

**CHAPTER 95**

**PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING ON DECEMBER 20, 2004**

**Authority**

N.J.S.A. 52:27D-301 et seq.

**Source and Effective Date**

R.2004 d.483, effective December 20, 2004.  
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**Chapter Expiration Date**

Chapter 95, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004, expires on December 20, 2009.

**Chapter Historical Note**

Chapter 95, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on December 20, 2004, was adopted as R.2004 d.483, effective December 20, 2004. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:95-1.1 Short title; purpose; scope**

(a) The provisions of this chapter shall be known as the "Procedural Rules of the New Jersey Council on Affordable Housing for the period beginning December 20, 2004."

(b) The purpose of this chapter is to establish procedures to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for low-and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.

(c) Municipalities filing or petitioning for substantive certification prior to December 20, 2004 shall be governed by the provisions of N.J.A.C. 5:91. Municipalities filing or petitioning on or after December 20, 2004 shall be governed by the provisions of this chapter.

(d) If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

**5:95-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14k-1 et seq.).

"Amendment" means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that has been adopted by the planning board and endorsed by the governing body.

"Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"Days" means calendar days.

"Fair Share Plan" means that plan that describes the projects, strategies and the funding sources, if applicable, by which a municipality proposes to address its fair share of affordable housing obligation as set forth in N.J.A.C. 5:94-2.4, and also includes the draft Fair Share ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:94.

"Filed Housing Element and Fair Share Plan" means the municipal submission of a Housing Element and Fair Share Plan accompanied by a duly adopted resolution from the governing body endorsing the Housing Element and the Fair Share Plan adopted by the planning board, but not necessarily including a request or petition for Council review or certification of the plan per N.J.A.C. 5:95-3.

"Housing Element" means that portion of a municipality's master plan, as required by N.J.S.A. 40:55D-28b(3), consisting of at least those items identified in N.J.S.A. 52:27D-310 and the supporting information pursuant to N.J.A.C. 5:94-2.2(b) when part of a petition for substantive certification.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibits significant social, economic and income similarities, and which constitutes to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

"Mediation" means that process established by N.J.S.A. 52:27D-315 whereby objectors to a municipality's petition for substantive certification and other parties meet with the municipality under the direction of a Council-appointed mediator to attempt to resolve disputes.

"Objector" means a person who files objections to a municipal Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:95-4.1.

"OAL" means the Office of Administrative Law.

"Participant to mediation" means any party the mediator deems necessary to conduct mediation and resolve any objections to a municipality's petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent of participation of each participant to mediation.

"Petition for Substantive Certification" means a request made by municipal resolution which a municipality files, or is deemed to have filed in accordance with this chapter, which engages the Council's review process seeking a determination as to whether the Housing Element and Fair Share Plan of the municipality are consistent with the Act and compliant with rules promulgated by the Council.

3. Certification that there have been no substantive changes in the availability of land, water and/or sewer within the municipality.

(e) Comments to the municipality's motion for extended substantive certification shall be accepted by the Council in conformance with N.J.A.C. 5:95-12.3 for a period of 20 days from the publication of this notice. The comment shall set forth how the municipality has failed to comply with the terms of the substantive certification. The comment shall be served upon the Council and the municipality.

(f) In conformance with N.J.A.C. 5:95-12.4(a), the municipality shall have 10 days to respond to any comments received pursuant to (e) above.

(g) If the Council determines that the municipality is complying with the terms of its 1987-1999 substantive certification, the Council shall grant extended substantive certification of the municipality's Housing Element and Fair Share Plan for a period of time not beyond December 20, 2005. The Council may condition its grant of extended

substantive certification with any conditions it deems necessary or appropriate in order to insure continued compliance with the terms of substantive certification and the satisfaction of the affordable housing obligation.

(h) When extended substantive certification is granted, a municipality shall leave all ordinances implementing its original substantive certification in effect for the extended substantive certification, unless the municipality can demonstrate good cause why the ordinances should not remain in effect.

(i) If a municipality received a judgment of compliance that expires by December 20, 2005, the municipality shall move before the Court that issued the judgment of compliance for an extension prior to the expiration of its judgment of compliance. The Council shall consider a motion for extended substantive certification if the Court transfers the request to the Council. In such cases, the procedures and criteria shall apply.