0302 TIME AND LOCATION
- 04 NCAC 01C .0303 CONTENT

History Note: Authority G.S. 126-4; 126-6; 126-7; 126-8; 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0400 - PAYROLLS AND OPTIONAL PAYROLL DEDUCTIONS

04 NCAC 01C .0401 PAYROLLS
04 NCAC 01C .0402 OPTIONAL PAYROLL DEDUCTIONS

History Note: Authority G.S. 126-4; 143A-6; 147-9.4;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0500 - INSURANCE

04 NCAC 01C .0501 HOSPITALIZATION INSURANCE
04 NCAC 01C .0502 PRIVATE INSURANCE PROGRAMS

History Note: Authority G.S. 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0600 - PARKING

04 NCAC 01C .0601 AGENCY ALLOCATION OF PARKING SPACES
04 NCAC 01C .0602 PAYROLL DEDUCTION

History Note: Authority G.S. 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0700 - RETIREMENT

04 NCAC 01C .0701 GENERAL INFORMATION
04 NCAC 01C .0702 PROGRAMS AVAILABLE

History Note: Authority G.S. 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0800 - EDUCATION LEAVE AND TUITION REFUND

04 NCAC 01C .0801 EDUCATION LEAVE
04 NCAC 01C .0802 TUITION REFUND

History Note: Authority G.S. 143A-6;
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .0900 - APPLICATION OF FEDERAL FAIR LABOR STANDARDS ACT

04 NCAC 01C .0901 EXEMPT AND NONEXEMPT POSITIONS
04 NCAC 01C .0902 EMPLOYEE TIME RECORD
04 NCAC 01C .0903 OVERTIME WORKED
04 NCAC 01C .0904 AUTHORIZATION OF OVERTIME WORK

History Note: Authority G.S. 143A-6; 29 U.S.C., s. 207(1966); 29 U.S.C., s. 211(1949);
29 U.S.C., s. 213(1974);
Eff. February 1, 1976;
Repealed Eff. March 1, 1985.

SECTION .1000 - JOB POSITION RECLASSIFICATION

- 04 NCAC 01C .1001 REQUEST FOR RECLASSIFICATION**
- 04 NCAC 01C .1002 REQUISITE CONDITIONS**
- 04 NCAC 01C .1003 PROCEDURE**
- 04 NCAC 01C .1004 DECISION**

*History Note: Authority G.S. 126-4; 143A-6;
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.*

SECTION .1100 - OVERDRAWN LEAVE POLICY

- 04 NCAC 01C .1101 ANNUAL LEAVE**
- 04 NCAC 01C .1102 SICK LEAVE**

*History Note: Authority G.S. 126-4; 143A-6;
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.*

SUBCHAPTER 1D - BUDGET DIVISION RULES

SECTION .0100 - PURCHASES GOVERNED BY PURCHASE AND CONTRACT

- 04 NCAC 01D .0101 ITEMS NOT UNDER STATE CONTRACT**
- 04 NCAC 01D .0102 RESOURCE MATERIALS**
- 04 NCAC 01D .0103 CONTACT WITH VENDORS**
- 04 NCAC 01D .0104 SURPLUS PROPERTY**

*History Note: Authority G.S. 143A-6;
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.*

SECTION .0200 - PURCHASES NOT GOVERNED BY PURCHASE AND CONTRACT

- 04 NCAC 01D .0201 PURCHASES OF PRINTED MATERIALS**
- 04 NCAC 01D .0202 PURCHASES OF LESS THAN TEN DOLLARS**

*History Note: Authority G.S. 143-56; 143A-6;
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.*

SECTION .0300 - EMPLOYEE EXPENSE ADVANCES AND REIMBURSEMENTS

- 04 NCAC 01D .0301 SUBMISSION OF EXPENSE FORMS**
- 04 NCAC 01D .0302 FORMS**

*History Note: Authority G.S. 143A-6;
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.*

SECTION .0400 - SECOND INJURY FUND

- 04 NCAC 01D .0401 DEFINITION**

04 NCAC 01D .0402 DISBURSEMENTS
04 NCAC 01D .0403 DEPLETION OF FUND

History Note: *Authority G.S. 97-40.1; 143A-6;*
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.

SECTION .0500 - SALE OF FORMS AND ACTS

04 NCAC 01D .0501 REQUESTS FOR FORMS AND ACTS
04 NCAC 01D .0502 QUANTITIES AND PRICES

History Note: *Authority G.S. 97-81; 143A-6;*
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.

SECTION .0600 - LEASES

04 NCAC 01D .0601 RECORDS
04 NCAC 01D .0602 PREPARATION OF LEASES

History Note: *Authority G.S. 143A-6;*
 Eff. February 1, 1976;
 Repealed Eff. March 1, 1985.

SUBCHAPTER 01E - INDUSTRIAL AND POLLUTION CONTROL REVENUE BONDS

SECTION .0100 - PURPOSE AND DEFINITIONS

04 NCAC 01E .0101 PURPOSE OF SUBCHAPTER

The purpose of this Subchapter is to set out the procedures and criteria by and under which the Secretary of the Department of Commerce shall make the findings under his project approval responsibility as spelled out in North Carolina General Statutes Section 159C-7.

History Note: *Authority G.S. 159C-7;*
 Eff. August 2, 1976;
 Amended Eff. June 7, 1977;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0102 INDUSTRIAL PROJECT
04 NCAC 01E .0103 POLLUTION CONTROL PROJECT

History Note: *Authority G.S. 159C-7; 159C-3;*
 Eff. August 2, 1976;
 Amended Eff. March 1, 1983; February 11, 1980;
 Repealed Eff. March 1, 1985.

04 NCAC 01E .0104 OPERATOR

(a) An "operator" shall mean the persons or corporate entity entitled to the use or occupancy of a project. Where all or virtually all of the stock in one corporate entity is owned (either directly or indirectly) by another corporation (i.e., a relationship commonly known as a "parent--wholly-owned subsidiary") and where final management control rests with the parent, "operator" shall be construed so as to include the total corporate responsibility implied by such a relationship. Such presumption may be rebutted where the department finds clear and convincing evidence of the independence of the subsidiary from the parent.

(b) If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to Rules .0303 and .0307 of this Subchapter only with respect to the initial operator identified in the application for approval of the project. When the current operator discontinues serving as operator, and arrangements have been made by the obligor for a new operator, the new operator shall be subject to the approval of the Secretary pursuant to Rules .0303 and .0307 of this Subchapter.

(c) If an operator subsequently seeks to sell, to lease, or to sublease the project to a non-affiliated person(s) or entity, the operator must give written notice to the Department of Commerce including information prescribed by the secretary. This information shall include details of the proposed transaction, as well as name, address, NAICS code, and financial status of the non-affiliated person(s) or entity.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. August 1, 2000; March 1, 1983; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0105 OBLIGOR

History Note: Authority G.S. 159C-3(7); 159C-7;
Eff. August 2, 1976;
Repealed Eff. March 1, 1985.

04 NCAC 01E .0106 DEPARTMENT

The term "department" shall mean the Department of Commerce.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0107 SECRETARY

The term "secretary" shall mean the Secretary of the Department of Commerce, or his appointed designee.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0108 AUTHORITY

The term "authority" shall mean an authority created pursuant to North Carolina General Statutes Section 159C-4.

History Note: Authority G.S. 159C-4;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 - APPLICATION PROCEDURES

04 NCAC 01E .0201 GENERALLY

This Section provides the application procedures which shall be followed, including data and information submissions, before the secretary will make his final decision relative to project approval.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0202 PRE-APPLICATION CONFERENCE

(a) Authorities may advise the Department when the authority enters serious consideration of financing a project. The department shall assist the authority, as requested, within the limits of available resources. Information, liaison and coordination shall be effected by the Department through the Commerce Finance Center. Available services include:

- (1) provision of forms and documents relating to the application process with informative comments;
- (2) comment on the type of projects consummated by other authorities;
- (3) examination of and comment on assembled facts and data which might be used in the preparation of application;
- (4) analysis of likely or potential procedural or environmental problems.

(b) At least one week prior to submission to the Department of a project application, the authority shall arrange for a pre-application conference with the Department. Parties present at the pre-application conference will include representatives from the authority, the Department, the operator, the obligor, if other than the operator, the Local Government Commission, and the Department of Environment and Natural Resources or its successor agency.

(c) The purpose of the conference is to help ensure that application procedures and requirements are clearly understood.

(d) The operator shall offer verbal, and if available, written project descriptions. The operator will be encouraged to provide data relative to the character and volume of process wastes, water and air discharges of pollutants, as well as any comment already received from the Division of Environmental Management.

(e) Another purpose of this conference will be to reach an understanding among all parties that the project is of the type that may be considered for approval by the secretary.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; March 1, 1983; February 11, 1980; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0203 APPROVAL IN PRINCIPLE

No application for approval of the project will be officially received until the elected board of commissioners in the county from which the application is to be made, has, by resolution, approved in principle the proposed project and the issuance of bonds to finance or partially finance that project. That resolution will not be considered by the elected board of county commissioners until the public hearing required in Rule .0204 of this Subchapter has been completed. If the elected board of county commissioners delegates to the authority the responsibility for holding the public hearing and if that public hearing is not attended by a quorum of the elected board of county commissioners, the summary of the public hearing required in Rule .0204(d) of this Subchapter will be presented to the elected board of county commissioners prior to their consideration of the resolution. A certified copy of such resolution will be provided to the department as an addendum to the authority application.

*History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Temporary Amendment Eff. January 7, 1983 for a Period of 120 Days to Expire on May 7, 1983;
Amended Eff. March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0204 PUBLIC HEARING

(a) No application will be officially received until either the elected board of county commissioners or the authority, if so designated by the elected board, has held a public hearing on the advisability of the proposed project and the issuance of the bonds to finance or partially finance the project. The public hearing will take place after the completion of the preapplication conference required in Rule .0202 of this Subchapter. The department will be

notified of the public hearing at least three working days in advance of the hearing. That notice will specify the date, place and time of the hearing.

(b) The public notice of the public hearing must be given by the elected board or the authority by publication at least fourteen days prior to the public hearing in one or more newspapers of general circulation in the county. In addition to the place, date and time of the public hearing, the notice of the public hearing will indicate the date on which the authority entered into the inducement agreement with the proposed operator, the type of facility, its location, an estimate of the number of employees' jobs saved or added (except for pollution control projects for public utilities), the approximate cost of the project, the maximum principal amount of the bonds proposed to be issued by the authority, and the intention of the authority to submit to the department an application for approval of the project. The public notice of the public hearing shall also indicate that persons wishing to make written comment about the proposed project and the related bond issue may do so to the authority, to the elected board of county commissioners and to the Secretary of the Department of Commerce, or his designee, within fourteen days of the date of the publication thereof. Certification of the notice of the public hearing will be provided to the department as an addendum to the authority application.

(c) The applicant should be prepared at the public hearing to discuss the details concerning the proposed project and bond issue, including the following:

- (1) the site location;
- (2) the building specifications;
- (3) the type of operations to be conducted at the project;
- (4) pertinent environmental questions;
- (5) employment and wage projections, including whether the operator will meet or seek waiver of the wage test in Rule .0303 of this Chapter;
- (6) the size of the proposed bond issue; and
- (7) a description of plans for sale of the bonds.

(d) A summary of oral comment made at the public hearing, including a list of the names and addresses of those who spoke at the hearing, and a copy of any written comment received, will be prepared and made a part of the authority application.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Temporary Amendment Eff. January 7, 1983 for a Period of 120 Days to Expire on May 7, 1983;
Amended Eff. March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0205 FORMAL APPLICATION PROCEDURES: REQUIRED DATA: INFORMATION

(a) When making application for an approval of an industrial project for a prospective industry or for an existing industry, a pollution control project for a prospective industry or for an existing industry, or a pollution control project for a utility, the authority shall complete the pertinent application form developed by the secretary and made available by the Commerce Finance Center in the Department of Commerce.

(b) Any application which has factual data which is incomplete shall be returned to the authority with reasons for the return being stated in writing. Missing or deficient information shall be noted. Once the requested information is provided, the application will be accepted as officially received and processing shall begin.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0206 FORMAL APPLICATION PROCEDURES: PUBLIC HEARING

(a) Where the project has caused significant adverse public reaction as determined from the responses to the public notice or the public hearing held by the elected board of county commissioners, or the authority, or where the facts are unclear and do not support clear finding, the secretary may hold a public hearing on the proposed project for the

purpose of obtaining the views of the community to be affected. The community is hereby defined as the county in which the project is to be located.

(b) Public notice shall be given - least seven days prior to the hearing. The notice shall specify the date, time, place and subject matter of the hearing.

(c) A complete transcript of the hearing shall be prepared by the secretary. The secretary shall provide to the Secretary of the Department of Environment and Natural Resources a copy of the transcript.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. February 11, 1980; June 7, 1977;
Temporary Amendment Eff. January 7, 1983 for a period of 120 days to expire on May 7, 1983;
Amended Eff. April 1, 1999; March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0207 PROJECT CERTIFICATION FROM DENR: OR ITS SUCCESSOR AGENCY

(a) Prior to giving final consideration to the authority application, the secretary shall inform the Secretary of the Department of Environment and Natural Resources, or its successor agency, that the particular application is pending, shall furnish him with a copy of the authority application, and shall make a request that the Department of Environment and Natural Resources, or its successor agency, issue a certification, under G.S. 159C-7(3) that in the case of a proposed industrial project, the proposed project shall not have a materially adverse effect on the environment and that, in the case of the proposed pollution control project, the proposed project shall have a materially favorable impact on the environment or shall prevent or diminish materially the impact of pollution which could otherwise occur.

(b) Prior to making any of the findings required in 159C-7(1)(b) and (2), the Secretary of the Department of Commerce shall have received the project certification requested from the Department of Environment and Natural Resources, or its successor agency.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; February 11, 1980; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0208 FORMAL APPLICATION PROCEDURES: APPROVAL

(a) Where the secretary makes all the findings necessary, including discretionary approval where the operator of an industrial project does not pay an above average manufacturing wage or where there is an abandonment of an existing facility, he will do so in writing to the authority at the earliest possible date after following the procedures set forth in (b) of this Rule.

(b) The secretary will prepare a certificate of approval in which all his findings are set forth and cause this certificate to be published in a newspaper of general circulation within the county. If no appeal is taken within a 30-day period from date of notice or after the successful expiration of any appeal process, the secretary will forward the certificate of approval to the authority.

*History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. March 1, 1983; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0209 FORMAL APPLICATION PROCEDURES: DENIAL

(a) Where there is significant unresolved public controversy or where the secretary is unable to make one or more required findings, the secretary will so indicate in writing and with specificity the reasons for denial.

(b) The secretary in his letter shall indicate that the authority is invited to prepare a presentation, either written or oral which speaks factually to the unresolved issues. The secretary or his designee will be present at the meeting to

hear and discuss the issues with the authority. It will be the responsibility of the authority to persuade the secretary that he should make all the necessary findings.

(c) Where the authority does accomplish its responsibility to persuade the secretary, further procedures shall be as in .0208 of this Section.

(d) Where the authority does not accomplish its responsibility to persuade the secretary, the secretary shall notify the authority of his decision in writing specifying the reasons for denial.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0210 REIMBURSEMENT OF EXTRAORDINARY EXPENSE

Where the department finds it necessary to incur "extraordinary" expense pertinent to consideration of/or the approval of an authority application, the department will expect to be reimbursed for those expenses by the authority or its proposed lessee. The expenditure will not be made or committed except as agreed to by the authority. Such expenditures will be confined to those costs to be incurred relative to a particular application, such as the "out-of-pocket" costs relative to "out-of-state" trips made by the secretary, or his designee, or the cost of advertising the certificate of approval.

History Note: Authority G.S. 159C-7;
Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0300 - REVIEW CRITERIA

04 NCAC 01E .0301 GENERAL

In order for the secretary to approve a project he must make certain findings as specified in G.S. 159C-7(1) or (2) and (3). It is the purpose of this Section to specify the standards and criteria the secretary will use in making his findings.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0302 JURISDICTIONAL FINDINGS

(a) Before the department can begin to make technical findings specified in G.S. 159C-7(1) to (3), a finding must be made that the project is either:

- (1) an industrial project for industry,
- (2) a pollution control project for industry, or
- (3) a pollution control project for public utility, as defined in G.S. 159C-3, and as defined in Article V, Section 9 of the constitution of North Carolina.

(b) The department shall use the definitions of those terms found in Section .0100 of this Subchapter to make those jurisdictional findings.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0303 MANUFACTURING WAGE TEST

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Temporary Amendment Eff. January 7, 1983 for a period of 120 days to expire May 7, 1983;
Amended Eff. March 1, 1985; November 1, 1984;
Temporary Amendment Eff. September 15, 1988 for a period of 180 days to expire March 14, 1989;
Amended Eff. April 1, 1999; July 1, 1989; March 1, 1989;
Repealed Eff. March 1, 2005.

04 NCAC 01E .0304 NO MATERIALLY ADVERSE EFFECT ON THE ENVIRONMENT TEST
04 NCAC 01E .0305 MATERIALLY FAVORABLE IMPACT TEST

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. March 1, 1983; February 11, 1980; November 21, 1978; June 1, 1977;
Repealed Eff. March 1, 1985.

04 NCAC 01E .0306 JOBS SAVED OR GENERATED TEST

(a) G.S. 159C-7 specifies that in the case of either "... an industrial or a pollution project, except a pollution control project for a public utility, (a), that the jobs to be generated or saved, directly or indirectly by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project."

(b) The department shall use as a guideline, a standard of requiring one job saved or generated for each two hundred fifty thousand dollars (\$250,000) of bond financing. This ratio may be lower and still acceptable depending upon other critical factors, including but not limited to:

- (1) the wage scale of the facility;
- (2) the present economic situation in the county;
- (3) the effect of the facility on the tax base of the county;
- (4) the expected effect that the industrial facility will have on the development of new industry and services as well as any other factors which the applicant feels pertinent to the issue.
- (5) the machinery and equipment financed is "state of the art" in technology increasing efficiency with moderate effect on employment.

(c) The applicant has the burden of demonstrating that the jobs saved or generated will have a measurable impact on the county. The applicant must show by clear and convincing evidence the number and type of such jobs generated or saved.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; March 1, 1983; February 11, 1980; November 21, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0307 CAPABILITY TEST

(a) G.S. 159C-7 specifies that in the case of either "...an industrial or a pollution control project, except for a public utility, that the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such a project...."

(b) The applicant has the burden of showing that capability exists in the operator to operate and maintain the facility efficiently and effectively. Financial strength and prior related experience by the operator will be given great weight. Where little or no prior experience can be demonstrated, the qualifications of management, including production or engineering staff, as applicable, will be of great significance.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. November 21, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0308 ABANDONMENT TEST

- (a) G.S. 159C-7 specifies that in the case of either "an industrial or a pollution project, except a pollution project for a public utility, that the financing of such project by the authority will not cause or result in abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the state unless the facility is to be abandoned because of obsolescence, lack of available labor, or site limitations."
- (b) The department shall consider an abandonment statement as prima facie proof of lack of abandonment.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0309 THE SECRETARY'S FINDINGS

- (a) Unless the applicant has met his various burdens of proof, the secretary shall not make his required findings.
- (b) All findings shall be in writing and where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SUBCHAPTER 01F - GUARANTY AGAINST LOSS RESERVES AND LOANS FOR BASIC INDUSTRIAL BUILDINGS

SECTION .0100 - PURPOSE AND DEFINITIONS

- 04 NCAC 01F .0101 PURPOSE OF SUBCHAPTER**
- 04 NCAC 01F .0102 GOALS AND POLICIES**

History Note: Authority G.S. 143B-428; 143B-429; 143B-430; 143B-432; 143B-434(a); 143B-434(c);
Eff. February 11, 1980;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0200 - DEFINITIONS

- 04 NCAC 01F .0201 BASIC INDUSTRIAL BUILDINGS**
- 04 NCAC 01F .0202 DEVELOPER ENTITY**
- 04 NCAC 01F .0203 INDUSTRIAL BUILDER**
- 04 NCAC 01F .0204 OBLIGOR**
- 04 NCAC 01F .0205 CONSTRUCTION LOAN LENDER**
- 04 NCAC 01F .0206 CONSTRUCTION LOAN**
- 04 NCAC 01F .0207 ALLOWABLE JOB COSTS**
- 04 NCAC 01F .0208 GUARANTY AGAINST LOSS RESERVE**
- 04 NCAC 01F .0209 INTEREST RATES**

History Note: Authority G.S. 143B-429; 143B-430; 143B-434(a); 143B-434(c);
Eff. February 11, 1980;
Amended Eff. March 1, 1983;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0300 - APPLICATION PROCEDURES

04 NCAC 01F .0301	GENERALLY
04 NCAC 01F .0302	NEED DETERMINATION: BASIC BUILDINGS
04 NCAC 01F .0303	PREAPPLICATION CONFERENCE
04 NCAC 01F .0304	PUBLIC NOTICE
04 NCAC 01F .0305	FORMAL APPLICATION PROCEDURES: REQUIRED DATA: INFORMATION
04 NCAC 01F .0306	STAFF APPROVAL AND REVIEW
04 NCAC 01F .0307	FORMAL APPLICATION PROCEDURES: DESIGNATION
04 NCAC 01F .0308	FORMAL APPLICATION PROCEDURES: DENIAL
04 NCAC 01F .0309	TERMINATION OF AGREEMENT

History Note: Authority G.S. 143B-429; 143B-430;
 Eff. February 11, 1980;
 Amended Eff. March 1, 1983; March 25, 1980;
 Temporary Rule Eff. February 27, 1987 for a Period of 120 Days to Expire on
 June 27, 1987;
 Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0400 - REVIEW CRITERIA AND STANDARDS

04 NCAC 01F .0401	GENERAL
04 NCAC 01F .0402	JURISDICTION DETERMINATIONS
04 NCAC 01F .0403	EXPERIENCED INDUSTRIAL BUILDER
04 NCAC 01F .0404	INVOLVEMENT OF COMMUNITY LEADERSHIP
04 NCAC 01F .0405	THE INDUSTRIAL SITE
04 NCAC 01F .0406	BUILDING SPECIFICATIONS AND MATERIALS
04 NCAC 01F .0407	WATER SERVICE
04 NCAC 01F .0408	SEWER SERVICE
04 NCAC 01F .0409	RAIL SERVICE
04 NCAC 01F .0410	NATURAL GAS
04 NCAC 01F .0411	LABOR AVAILABILITY
04 NCAC 01F .0412	PROFESSIONAL INDUSTRIAL DEVELOPER
04 NCAC 01F .0413	FINANCING PROGRAMS

History Note: Authority G.S. 143B-429; 143B-430; 143B-432; 143B-434(a); 143B-434(c);
 Eff. February 11, 1980;
 Amended Eff. March 1, 1983;
 Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 01G - LOW-INCOME HOUSING TAX CREDIT PROGRAM

SECTION .0100 - GENERAL DESCRIPTION

04 NCAC 01G .0101	BACKGROUND
04 NCAC 01G .0102	OBJECTIVES
04 NCAC 01G .0103	DEFINITIONS

History Note: Authority G.S. 143B-429; 143B-430; Rev. Code Sec. 42; Fed Reg 26 CFR 1.42-1T;
 Eff. November 1, 1987;
 Temporary Rule Eff. October 16, 1987, for a Period of 120 Days to Expire on
 February 13, 1988;
 Temporary Rule Eff. April 27, 1987, for a Period of 120 Days to Expire on
 August 24, 1987;
 Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0200 - REQUIREMENTS

04 NCAC 01G .0201 ELIGIBLE PROJECTS
04 NCAC 01G .0202 APPLICATION PROCEDURE
04 NCAC 01G .0203 FEES

History Note: Authority G.S. 143B-429; 143B-430; Rev. Code Sec. 42; Fed Reg 26 CFR 1.42-1T; Temporary Rule Eff. October 16, 1987, for a Period of 120 Days to Expire on February 13, 1988; Temporary Rule Eff. April 27, 1987, for a Period of 120 Days to Expire on August 24, 1987; Eff. November 1, 1987; Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0300 - SELECTION PROCESS

04 NCAC 01G .0301 REVIEW OF APPLICATIONS
04 NCAC 01G .0302 APPROVAL OR REJECTION OF APPLICATION

History Note: Authority G.S. 143B-429; 143B-430; Rev Code Sec. 42; Fed Reg 26 CFR 1.42-1T; Temporary Rule Eff. October 16, 1987, for a Period of 120 Days to Expire on February 13, 1988; Temporary Rule Eff. April 27, 1987, for a Period of 120 Days to Expire on August 24, 1987; Eff. November 1, 1987; Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 01H - PRIVATE ACTIVITY BOND VOLUME CAPACITY PROGRAM

SECTION .0100 - GENERAL DESCRIPTION

04 NCAC 01H .0101 BACKGROUND

The rules of this Subchapter apply to the administration of the Private Activity Bond Volume Capacity Program. Made necessary by Federal legislation, this program will relate to a type of financing now defined and controlled as "private activity" bonds. Executive Order No. 37, issued by Governor James G. Martin on March 17, 1987 is a response to federal mandates. It is hereby referenced and incorporated herein as if fully set out in this Paragraph.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0102 OBJECTIVES

The purpose of this Subchapter is to set out the procedures and criteria by and under which the North Carolina Federal Tax Reform Allocation Committee will carry out the duties set out in Executive Order No. 37 and Chapter 588 of the 1987 General Assembly Session of North Carolina.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0103 DEFINITIONS

(a) Act - shall mean the Tax Reform Act of 1986, as amended.

- (b) Committee - shall mean the North Carolina Federal Tax Reform Allocation Committee created by Executive Order No. 37.
- (c) Department - shall mean the North Carolina Department of Commerce.
- (d) Issuer - shall mean the entity authorized to issue Private Activity Bonds, except that in the case of Private Activity Bonds issued pursuant to Article 22 of Chapter 160A of the General Statutes of North Carolina, or issued solely pursuant to regulations, rules, procedures or rulings of the Internal Revenue Service of the United States, "Issuer" shall mean the municipal corporation which created the issuing commission or the municipal corporation which approved the issuance of the bonds pursuant to such regulations, rules, procedures or rulings.
- (e) "Private Activity Bond" - will mean any instrument of debt defined by federal law and regulation as a Private Activity Bond, thusly requiring an allocation of Private Activity Bond Volume capacity.
- (f) "Private Activity Bond Volume Capacity" - will constitute a statewide resource which is measured by a formula contained in the Federal Tax Reform Act of 1986, as amended. The resource will constitute a total volume limitation of such bonds that can be issued by North Carolina issuers.
- (g) "Uniform Volume Limitations" - shall mean the total volume capacity for North Carolina allowed by the formula contained in federal legislation pertaining to private activity bonds.
- (h) "Election as Carryforward Purpose" - shall mean a designation made by the committee under the definitions continued in federal legislation. Generally, it allows an allocation made from the present year volume capacity to be used in a named subsequent year.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 - APPLICATIONS AND PROCEDURES

04 NCAC 01H .0201 GENERAL

This Section provides the application procedures which shall be followed, including data and information submissions, before the committee will make the final decision relating to allocations of capacity for private activity bonds.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0202 INFORMATION AND APPLICATIONS

- (a) Issuers and interested parties may obtain general information pertinent to this program at:
- (1) The North Carolina Department of Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, NC 27699, (919) 814-4613.
 - (2) Department of State Treasurer, 3200 Atlantic Avenue, Raleigh, NC 27604, (919) 814-4300.
- (b) Applications may be filed at either of the above addresses, but for the most part, should be directed to the Director of the Commerce Finance Center in care of the Industrial Financing Group in the Department of Commerce, 4318 Mail Service Center, Raleigh, NC 27699, (919) 814-4613.
- (c) Applications will include the following as a minimum:
- (1) Pertinent facts as to the project being financed;
 - (2) Details of sale and market distribution;
 - (3) Details as to the economic benefit to the area impacted by the project;
- (d) Applications will be processed by the Director or staff available to the Director.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016; Amended Eff. December 1, 2019.

04 NCAC 01H .0203 FORMAL PROCEDURES: APPROVAL

When the committee can approve the Allocation of Capacity, the chairman, or his designee, will indicate in writing and describe any terms or conditions of the allocation, including the expiration date of the allocation. Any unused portion of the allocation will revert back to the statewide pool of volume resource. The use of any allocation is predicated on the Issuer of the bonds, within ten business days after such issue, advising in writing, that the allocation has been used, and stating the amount of unused allocation. All allocations will be issued with a stated time of expiration. If the Issuer becomes aware that the bond closing cannot be effected within the time scheduled, he may apply for an extension. In the case of a time extension, the Issuer will provide written confirmation from all parties to the transaction that they have seen and agreed to all terms and conditions for the financing.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0204 FORMAL PROCEDURES: DENIAL

When the committee is unable to approve the application, the chairman, or his designee, will so indicate in writing, including with specificity, the reasons for such denial.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0300 - REVIEW CRITERIA

04 NCAC 01H .0301 GENERAL

It is the purpose of this Section to specify the standards and the criteria the committee will use in making decisions.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0302 ESTABLISHMENT OF AVAILABILITY CAPACITY

The committee will determine the amount of the Uniform Bond Limitations for Private Activity Bonds available in North Carolina for the pertinent years. These formulas are contained in federal legislation.

History Note: Authority G.S. 143B-429; 143B-320; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01H .0303 CONSIDERATIONS OF THE CAPACITY RESOURCE USAGE AND DEMAND

The committee will consult with informed authorities, with Issuers, and with legislative lenders. When it appears that the demand for the resource will be so large that the needs of all issuers might not be met, the committee will make allocations on a first-come, first-serve basis. When demand, or potential demand, becomes so large that the resource will prove to be inadequate, the committee would consider, but not limit their consideration of approvals to the following:

- (1) the overall good of the state and the people of North Carolina;
- (2) relative economic need and benefit to the Issuer and the area to be impacted by the following:
 - (a) whether or not alternative structure or mechanisms for the project agreements and the financing documents might resolve or reduce the need for a "private activity bond" capacity allocation;
 - (b) whether or not the Issuer is in competition with another out of state Issuer for the project benefits such as jobs and tax base;

- (c) whether or not the availability of the allocation is a crucial part of keeping an existing industrial plant open, whereas the alternatives would be for that plant to close.

History Note: Authority G.S. 143B-429; 143B-430; Ch. 588 (1987 Session Law); Eff. December 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0400 – RECOVERY ZONE BONDS

04 NCAC 01H .0401	BACKGROUND
04 NCAC 01H .0402	DEFINITIONS
04 NCAC 01H .0403	PROCEDURES
04 NCAC 01H .0404	REALLOCATION

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009; Temporary Adoption Eff. December 23, 2009; Temporary Rule Expired June 30, 2012.

SECTION .0500 - QUALIFIED ENERGY CONSERVATION BONDS

04 NCAC 01H .0501 PROCEDURES AND CRITERIA FOR ALLOCATION OF QUALIFIED ENERGY CONSERVATION BONDS

(a) The North Carolina Tax Reform Allocation Committee (the "Committee") shall allocate Qualified Energy Conservation Bond ("QECCB") capacity to entities eligible to issue the bonds under 26 U.S.C.S. 54D as follows:

- (1) To "large local governments," as the term is used in 26 U.S.C.S. 54D(e)(2) in the amounts and manner as directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>). For purposes of calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS (as listed at <http://www.census.gov/popest/data/counties/totals/2009/CO-EST2009-01.html> and <http://www.census.gov/popest/data/cities/totals/2009/SUB-EST2009-4.html>).
- (2) To "Indian tribal governments," as the term is used in 26 U.S.C.S. 54D(h) in the amounts as directed by the IRS in 26 U.S.C.S. 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as modified, amended or supplemented (as listed at <http://www.irs.gov/irb/2009-16irb/ar10.html#d0e3578>).

(b) Following the allocations described in Paragraph (a) of this Rule, the Committee shall allocate the remaining QECCB capacity to other issuers. The allocation shall be made by the Committee upon completed application by an issuer, and after consideration of the following factors:

- (1) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECCB private activity bonds under IRS rules, regulations and guidelines;
- (2) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
- (3) The extent to which the project demonstrates the potential to conserve energy;
- (4) The extent to which the project supports the development or implementation of energy conservation technology;
- (5) The extent to which the project uses renewable resources to produce energy;
- (6) The number of citizens benefiting from the project;
- (7) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECCB authority per job produced;

- (8) The readiness of the project to proceed;
- (9) The certainty of the issuer using the allocation within the estimated timelines;
- (10) The amount of other public and private funding leveraged by the QECB allocation;
- (11) The amount of local community support for the project;
- (12) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
- (13) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
- (14) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
- (15) The ability of the unit of local government or company benefiting from the QECB to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;
- (16) The total amount of capacity available to the Committee for allocation in relation to the total number of pending requests for allocation;
- (17) The tier status of the county in which the project is to be located, as defined in G.S. 143B-437.08; and
- (18) The geographic location of the project in light of the location of other projects benefitting from QECB capacity.

(c) If so required by G.S. Chapter 159 or G.S. 160A-20, local governments shall coordinate issuance of QECBs with and through the North Carolina Local Government Commission (the "LGC") in the Office of the North Carolina State Treasurer and shall obtain approval from the LGC for QECB issuance.

(d) Entities allocated QECB capacity by the Committee and entities who issue QECBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to the allocation or issue.

(e) Entities receiving an allocation under Paragraph (a) of this Rule ("large local governments" and "Indian tribal governments") may waive or reallocate to the State of North Carolina all or a portion of their allocation. Upon the State's receipt of any additional QECB capacity through any waiver or reallocation, the Committee shall allocate the capacity to eligible issuers in the manner described in Paragraph (b) of this Rule.

(f) To ensure timely use of any QECB allocation, the Committee shall attach to an allocation of capacity made under Paragraph (b) of this Rule contingencies relating to a time deadline for issuance of the QECBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECB capacity for public or private activity bonds.

*History Note: Authority G.S. 143-433.6(d); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475;
Emergency Adoption Eff. July 15, 2011;
Temporary Adoption Eff. September 8, 2011;
Eff. July 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SUBCHAPTER 01I – INDUSTRIAL DEVELOPMENT FUND

SECTION .0100 – PURPOSE AND DEFINITIONS

04 NCAC 01I .0101 BACKGROUND AND OBJECTIVES

(a) BASIC - The purpose of the North Carolina Industrial Development Fund is to assist town, city or county governments with incentive industrial financing in areas of the state that have been designated as eligible tier areas by NC General Statutes. This assistance is intended to help units of government offer to its new and expanding industry, new or improved infrastructure, or funds for building renovation and equipment in exchange for commitments to create new, full-time jobs in industries currently eligible under NC General Statutes. (The fund is not designed to be used for the acquisition of land and buildings or constructing new buildings.) If the assistance is used for infrastructure, it shall be granted to local governments with no repayment; however, if it is used to purchase equipment or to renovate industrial buildings, then the funds must be repaid. But whether a grant or a loan, the

amount of funds to be made available for a project shall be determined by the number of new jobs committed, with a maximum job limit and project limit as currently authorized for the program by NC General Statutes.

(b) EMERGENCY ECONOMIC DEVELOPMENT ASSISTANCE - This special assistance from the Industrial Development Fund is available to units of government that have, or shall imminently experience, a loss of 500 or more manufacturing jobs in the county, or a number of manufacturing jobs equal to at least 10% of the manufacturing workforce in the county. Where a unit of government relies on the 500 jobs lost as the threshold for obtaining this special assistance, it must submit evidence that the loss impacts the county's economy, taking into account the county's tier ranking under Rule .0701 of this Subchapter. The funding obtainable under this emergency assistance category shall not necessarily be determined by the number of new jobs to be created, although the project should lead to new jobs or saved jobs or both and help alleviate a jobs dislocation problem. The Secretary shall determine the amount of funds for a project, up to the maximum currently authorized for the program by NC General Statutes. This assistance shall be in the form of a low interest loan to the governmental unit, amortized over five years with repayment beginning at the end of the second year.

(c) UTILITY ACCOUNT - Within the IDF structure, the Utility Account provides financing to units of government for jobs creation and investment in the tier area(s), and for benefiting firms currently authorized by NC General Statutes. Funds may be used for construction or improvements to water, sewer, gas, or electrical utility lines and equipment for existing or proposed industrial buildings. There is no specific amount of funding specified for each new job or project, but the impact of the funding shall lead to the creation of new jobs and new investment. As with basic IDF financing, if Utility Account funds are spent for public property, the assistance shall be a grant; for private property, it shall be a loan.

*History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. July 1, 2012; August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01I .0102 DEFINITIONS

(a) These definitions apply to all parts of the Industrial Development Fund including the Basic Emergency Economic Development Assistance, Utility Account and Clean Water Bonds for Economic Development:

- (1) "Department" means the North Carolina Department of Commerce, or its Secretary.
- (2) "Applicant" means a North Carolina unit of government that applies for IDF funds.
- (3) "Industrial Development Fund" as referenced in G.S. 143B-437.01 means the fund within the Department's fiscal structure in which the appropriation of monies for industrial development projects is received and disbursed.
- (4) "IDF" means the Industrial Development Fund.
- (5) "Eligible tier areas" means the aggregation of North Carolina counties into groups in which certain economic benefits apply, as currently authorized by G.S. 105-129.3.
- (6) "Unit of Government" means a town, city or county of the state.
- (7) "Full-time Job" means a job that requires at least 1600 hours of work in a year.
- (8) "Infrastructure" means utilities, typically referred to as "public utilities," or a rail spur where there is public ownership of the rail property.
- (9) "Grant" means money given to a unit of government to pay for an economic development project and does not have to be repaid, if the terms of the grant are fulfilled, i.e. the jobs commitment is met.
- (10) "Loan" means money loaned to a unit of government to pay for an economic development project, to be repaid by the borrower.
- (11) "Project" means an activity proposed for IDF funding. It shall be described narratively in an application and accompanied by a preliminary set of drawings, or sketches, or other data that present the project in factual detail, together with a schedule or itemization of costs from an engineer or contractor. The schedule of costs shall constitute the ability to complete a project with no more than a 10 percent contingency.
- (12) Project expenditures means:

- (A) For basic IDF -
- (i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur when either is publicly owned and operated, and or;
 - (ii) the renovation of buildings including structural repairs, repairs, addition of docks, erection of walls, structural supports for heavy equipment, electrical upgrades, or HVAC upgrades;
 - (iii) improvements that are necessary to make a building suitable for occupancy by the operator of the project. Such improvements may include mechanical equipment such as heating and air conditioning equipment, plumbing, pipes or trenching to handle effluents or process water, special electrical additions and lighting. If an improvement is critical to the operation of a or is critical to the decision making process pertinent to the creation of jobs, the actual improvement need not be located on the site of the main project building. If, however, a grant of funds is involved, the improvement must be constructed on public right-of-ways or on property which the unit of government has an easement to treat as it normally would do as if it owned the property. However, when extending infrastructure to a firm, IDF assistance ends at the private property line. In either situation, the application must document the exact relationship between the jobs and the project. An example of a fundable project would be where the unit of government must construct an elevated water tank and service lines to provide water to a building where such service is directly required to operate an industrial-business. An example of an unfundable project would be where a unit of government seeks to expand or to repair its water utility (or other infrastructure) system and where the relationship to the creation of jobs is fairly general or vague. The project shall be described from the perspective of employment to be created and its impact to the project.
 - (iv) the purchase and installation of equipment that is associated with the industrial classification of the project.
- (B) For Emergency Economic Development Assistance -
Loans to local units of government for economic development projects designed to create jobs, lead to the creation of jobs, or save jobs, and to assist in alleviating the economic dislocation created by the loss of jobs.
- (C) For the Utility Account -
- (i) the construction of, or improvements to water, sewer, gas or electrical utility systems, distribution lines, or required storage facilities, or a rail spur or rail line when either is publicly owned and operated, and/or
 - (ii) equipment for existing or proposed industrial buildings for operations in the industrial classifications that are currently eligible to receive Utility Account.
- (D) For Clean Water Bonds -
- (i) the construction of or improvements to new or existing water or sewer distribution lines or equipment,
 - (ii) the construction or improvements to new or existing wastewater treatment facilities, or
 - (iii) improvements that will expand the capacity of existing wastewater treatment facilities or water supply systems.
- (13) "State" means the State of North Carolina.
- (14) "Application" means the pages of documents in which an applicant for IDF funds identifies itself, describes a project, specifies the funds required, provides a breakdown of project costs, and submits the benefiting firm's commitment to create jobs and evidence of its credit worthiness.
- (15) "Local Matching Funds" means funds of a unit of government contributed to an economic development project for the purpose of assisting in a total financing package and earning (or winning) other funds by doing so. Matching is usually expressed as a ratio, i.e. one local dollar for three state dollars, or one for three.
- (16) "Participation Loan" means a loan among at least three parties, including: A bank or financial institution, the private firm, and the unit of government. The essence of a participation loan is that

- the bank, or financial institution, and the unit of government shall share at least equally in the lending arrangements, meaning the money loaned and the risk involved and collateral shared.
- (17) "Borrower" means the private firm identified in a participation loan for building improvement or equipment in the basic IDF, or the unit of government when the money is spent for emergency economic dislocation assistance or when the money is reloaned in a utility account project. Additionally, the unit of government shall be the borrower when IDF is used to assist local matching, or in other cases when the Department believes the project can be more prudently structured as a loan rather than a grant.
- (18) "Preapplication Conference" means a meeting held at the Department to discuss a proposed IDF application and includes: a representative of Commerce Finance Center; the applicant; an official of the benefiting firm; and a banker, if a participation loan is involved. A preapplication conference may be waived when the total IDF expenditures are expected to be fifty thousand dollars (\$50,000) or less.
- (19) "Clean Water Objectives of the State" include:
- (A) Reducing the reliance on wells, septic tanks and similar facilities;
 - (B) Allowing residences, businesses, or local governments not otherwise served by water or sewer or wastewater infrastructure to connect into a distribution line or system (for water supply, sewer, or wastewater) being furnished in an economic development project for new or expanding industry.

(b) "Local Matching Requirement." The Department requires local matching in grant projects except for Emergency Economic Development Assistance projects and those located in a tier area that has been exempted from matching by NC General Statutes. The required rate shall be one for three, or one local dollar for each three state dollars.

History Note: Authority G.S. 143B-437.01; 105-129.3;
 Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;
 Eff. May 1, 1988;
 Temporary Amendment Eff. January 11, 1990 for a Period of 180 Days to Expire on July 9, 1990;
 Amended Eff. September 1, 1990;
 Temporary Amendment Eff. January 11, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Amendment Eff. October 6, 1999;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 – GENERAL REQUIREMENTS

04 NCAC 01I .0201 DATE OF RECEIPT OF APPLICATIONS

The Department shall receive applications after November 15, 1987 on a first-come, first-serve basis. An application shall be assigned a processing number when it is received and is judged sufficiently complete for consideration. When possible, applications shall be processed in the order of the processing numbers assigned.

History Note: Authority G.S. 143B-437.01;
 Temporary Rule Eff. November 16, 1987 for a Period of 180 Days to Expire on May 15, 1988;
 Eff. May 1, 1988;
 Temporary Amendment Eff. January 11, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
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04 NCAC 01I .0202 APPLICATION CATEGORIES AND REQUIREMENTS

(a) Applicants may apply for funding under the following categories:

- (1) Basic IDF;
- (2) Emergency Economic Development Assistance;

- (3) The Utility Account; and
- (4) Clean Water Bonds Proceeds.

(b) There is no set minimum amount of funding which applicants may request to be awarded. If there are practical difficulties about a small amount or cost disadvantages, these shall be discussed with the applicant in a preapplication conference. IDF awards shall not exceed the total amount appropriated by the General Assembly in its appropriation process. For basic IDF, Emergency Economic Development Assistance, and Clean Water Bonds Proceeds, per job or per project maximum funding limitation will be the amounts established under current law. There is no maximum set for Utility Account funding; but the amount of awards shall be determined by the Secretary. For basic IDF, the per job limitation shall be applied on the basis of requiring a commitment from the operator of the business as to the number of jobs that shall be created over a reasonable period of time, not to exceed three years. Those shall be permanent, full-time jobs; no temporary or contract jobs.

(c) Under basic IDF, improvements to building properties and equipment purchases (either of which becomes private property) shall be loan projects and shall be accomplished with participation loans. The three parties to a participation loan shall be: the borrower's North Carolina bank, the borrower, and the unit of government. The bank shall commit at least as much funding as the unit of government, with the risk and collateral shared on a pro rata basis. Also, in the matter of sharing equally, this means that if the bank takes a certain collateral position, the unit of government shall share in that position. The participation by a financial institution based outside North Carolina may be done at the Secretary's (or his designate) discretion, based on findings made by Department staff concerning that institution's capacity for the proposed loan project. Such findings may include documentation of the bank's charter or institution type, credit reports, and documentation of the institution's financial history with the project company or companies.

(d) IDF funds may be loaned to a unit of government to meet matching funds requirements. In this case the Department shall furnish a loan repayment schedule to the mayor, city manager or county manager, which, in addition to the award letter and application, shall establish the responsibility for repayment, and times and amounts of repayment.

(e) Loans for Emergency Economic Development projects shall be accomplished as in Paragraph (d) of this Rule.

(f) Loans for Utility Account projects shall be accomplished as in Paragraph (d) of this Rule.

(g) With either grants or loans, the Department shall require financial information from the project owner or operator to establish financial capability. The usual requirement shall be the preceding three years' financial and operating statements; for new businesses, at least three years pro forma statements and a business plan. In any case, the Department may use credit reports, bank information, or other data that it deems appropriate to establish the credit worthiness of the borrower.

(h) A project shall be subject to review by the Department at any time during the first three years after the project begins.

(i) The Department may require a unit of government to partially or fully accelerate loan repayments if the operator's business has closed, moved, or if the company has not reached 90% of its job creation commitment within twenty-four months of the grant approval date. The Department may require repayment of a grant, partially or fully, if the operating company has moved, closed, or has not created 90% of its job creation commitment; and, in the case of Emergency Economic Development Assistance or the Utility Account, if funds are not spent for the specific activities which were approved in the project application.

*History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0300 – SELECTION PROCESS

04 NCAC 01I .0301 REVIEW OF APPLICATIONS AND FUNDING

(a) When an application is deemed complete, it shall be assigned a processing number.

(b) Applications may be submitted directly to the Secretary of the Department. They may also be submitted to the Department's Commerce Finance Center, 301 North Wilmington Street, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318. Applications shall be approved or denied by the last day of the calendar month following assignment of a processing number. When possible, applications shall be processed in the order that processing numbers are assigned.

*History Note: Authority Chapter 754, 1989 S.L.;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1998;
Amended Eff. September 1, 1990;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01I .0302 ELIGIBILITY REQUIREMENTS

Applications shall show that:

- (1) This funding is a vital part of the proposal to create the jobs set out and that the jobs shall not be created if the project goes unfunded;
- (2) For Emergency Economic Development Assistance Projects, the project is completely funded or financed, except for the particular funds sought in the application;
- (3) The involvement of the local unit of government is authorized by its elected board under specific resolution and by specific State Statute;
- (4) The participating private entity has provided a statement of commitment relating to the project. That commitment shall state that the project is to be carried out as described in the application, with specificity as to time schedules and to the parties involved;
- (5) The expenditure of private money on the project has not begun;
- (6) The project has not yet begun, i.e. money spent on the project, or public announcements made that the benefiting firm plans to do the project before the Department has been requested to participate with IDF;
- (7) For Emergency Economic Development Assistance Projects, there exists an emergency in the economy large enough to be considered an economic dislocation as set out in G.S. 143B-437.01 (a)(1a); and
- (8) The project for which funding is sought might help to alleviate the economic emergency described in Item (7) of this Rule.

*History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
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04 NCAC 01I .0303 REVIEW: APP/FUNDING/EMGCY ASST PROJ DEFINED/RULE .0102(H)

*History Note: Authority S.L. 1989, c. 754;
Eff. September 1, 1990;
Temporary Repealed Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repealed Eff. October 6, 1999;
Repealed Eff. August 1, 2000.*

04 NCAC 01I .0304 ELIGIBILITY REQ/EMGY ASST PROJ DEFINED/RULE .0102(H)

*History Note: Authority S.L. 1989, c. 754;
Eff. September 1, 1990;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repeal Eff. October 6, 1999;
Repealed Eff. August 1, 2000.*

SECTION .0400 – APPROVAL CRITERIA

04 NCAC 01I .0401 GENERAL

*History Note: Filed as a Temporary Amendment Eff. January 11, 1990 for a Period of 180 Days to Expire on July 9, 1990;
Filed as a Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Authority S.L. 1987, c. 830, s. 111 of Part XXII, S.L. 1989, c. 754, s. IX;
Eff. May 1, 1988;
Amended Eff. September 1, 1990;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repeal Eff. October 6, 1999;
Repealed Eff. August 1, 2000.*

04 NCAC 01I .0402 REQUIRED FINDINGS

- (a) Before the Department shall approve a project, a finding must be made that the project:
- (1) shall assist a unit of Government in one of eligible tier areas of the State; and
 - (2) the funds shall be used for renovation of buildings or infrastructure or equipment by firms that have industry classifications currently eligible for tax incentives under G.S. 105-129.4.
- (b) The Department shall document a finding based on data provided in the application or by staff research, that the jobs to be created by a project, over no more than a three year period, shall be large enough in number to have a measurable favorable impact on the area immediately surrounding the project and shall be commensurate with the size and cost of the grant to the project. The applicant has the burden of demonstrating that the jobs shall have a measurable impact on the county. The applicant must show by clear and convincing evidence the number and type of such jobs generated.
- (c) The Department shall make a finding that the operator of the proposed project has demonstrated the capabilities to operate such a facility. The applicant shall show that capability exists in the operator to operate and maintain the facility efficiently and effectively. Financial strength and prior related experience by the operator shall be evaluated. Where little or no experience can be demonstrated, the qualifications of management, including production or engineering staff, as applicable, shall be of prime significance.
- (d) The Department shall make a finding that IDF financing for a project shall not cause or result in the abandonment of an existing similar industrial facility of the proposed operator or an affiliate elsewhere in the State unless the facility is to be abandoned because of obsolescence, lack of available labor, or site limitations. The Department shall consider an abandonment statement as prima facie proof of lack of abandonment.
- (e) For Emergency Economic Development projects, the Department shall make a finding that:
- (1) the economic emergency exists, or is imminent and;
 - (2) the project shall, or shall tend to, alleviate the especially severe economic emergency caused by the described economic dislocation.
- (f) For Utility Account projects, the Department shall make a finding that the proposed funding will create new jobs or reasonably be expected to lead to the creation of new jobs in the industries currently eligible for Utility Account financing assistance as specified in G.S. 143B-437.01(b1).
- (g) For Clean Water Bonds projects, the Department shall make a finding that the proposed project will have a favorable impact on the Clean Water Objectives of the State.
- (h) The Department shall use the definitions of terms found in Rule .0102 of this Subchapter to make these findings.

History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000;
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04 NCAC 01I .0403 FORMAL APPLICATIONS PROCEDURES: DENIAL

- (a) Unless the applicant has met its various burdens of proof, the Department shall not make the required findings.
- (b) Where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01I .0404 FORMAL APPLICATION PROCEDURES: APPROVAL

- (a) Where the Department makes all the findings necessary, it shall do so in writing to the applicant at the earliest possible date after following the procedures as set forth in this Subchapter.
- (b) The Department shall prepare a letter of approval and cause this letter to be mailed to the applicant.

History Note: Authority G.S. 143B-437.01;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Temporary Amendment Eff. January 11, 1999;
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04 NCAC 01I .0405 FINDINGS REQ/APPROVAL/EMGCY PROJ DEFINED/RULE .0102(H)

History Note: Authority S.L. 1989, c. 754, s. IX;
Eff. September 1, 1990;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repeal Eff. October 6, 1999;
Repealed Eff. August 1, 2000.

SECTION .0500 – RESERVATION OF FUNDS

04 NCAC 01I .0501 GENERAL

Units of government may apply for a "45 day reservation" of funds, relating to a particular IDF project to induce prospective private sector employers to locate or expand and create new jobs. The Department may accept and approve the requests where local units of government can document that:

- (1) they have the potential for a project of strong merit;
- (2) a particular employer is interested in a proposed industrial building;
- (3) strong offers have been made to a client by other states or by communities located in the tier areas not currently eligible for IDF funding. A request shall be prepared along the lines of the application for approval described in Rule .0302 of this Subchapter, except that the data normally obtained from the client or potential employees would not necessarily be prepared by the client and would not be required in such detail.

History Note: Authority G.S. 143B-437.01;
 Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
 Eff. May 1, 1988;
 Temporary Amendment Eff. January 11, 1999;
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 Temporary Amendment Eff. October 6, 1999;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01I .0502 LIMITATIONS

A request for a reservation of funds may be approved for a project if the funds required do not exceed one-half of the total of program funds available and not previously committed. The total of programs funds not previously committed shall include appropriated funds, those funds received in repayment from recipients, interest earned, and funds not used and reverted from either approved projects or from "reserved" funds.

History Note: Authority G.S. 143B-437.01;
 Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
 Eff. May 1, 1988;
 Temporary Amendment Eff. January 11, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Amendment Eff. October 6, 1999;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01I .0503 REVERSION OF FUNDS

An approval for "reservation" of funds for projects shall not predicate approval or funding of a project. When a formal and complete application for approval of a project has not been filed by the applicant that requested the reservation of funds, before the expiration date of the "reservation of funds", the Department may revert those funds back to the program without any obligation to the unit of government. The unit of government shall keep track of when the reservation of funds expires.

History Note: Authority G.S. 143B-437.01;
 Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
 Eff. May 1, 1988;
 Temporary Amendment Eff. January 11, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Amendment Eff. October 6, 1999;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0600 – REPORTING REQUIREMENTS

04 NCAC 01I .0601 REPORTING REQUIREMENTS

History Note: Filed as a Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Authority S.L. 1987, c. 830, s. 111, Part 4II;
Eff. May 1, 1988;
Temporary Repeal Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Repeal Eff. October 6, 1999;
Repealed Eff. August 1, 2000.

SECTION .0700 – DESIGNATION OF ELIGIBLE TIERS AND QUALIFIED COUNTIES

04 NCAC 01I .0701 ANNUAL DESIGNATION

History Note: Authority G.S. 105-129.3 ,143B-437.01;
Eff. September 1, 1990;
Temporary Amendment Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Repealed Eff. August 1, 2000.

SECTION .0800 – ENVIRONMENTAL COMPLIANCE

04 NCAC 01I .0801 COMPLIANCE WITH NORTH CAROLINA ENVIRONMENTAL RULES

Any local unit of government or grantee receiving Industrial Development Funds (IDF), including Basic IDF, Utility Account funds, Emergency Economic Assistance funds or Clean Water Bonds proceeds shall comply with North Carolina Environmental Policy Rules as cited in the North Carolina Administrative Code unless the project activity is a non-major activity, as cited in 15A NCAC 1C .0504.

History Note: Authority G.S. 143B-437.01;
Temporary Adoption Eff. January 11, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Amendment Eff. October 6, 1999;
Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SUBCHAPTER 01J - NORTH CAROLINA JOBS TAX CREDIT

SECTION .0100 - PURPOSE AND DEFINITIONS

04 NCAC 01J .0101 BACKGROUND AND OBJECTIVES **04 NCAC 01J .0102 DEFINITIONS**

History Note: Authority G.S. 105-130.40(a),(b),(c), and (d); 105-151.17(a),(b),(c), and (d); Chapter 568, 1987 S.L.; Chapter 111 and 753, 1989 S.L.;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Amended Eff. December 1, 1989;
Repealed Eff. July 1, 2012.

SECTION .0200 - DESIGNATION OF SEVERELY DISTRESSED COUNTIES

04 NCAC 01J .0201 DESIGNATION OF SEVERLY DISTRESSED COUNTIES

History Note: Authority G.S. 105-130.40(c) and (d); 105-151.17(c) and (d); Chapter 568, 1987 S.L.; Chapter 111, 1989 S.L.;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Amended Eff. March 1, 1991; December 1, 1989;
Repealed Eff. July 1, 2012.

SECTION .0300 - LETTER OF COMMITMENT

04 NCAC 01J .0301 LETTER OF COMMITMENT

History Note: Authority G.S. 105-130.40(c) and (d); 105-151.17(c) and (d); Chapter 568, 1987 S.L.;
Temporary Rule Eff. November 16, 1987 For a Period of 180 Days to Expire on May 15, 1988;
Eff. May 1, 1988;
Amended Eff. December 1, 1989;
Repealed Eff. July 1, 2012.

SECTION .0400 - SUBSTANTIATION OF CREDIT CLAIMED

04 NCAC 01J .0401 SUBSTANTIATION OF CREDIT CLAIMED

History Note: Authority G.S. 105-130.40(f); 105-151.17(f); Chapter 111, 1989 S.L.;
Eff. December 1, 1989;
Repealed Eff. July 1, 2012.

SECTION .0500 - DETERMINATION OF ELIGIBILITY

04 NCAC 01J .0501 DETERMINATION OF ELIGIBILITY

History Note: Authority G.S. 105-130.40(b1); 105-151.17(b1); Chapter 753, 1989 S.L.;
Eff. March 1, 1991;
Repealed Eff. July 1, 2012.

SUBCHAPTER 01K - ECONOMIC DEVELOPMENT ACTIVITY OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

04 NCAC 01K .0101 PROGRAM PURPOSE AND OBJECTIVE

The purposes and objectives of the North Carolina Community Development Block Grant program are set out in full in the North Carolina Administrative Codes Title 4, Subchapter 19L, as promulgated by the Division of Community Assistance of the Department of Commerce. While the Division of Community Assistance is the lead agency for the Community Development Block Grant Program, the Commerce Finance Center is responsible for the administration of activities conducted under the Economic Development section of that program. Economic Development projects and grant activities consist of projects which directly support the creation or retention of jobs, principally for persons of low and moderate family income (LMI) status. Sixty percent of jobs created shall be filled by persons with LMI status prior to being hired by the Employer, or who are documented as having LMI status at the time of project application in the case of retained jobs. If at any time during the grant period the percentage of jobs held by persons who qualified as LMI when hired drops below 51% of the jobs retained or created, the beneficiary or beneficiaries and the grantee shall be directly liable for repayment of the grant. All CDBG expenditures which directly assist participating private businesses must be provided as loan funds, and be repaid under terms established at the time the program funds are awarded to the local government grantee. Other program income, or a portion of other program income, such as connection fees, acreage development fees, or consideration received for the sale of public utilities

to private concerns or regulated utilities shall be returned to the CDBG Economic Development Program and used to finance other such Economic Development projects.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.494; 42 U.S.C.A. 5301; Temporary Rule Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. December 1, 1992; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0102 DEFINITIONS

The following definitions apply to the Community Development Block Grant program Rules .0102 through .0404.

- (1) "Act" means Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended.
- (2) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.
- (3) "CDBG" means the State administered Community Development Block Grant Program.
- (4) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.
- (5) "Community Development Program" means the program of projects and activities to be carried out by the applicant with funds provided annually under this Subchapter and other resources.
- (6) "HUD" means the U.S. Department of Housing and Urban Development.
- (7) "Local Government" means any unit of general municipal or county government in the State.
- (8) "Low-Income Families" means those with a family income of 50 percent or less of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.
- (9) "Moderate-Income Families" means those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income.
- (10) "Low and Moderate Income Persons" means members of families whose incomes are within the income limits of low and moderate income families as defined in Paragraphs (h) and (i) of this Rule.
- (11) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.
- (12) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.
- (13) "Department" means the North Carolina Department of Commerce (DOC).
- (14) "Project" means any eligible business as defined in Paragraph (o) of this Rule and which the Economic Development Grant sector of the CDBG Program may consider so long as the project business (or businesses) presents separate, identifiable opportunities to create or retain jobs, principally for low and moderate income people. Such jobs must be created within the grant period.
- (15) The following definitions determine eligible business types for projects for which CDBG assistance is requested:
 - (a) All business types identified as eligible for New and Expanding Business tax incentives under the North Carolina William S. Lee Quality Jobs and Business Expansion Act (Article 3A of Chapter 105 G.S. 105, Article 3A), as amended; and
 - (b) Other project businesses that provide public benefit and can reasonably be interpreted as being eligible for CDBG assistance under Sections 105(a)(14) and 105(a)(17) of the Housing and Community Development Act of 1974, as amended. (Also see Rule .0105 of this Subchapter regarding projects not to be considered for funding in N. C.)
- (16) "Utility Project" shall mean any water, sewer, electric or natural gas utility improvement needed to provide services to the economic development project. The applicant shall delineate which projects are to be owned and operated by a unit of government, which projects are to be owned by a unit of government and leased to an operating utility company, and which projects are to be owned and operated by a private utility company. If the project is for infrastructure which shall be leased to and maintained by a privately owned and regulated natural gas distributor, the application will state the terms of the lease between the unit of government and the private entity.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489;
Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 1, 1992;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01K .0103 ELIGIBLE APPLICANTS

- (a) All counties except those designated by HUD as urban counties and all cities except those designated by HUD as entitlement cities or urban county cities may be applicants under this Economic Development Program.
- (b) Eligibility to submit an application shall depend upon an applicant's satisfactory administrative performance with present or prior CDBG program projects. A letter of certification of eligibility from the Division of Community Assistance shall be evidence of eligibility.

*History Note: Authority G.S. 143B-431; 42 U.S.C.A. 5301;
Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 29, 1992;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01K .0104 FUNDING LIMITATIONS

Economic Development Grant awards are limited by:

- (1) maximum dollar amounts for each unit of government determined by the amount of (HUD) money received in any one funding year; and
- (2) the State-HUD approved program statement of operation for each respective CDBG program year. Those program and project maximums are specifically set out in the Grant Agreement between the state and HUD and in the official program statement issued by the State and approved by HUD.

*History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 1, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01K .0105 PROJECTS NOT TO BE CONSIDERED FOR FUNDING

(a) Projects that have evidence of prior major financial commitment by the local government applicant or the proposed project shall not be eligible for CDBG assistance. After an operator or beneficiary becomes economically committed to a project, it shall not be eligible for funding and the unit of government shall not be eligible to request any funding assistance to serve that project with utilities or CDBG loan assistance. "Economic commitment" is not a quantitative measure, but those types of prohibited situations shall include the following:

- (1) when construction contracts have been signed;
- (2) when equipment purchase orders for site specific installations have been issued;
- (3) when true, simple options for the purchase of an existing facility are bound with deposits that are so large that the option constitutes a sales contract; or
- (4) when conditions or contingencies in a contract of sale have all been met.

(b) Proposed projects that are specifically prohibited by current State and HUD rules due to lack of public benefit and potential failure to meet required program objectives shall not be eligible for CDBG assistance when the following occurs:

- (1) provide general, non-specific promotion of a community as a whole;
- (2) assist professional sports teams;

- (3) assist privately-owned recreational facilities that would serve a predominantly higher-income clientele, where such recreational benefit clearly outweighs employment or other benefits to LMI persons;
- (4) acquire land for which no specific purpose has yet been identified; or
- (5) assist a for-profit business while that business or any other business owned by the same person, persons or entity is the subject of unresolved findings of non-compliance relating to present or previous CDBG assistance provided by the applicant.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
 Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. December 1, 1992;
 Amended Eff. July 1, 2012; April 1, 1999;
 Amended Eff. April 1, 1999;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0200 - APPLICATION PROCEDURE

04 NCAC 01K .0201 GENERAL

This Section provides the application procedures which shall be followed by applicants before the Secretary will make a final decision relative to project approval. The Secretary may request additional facts, details and informed or expert opinions on facts or conditions described in the application. Narratives and statements of fact will be attested as true and accurate by elected officials or by a company official or official objectives designees.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
 Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. December 1, 1992;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0202 PRE-APPLICATION CONFERENCE

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496;
 Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the Permanent rule becomes effective, whichever is sooner;
 Eff. December 1, 1992;
 Amended Eff. April 1, 1999;
 Repealed Eff. July 1, 2012.

04 NCAC 01K .0203 APPLICATIONS

Each Applicant that proceeds with a formal application shall take the following steps:

- (1) the applicant may employ or designate an application preparer and service provider for its application. If applicable, federal procurement guidelines shall be followed. Documentation of compliance or non-applicability shall be provided to the Commerce Finance Center.
- (2) The applicant may proceed with three critical areas of the application as follows:
 - (a) the environmental assessment, or the state clearing house review process;
 - (b) the determination of Davis-Bacon applicability and the pertinent wage decision; and
 - (c) the second project specific public hearing.
- (3) All applications for CDBG funds shall include a disclosure report. Such report, in addition to requesting identifying information and the amount of funds requested, shall disclose whether or not, and the extent, to which interested parties have a financial interest in the application. Interested parties include developers, contractors, consultants, individuals, entities including units of government with a financial interest greater than fifty thousand dollars (\$50,000) or 10 percent of the assistance requested, whichever is lower. Additionally, the report shall show any sources

and uses of funds for the project which are not identified in the application's source and use of funds statement.

- (4) The unit of government shall complete its application on forms developed by the Department and made available by the Commerce Finance Center.
- (5) Any application which has incomplete factual data or lacks sufficient detail may be returned to the applicant with specific reasons for the return being stated in writing. Upon receipt of the requested information the Department's review of the application shall be completed.
- (6) In the event that an application is received at a time when current year funding is no longer available (all funds have been allocated), the Department shall so advise the applicant of the funding status. By mutual agreement between the applicant and the Department, the application may be retained by the Department for final review of the application and the proposed project when CDBG program funds are available.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 1, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0204 DISCRETIONARY PUBLIC HEARING BY THE DEPARTMENT

History Note: Authority G.S. 143B-431; 42 U.S.C.A. 5301;
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 29, 1992;
Amended Eff. April 1, 1999;
Repealed Eff. July 1, 2012.

04 NCAC 01K .0205 FORMAL APPLICATION PROCEDURES: APPROVAL

- (a) The Secretary shall prepare a Letter of Approval and Grant Offer setting forth all findings and grant conditions.
- (b) The chief elected official who signed the original application shall be the addressee of the Letter of Approval and Grant Offer from the Secretary.

History Note: Authority G.S. 143B-431; 42 U.S.C.A. 5301;
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 29, 1992;
mended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0206 FORMAL APPLICATION PROCEDURES: DENIAL

- (a) The Secretary shall indicate in writing the reasons for denial of an application.
- (b) The Secretary shall indicate in writing that the unit of government may prepare a presentation, either written or oral which speaks factually to the unresolved issues. The Secretary or designee shall be present at the meeting to hear and discuss the issues with the unit of government. The unit of government shall persuade the Secretary that all the necessary findings should be made.
- (c) Where the unit of government does persuade the Secretary, further procedures shall be as in Rule .0205 of this Section.
- (d) Where the unit of government does not persuade the Secretary, the Secretary shall notify the unit of government the decision in writing, again specifying the reasons for denial.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;

Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 29, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0207 REIMBURSEMENT OF DEPARTMENT EXPENSE

History Note: Authority G.S. 143B-431; 24 C.F.R. 570-489;
Eff. December 29, 1992;
Repealed Eff. July 1, 2012.

SECTION .0300 - FINDINGS REQUIRED FOR APPROVAL

04 NCAC 01K .0301 GENERAL

In order to approve a project it is necessary for the Secretary to find that:

- (1) the project shall have a measurable beneficial and desirable impact on the community; and
- (2) that the funding for the project is appropriate under state rules and federal rules and guidelines for the Community Development Block Grant programs.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 1, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0302 CRITERIA FOR MAKING NECESSARY FINDINGS

The Department shall determine criteria for making the approval findings, as follows:

- (1) The Department shall determine that the project business is capable of completing its proposed project activities in a successful manner. Capable means that there is a business history, a financial condition, or other outstanding business qualifications which support the conclusion that the project business is capable of operating in a successful manner;
- (2) The Department shall determine that the project is identifiable and free-standing, with its own measurable and significantly beneficial impact. Identifiable and free-standing means a project which can literally be separated out and specifically identified and determined as the project being discussed, and as such shall have its own measurable and significantly beneficial result at the project location;
- (3) The Department shall determine that the project shall be completed. The provision of legally binding commitments from the grantee and the beneficiary employer or employers shall be sufficient evidence that the project is to be completed;
- (4) The Department shall determine that there is a substantial benefit to persons of low and moderate income. Substantial benefit to persons of low and moderate income may be evidenced by employer commitments to assure that 60% of jobs created or saved shall be held by persons of prior low and moderate family income status;
- (5) The Department shall determine that there is a favorable ratio or relationship between the jobs created and the number of CDBG dollars invested in the project. Favorable shall mean that a project will create or retain jobs at a rate equal to a ratio of CDBG dollars required for the type of project company involved, and the local government has committed to meet the local to CDBG match requirement as required by current program rules and for the project type proposed.
- (6) The Department shall determine that there is a favorable relationship between the total dollars invested in the project, the amount of CDBG money invested, and the anticipated taxes or other revenues to either or both the municipality and county having taxing authority and jurisdiction.

- (7) The Department shall determine for jobs to be created (or retained), the NC Enterprise Tier or Development Zone designation level of the project site shall be considered for each application, along with the latest unemployment figures and impact on the actual number of unemployed persons. To the extent feasible, priority consideration shall be given for CDBG assistance for projects in the most distressed areas of the state.
- (8) The Department shall determine that required compliance with federal and state rules and legal requirements are documented by the grantee. The extent of documentation required shall be that as considered as reasonable by the Director of the Commerce Finance Center.
- (9) The Department shall determine that if the project involves retail, service or other local market business, the application shall include surveys or other market studies as evidence that similar businesses in the 15-25 mile labor work force area support the project and that the project shall not jeopardize the jobs in their businesses; and
- (10) The Department shall determine that the application presents evidence for a finding that the local government applicant, or the project business in the case of a loan project, has a reasonable and appropriate gap or need for the CDBG assistance requested.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5301;
 Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. December 29, 1992;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0400 - GRANT ADMINISTRATION

04 NCAC 01K .0401 GRANT AGREEMENT AND FUNDING APPROVAL

When the Secretary approves the project, offer of the grant agreement and funding approval and all modifications shall accompany and be attached to the communication of project approval. When the grant agreement is received by the unit of government, it shall be signed and returned to the Department and shall be deemed to be effective.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489;
 Temporary Adoption Eff. July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. December 1, 1992;
 Amended Eff. April 1, 1999;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0402 METHOD OF PAYMENT

Recipients shall receive payments based on requisitions submitted for immediate disbursing needs as approved by the Department. No funds shall be kept on deposit for more than three banking days by the local government grantee. If for any reason the grant costs for which funds were requisitioned cannot be paid as intended within three days, the local government finance officer shall return the unused funds to the Commerce Finance Center.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(g);
 Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. December 1, 1992;
 Amended Eff. August 1, 2000;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0403 METHOD OF ADMINISTRATION

Units of government may contract with authorized entities certain responsibilities affecting Economic Development projects and monitoring the compliance of beneficiaries with grant conditions. Such a delegation by contract will not absolve the unit from its responsibilities for compliance with state and federal guidelines or grant agreements.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.494;
Temporary Adoption Effective July 20, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. December 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0404 MONITORING AND GRANT CLOSE OUT

The Commerce Finance Center shall provide copies of the forms and documents needed to fulfill grant requirements in an annual performance report and in a final grant close out audit. Location visits and conferences with benefiting employers shall be conducted by the Commerce Finance Center. A minimum of one on-site visit for monitoring purposes by Commerce Finance Center staff is required before the active grant agreement between the State and the local government grantee can be closed.

History Note: Authority G.S. 143B-431; 24 C.F.R. 570.489;
Eff. December 1, 1992;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01K .0405 ADMINISTRATIVE HEARINGS

(a) Recipients may contest departmental actions with respect to this Subchapter under the Contested Case Hearing Procedures set forth in G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

(b) The Department may also commence contested case hearing procedures against recipients pursuant to G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

History Note: Authority G.S. 143B-431;
Eff. December 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SUBCHAPTER 01L - GRANTS TO SUCCESSFUL SBA DISASTER HOME LOAN APPLICANTS

04 NCAC 01L .0101	SCOPE
04 NCAC 01L .0102	ELIGIBILITY
04 NCAC 01L .0103	BENEFITS
04 NCAC 01L .0104	PROCEDURES FOR HOMEOWNERS
04 NCAC 01L .0105	PROCEDURES FOR COUNTIES
04 NCAC 01L .0106	APPEAL

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 18, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010;
The Department of Commerce and the Department of Crime Control & Public Safety consider this rule to be extended and currently in effect pursuant to Session Law 1999-463 Extra Session House Bill 2, Session Law 2005-1, Executive Order 8 dated July 6, 2001 and Executive Order 75 dated June 10, 2005;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 01M - HURRICANE FLOYD BUSINESS ASSISTANCE PROGRAMS

SECTION .0100 - GENERAL INFORMATION

04 NCAC 01M .0101 SCOPE

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0102 ELIGIBILITY

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0103 BENEFITS UNDER THE INTEREST REBATE PROGRAM

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0104 BENEFITS UNDER NC READE

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0105 PROCEDURES FOR INTEREST REBATE FOR SBA BORROWERS

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0106 PROCEDURES FOR NC READE

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

04 NCAC 01M .0107 APPEAL

History Note: Authority G.S. 150B-21.1; S.L. 1999-463;
Temporary Adoption Eff. February 1, 2000 to expire on January 1, 2003;
Codifier approved request on December 30, 2002 to extend expiration until January 1, 2005;
Codifier approved request on December 30, 2004 to extend expiration until January 1, 2010.

SUBCHAPTER 01N – THE HURRICANE RECOVERY ACT OF 2005 BUSINESS RECOVERY

PROGRAMS

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04 NCAC 01N .0102	ELIGIBILITY
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04 NCAC 01N .0106	PROCEDURES FOR THE BUSINESS RECOVERY LOAN PROGRAM
04 NCAC 01N .0107	APPEAL

History Note: Authority G.S. 143B-430(c); 143B-431(a)(1); S.L. 2005-1;
Emergency Adoption Eff. April 25, 2005;
Temporary Adoption Eff. July 29, 2005;
Eff. January 1, 2006;
Expired Eff. October 1, 2016 pursuant to G.S. 150B-21.3A.