

Guidelines for the Expanded Gas Products Service to Agriculture Fund Set Forth in N.C. Gen. Stat. § 143B-437.020 (the “Program”)

The following Guidelines for the Program are submitted for publication and comment by the Department of Commerce.

Hard copies of the Guidelines will be made available by the Public Affairs Office of the Department of Commerce to those persons requesting them. Electronic copies will be posted on the Department of Commerce website.

Public comments on the Guidelines will be accepted in oral and written form until 5:00 p.m. on Monday, October 6, 2014. Written comments are to be provided to the Commerce Finance Center by mail addressed to:

*Commerce Finance Center
N.C. Department of Commerce
4301 Mail Service Center
Raleigh, North Carolina 27699-4301*

or by hand delivery addressed to:

*Commerce Finance Center
N.C. Department of Commerce
Education Building
301 North Wilmington Street
Raleigh, North Carolina*

or by e-mail delivery to the following address: CFC@nccommerce.com

An opportunity for oral comments will be provided as well. A public comment session will take place from 12:00 p.m. to 1:00 p.m. on Monday, October 6, 2014, in the Department of Commerce Fourth Floor Boardroom in the Education Building, 301 North Wilmington Street, Raleigh, North Carolina, and provide their oral comments.

**GUIDELINES AND PROCEDURES FOR ADMINISTRATION OF
THE EXPANDED GAS PRODUCTS SERVICE TO AGRICULTURE FUND
SET FORTH IN N.C. GEN. STAT. § 143B-437.020**

1.0 GENERAL ADMINISTRATION

1.1 Authority

The Guidelines, criteria and procedures (“Guidelines”) set forth herein are established pursuant to N.C. Gen. Stat. § 143B-437.020(j).

1.2 Scope and Purpose of Guidelines

These Guidelines apply to funds appropriated or otherwise deposited, granted or allocated for discrete and specific economic development projects that would expand agricultural production or processing capabilities that require new or expanded natural gas or propane gas service, as set forth in N.C. Gen. Stat. § 143B-437.020 (the “Program”).

They are designed to provide internal direction and guidance to state officials responsible for administering the Program and negotiating the financial terms and arrangements under which money may be allocated under it.

Any term used in these Guidelines shall have the same definition as set forth in N.C. Gen. Stat. § 143B-437.020.

In the event of any conflict between these Guidelines and the terms of N.C. Gen. Stat. § 143B-437.020, the language of N.C. Gen. Stat. § 143B-437.020 shall supersede the language found in these Guidelines. Additionally, where these guidelines are more restrictive than the express terms of N.C. Gen. Stat. § 143B-437.020, the Secretary of Commerce or his designee (the “Secretary”) has the authority to waive any of the requirements of these Guidelines.

1.3 Amendments

These Guidelines may be amended from time to time as the size and nature of the Program or the economic circumstances and condition of the State may warrant.

At least 20 days before the effective date of any nontechnical amendments to the Guidelines, the North Carolina Department of Commerce (the

“Department”) will publish the proposed Guidelines on the Department’s Web site and provide notice to persons who have requested notice of proposed Guidelines.

The Department will accept oral and written comments on the proposed Guidelines during the 15 business days beginning on the first day that the Department has completed these notifications.

A technical amendment is either:

- (1) An amendment that corrects a spelling or grammatical error.
- (2) An amendment that makes a clarification based on public comment and could have been anticipated by the public notice that immediately preceded the public comment.

1.4 Administration

The Secretary administers the Program. Administrative support for the Program will be provided by the Commerce Finance Center, or such other division as the Secretary may designate, or any successor division performing a comparable function (“CFC”).

2.0 PROGRAM MISSION AND GUIDING PRINCIPLES

2.1 Purpose of Program

The purposes of the Program include those set out in N.C. Gen. Stat. § 143B-437.020, including the facilitation of new and expanded natural gas and propane gas service that would expand agricultural production or processing capabilities, as “agriculture” is defined in N.C. Gen. Stat. § 106-581.1.

2.2 Recipients of Money Allocated Under the Program

Program funds utilized in accordance with N.C. Gen. Stat. § 143B-437.020(b) and (c) shall be paid directly to the owner of the eligible project.

2.3 Entities in Default Barred From Receiving Funds

Pursuant to the specific terms of N.C. Gen. Stat. § 143B-431.2, the Department may not make a loan or award a grant to any individual, organization, or governmental unit that is currently in default on any loan or grant previously made by the Department.

2.4 New and Existing Industry Projects to be Treated the Same

For purposes of allocating money under the Program, projects involving businesses or industries with an existing presence in North Carolina that seek to expand operations or locate new operations in the state (existing businesses and industries) will be eligible for consideration and funding in the same manner and under the same criteria as projects involving businesses or industries with no existing presence in North Carolina (new businesses and industries).

2.5 Form of Financial Assistance Provided From the Program

Financial assistance provided by the Program will take the form of grants to owners of eligible projects, secured by a promissory note or other repayment mechanism in the event of non-performance or ineligible expenditures.

2.6 Provisions to Ensure Performance and Recapture Funds

It is the intent of this Program to ensure accountability for funds disbursed under it. To that end, grantees are to allow the State of North Carolina and the Department, or its agents, access to all records necessary to confirm compliance with the Guidelines and with terms of agreements negotiated and executed under them. Such agreements are to include provisions adequate to protect the state's interests in the funds and, as appropriate, to require return of funds in cases of failure to comply with performance standards agreed to between the parties.

2.7 Relationship of Funding to Environmental Obligations

Projects funded by this program are subject to the State Environmental Policies Act ("SEPA"), N.C. Gen. Stat. § 113A, Article 1, and shall be reviewed by the SEPA Clearinghouse.

The fact that the Department may approve or endorse funding for an application for a particular project has no bearing on and in no way mitigates the obligation of the business or industry associated with that project to comply with existing state environmental statutes and regulations.

Release of grant funds is contingent on the project receiving all applicable required environmental permits.

2.8 Overdue Tax Debts

Persons or entities with overdue tax debts to the State of North Carolina, as defined in N.C. Gen. Stat. § 105-243.1, are not eligible for grants until the debts are paid.

2.9 Tax Events

The State of North Carolina, including the Department, assumes no liability or responsibility for any tax implications of a project or a grant from the Program. Any tax liability arising out of a project shall be borne fully by the applicable taxpayer.

2.10 Specific Legislative Direction

To the extent the General Assembly's allocation of money to the Program directs a use or process different than those set out in these Guidelines, the General Assembly's direction controls and supersedes these Guidelines.

3.0 PROCEDURE FOR COMMITMENT, AWARD AND DISBURSEMENT OF FUNDS

3.1 Step One: Pre-Application Form

At the time a project has been identified as one for which funding may be appropriate, a pre-application form may be filled out. This form will solicit a variety of different types of information regarding the project. It is designed to assist the Secretary in making a preliminary determination as to whether a portion of the Program's funds should be reserved for the project in question.

The ability of the Secretary to reserve funds under such circumstances is essential for proper administration and management of the Program.

Approval of an amount and reservation of funds at this stage does not represent a binding commitment to grant funds. Evaluation of the project and negotiation of terms under which grants may be issued may continue after the initial approval and reservation are made.

Should it be determined that a project will not proceed to the formal application stage, the reserved funds for that project will become generally available for allocation to other projects.

3.2 Step Two: Formal Application

Grantees seeking money from the Program are required to submit a formal application to CFC. The application will provide information gathered from various sources including the grantee, and the business or industry associated with the project (including the gas local distribution company or propane dealer).

The application is designed to aid the Secretary in making an assessment of whether the project will promote new and expanded natural gas service or propane gas service for agricultural projects.

The application will solicit information regarding the project, including, among other things, information necessary to address some or all of the considerations set forth in Section 6.2 below.

The forms that make up the application should be submitted to the Department at least 30 days prior to the date by which a decision on the grant request is needed. A full and complete application, including all necessary supporting documentation, should be submitted and approved prior to a formal project announcement.

Applications not submitted in the proper timeframe and applications not properly completed may be denied for that reason by the Department.

3.3 Step Three: Consideration and Award

Upon receipt of a final application and consideration of the criteria set forth in Section 6.2, the Secretary shall determine whether or not the proposed project should receive an award of grant funding under the Program.

3.4 Step Four: Execution of Appropriate Contracts

The appropriate contract for a grant will be a satisfactory Grant Agreement (the "Grant

Agreement") between the grantee and the Department in a form acceptable to the Department and including the performance criteria necessary for funds to be released and expended. The Department will have basic forms for these agreements, although performance criteria for specific agreements will vary.

3.5 Step Five: Submission of Proof of Performance

Program funds shall be disbursed upon submission of invoices from the grantee based on work already completed, as set forth in Section 8 below. If the appropriate performance criteria have been met, a check will be issued for payment.

3.6 Step Six: Confirmation of Receipt, Deposit and Disbursement

When funds are actually applied by the grantee, the grantee must then submit to CFC proof of receipt, deposit, and proper disbursement of the funds.

3.7 Procedures to be Applied Consistently

The general procedure outlined in these Guidelines is intended to be applied consistently to all projects. Significant deviations in procedure should occur only when, in the exercise of discretion and considering the particular and unusual circumstances, the Secretary concludes that the best interests of the State and the purposes of the Program will be advanced. Such deviations should be noted when they occur.

4.0 INFORMATION REQUESTED FOR ALLOCATION DECISIONS

4.1 Information to be Collected

The information to be collected in the process of application for grants from the Program may include anything that allows consideration of the factors set forth in Section 6.2 below, or any other criteria considered relevant by the Department or applicant, including financial statements of the proposed grantee. As used herein, the term "financial statements" shall include, at a minimum, (i) three prior years of CPA-prepared balance sheets, income statements, and source and use of funds statement for applicants that are businesses and (ii) three prior years of personal tax returns for applicants who are individuals, as well as such other information as may be requested by the Department. Such information included in the application process shall also include

documentation provided by the grantee that all relevant documents have been submitted to the State Environmental Review Clearinghouse and that confirmation is received that the project is in full compliance with applicable laws, rules, regulations and requirements. All relevant Clearinghouse documents, including those related to SEPA, shall be prepared by and at the expense of the grantee.

4.2 Ability to Request Additional Information

The Secretary may require additional information to be provided from a grantee or from a business or industry beyond that which may be contained in the application forms or specified in these Guidelines.

4.3 Failure to Provide Information

Failure to provide information requested, as well as failure to provide requested information in sufficient detail, may serve as grounds for rejecting an application.

5.0 ALLOCATION DECISIONS

5.1 Review Procedure

The Secretary, in consultation with CFC and Department staff, shall review a formal application to reach a decision on whether an award will be made.

6.0 CRITERIA FOR ALLOCATING FUNDS TO PROJECTS

6.1 Threshold Statutory Criteria For Awarding Funds

Grants under this Program shall be awarded only for projects consistent with the requirements set forth in N.C. Gen. Stat. § 143B-437.020 and these Guidelines to support new and expanded natural gas and propane gas service that would expand agricultural production or processing capabilities.

6.2 Factors to be Considered in Allocation and Award Decisions

In exercising the discretion required to negotiate, award and allocate grants from the Program, the following criteria may be considered:

1. The location, scope and description of the project;
2. The impact the Project has on reducing costs, reducing energy consumption, and/or increasing energy efficiency;
3. The overall cost of the project and project carrying costs;
4. The cost of the grant and project relative to the overall economic impact of the proposed project;
5. The likelihood and opportunity for additional economic development as a result of the project;
6. The availability of less-costly or other viable alternatives;
7. The estimated or projected number of jobs likely to be created or retained by the project;
8. The nature of business activity associated with the project;
9. Types, amounts, and timing of the owner's, or other business or industry's financial investment in the project;
10. Information necessary to assess the economic strength, capacity and sustainability of the grantee as well as any business or industry associated with the project;
11. Information relating to the environmental record and practices of the grantee and the business or industry associated with the project as certified by the North Carolina Department of Environment and Natural Resources;
12. Information regarding other incentives offered or available for the project;
13. Such other information as the Secretary may deem necessary.

6.3 Limit on Amount of Grant

Individual grants under the Program shall be limited to a maximum of \$1,500,000 per project, unless the Secretary makes a special finding that a higher grant limit is appropriate under the entirety of the circumstances presented by a particular project.

7.0 TERMS TO BE INCLUDED IN GRANT AGREEMENTS

The basic form of a Grant Agreement between a grantee/owner and the Department will be prescribed by the Department. In addition, it may contain the following:

1. An agreement to comply with the terms of the grantee's application.
2. An agreement to take all steps necessary to ensure and establish to the Department that required performance criteria have been met and that no grant funds are disbursed by the grantee until any necessary performance criteria have been met.
3. Provisions ensuring the grantee repay to the Department any funds forfeited by grantee pursuant to N.C. Gen. Stat. § 143B-437.020(f) or funds improperly expended.
4. An agreement to permit the Department access to all records necessary to evaluate compliance with the relevant law, Guidelines and all agreements executed under them.
5. A disbursement schedule for the funds that is proportional to performance.

8.0 DISBURSEMENT OF FUNDS

8.1 Proof of Compliance

Before funds are disbursed, the Department must be provided with proof of compliance with the terms of the grant. Such proof shall take two forms:

First, the grantee must attest and certify that the applicable work was completed and the terms of the Grant Agreement have otherwise been followed. The grantee must ensure that the uses to which the funds will be put are verified and consistent with those purposes for which funds may be granted under these Guidelines and N.C. Gen. Stat. § 143B-437.020.

Second, the grantee must provide documentary proof that the applicable work has been completed.

If the appropriate performance criteria have been met, a check will be issued for an installment.

8.2 Forms of Documentary Proof

Prior to any disbursement, the grantee shall provide what documentary proof the Department shall require, including (without limitation), outstanding construction invoices for completed work and copies of the contract between the grantee and the gas local distribution company, propane dealer, or other installer/provider of gas and gas lines as part of the project (the "Contract"). Any disbursement of funds is subject to the Department's approval of the Contract. Additionally, grantee shall provide such other

documentation of compliance as the Department may require.

8.3 Grantee's Responsibilities in Disbursement

The grantee is responsible for any further disbursement of the funds, in a timely fashion and consistent with all applicable laws, rules, regulations and requirements. The grantee must account to the Department for its receipt, deposit and disbursement of the funds in question.

9.0 CLOSEOUT

Closeout shall occur upon certification and proof of completion of the entire Project in a form and manner satisfactory to the Department. However, grantees may remain subject to forfeiture and other requirements following closeout, as may be set forth in N.C. Gen. Stat. § 143B-437.020 and in the Grant Agreement.