

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.
See: 36 N.J.R. 3851(a), 36 N.J.R. 5895(a).

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.

“RCA Recipient Certification” means the determination of the Council that a receiving municipality in an RCA has met the criteria in N.J.A.C. 5:95-11.4 in at least one of four housing categories established in N.J.A.C. 5:95-11.4(b).

“Receiving municipality” means, for purposes of an RCA, a municipality, which agrees to assume a portion of another municipality’s growth share obligation.

“Regional Contribution Agreement (RCA)” means the transfer pursuant to N.J.S.A. 52:27D-312 of up to 50 percent of a municipality’s growth share obligation to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. Housing units developed pursuant to an RCA shall be included in the total number of affordable units developed in the sending municipality.

“Re-petition” means the municipal submission of a revision to a petition that has been adopted by the planning board and endorsed by the governing body, but that has not yet received substantive certification.

“Sending municipality” means, for purposes of an RCA, a municipality that transfers a portion of its growth share obligation to another willing municipality.

“Service list” means a list maintained by the Council that includes designated municipal representatives, all property owner(s)/developer(s) of sites designated for low-and moderate-income housing, objectors and interested parties that request to receive notification.

“Substantive certification” means a determination by the Council approving a municipality’s Housing Element and Fair Share Plan in accordance with the provisions of the Act and the rules and criteria as set forth in N.J.A.C. 5:94. A grant of substantive certification shall run for a period of 10 years beginning on the date that a municipality files a Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond a period of 10 years from December 20, 2005.

SUBCHAPTER 2. FILING A HOUSING ELEMENT AND FAIR SHARE PLAN

5:95-2.1 Jurisdiction

(a) A municipality shall fall within the jurisdiction of the Council if:

1. The municipality has filed a Housing Element and Fair Share Plan and petitioned for substantive certification within two years of such filing;
2. The municipality has filed a Housing Element and Fair Share Plan and is the defendant to an exclusionary zoning suit within two years of such filing; or

3. A court transfers jurisdiction of the case to the Council pursuant to N.J.A.C. 5:95-3.3.

5:95-2.2 Filing requirements

(a) A municipal Housing Element and Fair Share Plan that is filed with the Council shall include the following information:

1. A copy of the adopted Housing Element and Fair Share Plan;
2. A certified copy of the resolution of the municipal planning board adopting the Housing Element and Fair Share Plan as part of the municipality’s master plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and
3. A certified copy of the resolution of the governing body of the municipality endorsing the Housing Element and Fair Share Plan.

(b) The Council’s Executive Director shall notify the municipality in writing of any deficiencies in its filing as required in N.J.A.C. 5:95-2.2(a) within 14 days of receipt.

(c) A municipality receiving written notice of any deficiencies in its filing shall respond to the Council within 45 days of the date of such notice. Failure of a municipality to correct all deficiencies within 45 days shall result in the rejection of the municipality’s filing and dismissal from the Council’s jurisdiction.

(d) A municipality may revise and refile before submitting a petition, but such re-filing shall not extend the period of jurisdiction described in N.J.A.C. 5:95-2.1 beyond two years from the date of the initial filing.

(e) Notwithstanding any cited deficiencies, the date of initial filing starts the maximum ten-year period during which the Council’s grant of substantive certification shall apply or the period of the benefits outlined in N.J.A.C. 5:95-3.8.

5:95-2.3 Transferred cases

When a case is transferred to the Council by court order pursuant to N.J.S.A. 52:27D-316, the municipality shall file an adopted Housing Element and Fair Share Plan with the Council within 90 days from the date of transfer. The municipal plan shall conform to the petitioning requirements of N.J.A.C. 5:95-3.

SUBCHAPTER 3. PETITIONS FOR SUBSTANTIVE CERTIFICATION

5:95-3.1 Petition

A municipality may petition the Council for substantive certification within two years from the date of filing its Housing Element and Fair Share Plan, or may file and petition the Council simultaneously.

5:95-3.2 Petition requirements

(a) A petition for substantive certification shall be in the form of a filing pursuant to N.J.A.C. 5:95-2.2(a) and shall also include a duly adopted resolution from the governing body requesting Council review and certification of the Housing Element and Fair Share Plan.

(b) A petition shall be reviewed and accepted according to the requirements in N.J.A.C. 5:95-2.2.

(c) The period for which a municipality may either receive substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8 shall begin from the date of initial filing.

5:95-3.3 Action equivalent to a petition for substantive certification

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts, pursuant to Section 16 of the Act, shall be deemed to have petitioned for substantive certification when the Council accepts for filing the municipality's adopted Housing Element and Fair Share Plan as required pursuant to N.J.A.C. 5:95-2.2.

5:95-3.4 Re-petition requirements

(a) A municipality that has petitioned the Council may re-petition with a revised Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:95-3.2 prior to the receipt of substantive certification. A municipality shall re-petition when the plan requires a change in site, substantial change in density, other zoning requirements that result in a change of housing type on a specific site or a fundamental change in approach to its low-and moderate-income housing obligation. Such re-petition shall not extend the period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8.

(b) A municipality shall not re-petition with a revised Housing Element and Fair Share Plan more than two times without prior authorization of the Council.

5:95-3.5 Notice

(a) When a municipality petitions or re-petitions for substantive certification, or is deemed to have petitioned pursuant to N.J.A.C. 5:95-3.3, it shall publish notice of its petition or re-petition in a newspaper of general circulation within the municipality and county. Notice shall be published within seven days of the issuance of the notification letter from the Council's Executive Director pursuant to N.J.A.C. 5:95-2.2(b) indicating the submission is complete in order to provide the general public with an opportunity to review the municipal Housing Element and Fair Share Plan and to submit objections or comments. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation the municipality shall be required to re-publish in another appropriate newspaper.

(b) Notice of a petition for substantive certification shall be provided in the following format:

**NOTICE OF PETITION FOR
SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-3.1 et seq. A copy of the adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____. Comments or objections to said petition for Substantive Certification shall be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

(c) A municipality that chooses to revise its plan and re-petition or is required to re-petition with a revised plan for substantive certification shall provide notice in the following format:

**NOTICE OF RE-PETITION FOR
SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that (MUNICIPALITY) has re-petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-3.4 et seq. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (TOWNSHIP/BOROUGH/TOWN/CITY) had initially petitioned the Council on Affordable Housing for substantive certification on (DATE).

A copy of the revised and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____. Comments or objections to said re-petition shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW

5:95-8.1 General

(a) In the event there remain contested issues of material fact at the conclusion of mediation, the Council, upon the motion of any party or in its own discretion, shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Prior to determining whether a case is contested, the Council's Executive Director may, in appropriate instances, require all parties to submit affidavits or certifications. Such documentation shall address issues that require expert testimony and/or affidavits or certifications of individuals with personal knowledge of the facts at issue. The affidavits or certifications shall set forth, with specificity, facts sufficient to demonstrate there is a contested issue of material fact that requires a hearing before the Council. From these submitted papers the Council may determine to refer the matter to the OAL.

(b) Upon determining that the matter shall be referred to the OAL for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other documentation pertinent to the adjudication.

(c) The cost of the transcript of all oral testimony transmitted to the OAL from the Council shall be shared equally by the municipality and the objectors.

5:95-8.2 Review

Within 45 days after the issuance of an initial decision from OAL the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. Unless the Council accepts, modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council. For good cause shown the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 9. COUNCIL REVIEW OF CERTIFIED PLANS

5:95-9.1 Review

(a) On the third, fifth and eighth anniversary of the date on which a certified municipality filed its Housing Element

and Fair Share Plan, the Housing Element and Fair Share plan shall be reviewed by the Council's Executive Director pursuant to N.J.A.C. 5:94-9 to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality.

(b) Annual monitoring reports shall be completed by the municipality in accordance with N.J.A.C. 5:94-9.2. Within 90 days of the Council's receipt of a municipality's third, fifth and eighth annual monitoring report, the Council's Executive Director shall determine if a municipal plan continues to address the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Such a finding shall take into account the relationship between the municipality's pro-rated growth share projection as set forth in the Fair Share Plan and its actual pro-rated growth share obligation. The Council's Executive Director shall compare the actual pro-rated growth share obligation with the actual number of units that have been constructed or provided for.

(c) When the difference between the number of affordable units constructed or provided in a municipality and the number of units required pursuant to N.J.A.C. 5:94-2.4 during the third-year, fifth-year and eighth-year period of review results in a pro-rated production shortage of 10 percent or greater, the Council may direct the municipality to amend its plan in conformance with N.J.A.C. 5:95-13 to address the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Pursuant to N.J.A.C. 5:95-9.1(b), the Council's Executive Director shall notify the municipality and the service list as to whether or not the municipality is providing the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Upon a finding that a municipality is no longer meeting the affordable housing obligation, the notification shall set forth the reasons for such finding and provide a 90-day period for the submission of an amended Housing Element and Fair Share Plan that will meet the affordable housing obligation.

5:95-9.2 Notice

(a) The municipality shall publish notice that the monitoring report and the results of the Council's review are available for public inspection at the offices of the municipality in a newspaper of general circulation within the municipality and county within seven days of the issuance of the results of the Council's review. The public notice shall be in the legal newspaper as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, it shall require the municipality to re-publish in another newspaper.

(b) Notice shall be provided in the following format:

Notice of the Council on Affordable Housing Monitoring Report

NOTICE is hereby given that (MUNICIPALITY) has filed its (third, fifth or eighth) year New Jersey Council on Affordable Housing monitoring report with the New Jersey Council on Affordable Housing pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-9 et seq. The Council on Affordable Housing has reviewed the monitoring report and issued its review of the report. A copy of the monitoring report and the Council on Affordable Housing review are available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____.

Municipal Clerk

5:95-9.3 Public review

The municipality shall make copies of the monitoring report and the results of the Council's review available for public inspection during regular business hours within the municipality.

5:95-9.4 Enforcement

(a) If upon review of the monitoring report at the third year anniversary the municipality has not received initial plan endorsement from the State Planning Commission pursuant to N.J.A.C. 5:94-2.3(c), the Council may revoke the municipality's substantive certification. However, if the municipality has diligently pursued plan endorsement but has not received it by the third year anniversary through no fault of its own, the Council shall not take action to revoke certification but shall continue to monitor the municipality's progress on an annual basis.

(b) If upon review of a Housing Element and Fair Share Plan that has been amended in response to a notice of production shortage issued by the Council, the Council finds that the plan still does not provide for the affordable housing obligation set forth in N.J.A.C. 5:94-2.4, the Council shall issue an administrative order directing that specific corrective actions be taken and shall establish time frames for such actions for a period not to exceed 120 days. Failure to comply with the administrative order shall result in the revocation of substantive certification.

(c) Failure to submit annual monitoring reports pursuant to N.J.A.C. 5:94-9.2 by the date specified by the Council may result in an Order to Show Cause as to why the annual monitoring report was not submitted by the municipality by the specified date at the next scheduled Council meeting.

SUBCHAPTER 10. GENERAL POWERS

5:95-10.1 Orders to restrain scarce resources

At any time, upon its own determination or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation.

5:95-10.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

5:95-10.3 Administrative orders

At any time, upon its own determination, or upon the application of an interested party, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low-and moderate-income housing. The Council may dismiss a municipal Housing Element and Fair Share Plan by administrative order. The order shall set forth in detail the reasons for the dismissal and the actions the municipality must take before it may refile its Housing Element and Fair Share Plan.

SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS

5:95-11.1 Terms of agreement

(a) A municipality may propose to transfer up to 50 percent of its growth share obligation to another municipality within its housing region by means of an initial contractual regional contribution agreement (RCA) pursuant to N.J.S.A. 52:27D-312 between the two municipalities. The initial contractual agreement shall be submitted to the Council by the sending municipality and shall specify, at a minimum, the number of units to be transferred, the type of housing activity anticipated by the receiving municipality and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council's Executive Director may require revisions to the initial contract upon review of the RCA and prior to the Council's approval.

(b) An RCA that has been approved by the Council by the granting of a petition for substantive certification to the sending municipality may be executed once the Council awards substantive certification.

(c) A receiving municipality shall enter into an escrow agreement with the Council whereby the Council has access to the escrow account. RCA funds shall be deposited in a separate interest bearing escrow account for each RCA.

5:95-11.2 Statements of intent

(a) Municipalities which intend to enter into an RCA as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirements for their participation.

(b) Statements of intent submitted under this section shall be in the form of a duly adopted resolution adopted by the municipality.

(c) Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.

(d) Statements of intent are not binding upon the municipality.

5:95-11.3 Project plan review by the New Jersey Housing and Mortgage Finance Agency

(a) Except for a municipality that has been granted RCA recipient certification pursuant to N.J.A.C. 5:95-11.4, the receiving municipality shall submit a proposed project plan to the Agency delineating the manner in which the receiving municipality shall create or rehabilitate low and moderate-income housing in response to the regional contribution agreement. The project plan shall be in such a form and contain such information as the Agency may require. The Council or the Agency may impose time limitations for the submission of a project plan or any updates or conditions thereto. Project plans shall receive approval from the Agency prior to receiving approval from the Council.

(b) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to recommend the approval of the proposed project.

5:95-11.4 RCA recipient certification

(a) In addition to the procedures outlined in N.J.A.C. 5:95-11.3, a receiving municipality may request RCA recipient certification. RCA recipient certification is a streamlined process of implementing an RCA program for receiving municipalities with a history of demonstrated experience in housing production.

(b) A receiving municipality may apply to the Agency for RCA recipient certification in one or more of the four following housing categories:

1. Limited or moderate rehabilitation of one-to-four family buildings;

2. Reconstruction of one-to-four family buildings including in-fill housing;

3. Reconstruction, new construction or adaptive reuse of non-residential buildings into multifamily buildings containing more than four units; or

4. Reconstruction or new construction of special needs housing including transitional housing for the homeless.

(c) In order to receive RCA recipient certification, a receiving municipality shall file an application with the Agency and with the county planning board or agency of the county in which the receiving municipality is located that meets or includes the following:

1. An application for certification stating the category or categories of housing for which the municipality seeks certification and a listing of all RCA projects undertaken by the municipality in the applicable categories during the past five years;

2. Evidence of the ability to market, lease-up and successfully manage affordable housing. The receiving municipality shall submit three sample projects for each requested category for certification. Such housing must have been funded either through an RCA or other affordable housing program;

3. The receiving municipality shall demonstrate an ability to administer a housing program by providing a description of the administrative mechanism used to carry out past affordable housing programs including a description of staff responsibilities and procedures for income qualification of applicants. A receiving municipality may have started a program in-house, reached an agreement with a participating governmental agency or retained an outside experienced firm;

4. Submittal of an administrative manual that complies with the Council and Agency rules; and

5. A detailed regional marketing program as per N.J.A.C. 5:94-7 that describes the outreach efforts to be used in carrying out the program.

(d) A receiving municipality shall establish criteria for the selection of development teams that will develop affordable housing projects. A receiving municipality shall encourage the formation of development teams that can complete projects of the type for which financing is sought. The following characteristics are to be considered:

1. The organizational setup of the housing investor/developer (for example, limited dividend, limited partnership, nonprofit);

2. The formation of the project in terms of the site, the number of dwelling units, the number of buildings and the number of stories; and

3. The extent of experience in developing mixed-use facilities (for example, commercial space, day care accommodations).

(e) The Agency shall review all RCA recipient certification applications for feasibility in accordance with the criteria in (c) above and shall make recommendations to the Council.

(f) The county planning board or agency of the county in which the receiving municipality is located shall review the RCA recipient certification application in accordance with sound comprehensive regional planning.

(g) The Council shall approve an RCA recipient certification application based upon the recommendation of the Agency and the county planning board or agency of the county in which the receiving municipality is located and the criteria established by N.J.A.C. 5:95-11.4 and 5:94-5.

(h) A municipality that received RCA recipient certification is considered to have an approved project plan and has the ability to use RCA funds for any eligible project within that certified housing category without Agency review and Council approval during the three-year recipient certification period.

(i) After receiving RCA recipient certification, a receiving municipality shall file with the Agency, the county planning board or agency of the county in which the receiving municipality is located and the Council a summary of each project prior to the commencement of the project. The summary shall include:

1. A brief project description including address and number of units;
2. The total development cost and breakdown of financing;
3. The estimated start date; and
4. The projected completion date.

(j) RCA recipient certification shall extend for a three-year period. At the end of the third year, the Agency and the Council shall evaluate the receiving municipality's RCA program for conformity with N.J.A.C. 5:95-11.4 and 5:94-5, including completion of projects and timely submission of reports. A municipality shall receive a three-year extension upon a satisfactory review of the first certification period.

(k) Any changes in facts upon which the RCA recipient certification is based or any deviations from the terms and conditions of the RCA recipient certification which affects the ability of the receiving municipality to provide for the RCA units in the certified housing categories shall render the RCA recipient certification invalid.

(l) All RCA contracts between a sending and RCA recipient certification municipality shall be reviewed and approved by the Council prior to the execution of the agreement and, after approval, shall be forwarded to the Agency and the county planning board.

5:95-11.5 Review by county planning board or agency

(a) Each RCA, together with the RCA recipient certification application as applicable, shall be forwarded to the county planning board or agency of the county in which the receiving municipality is located for review and recommendation. The county planning board or agency shall consider whether or not the RCA and/or RCA recipient certification application is in accordance with sound comprehensive regional planning.

(b) All determinations of a county planning board or agency shall be by resolution. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.

(c) The county planning board or agency shall file its review with the Council within 45 days of receipt of a complete application for review. For good cause shown, a 15-day extension may be granted.

(d) In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

5:95-11.6 Review by the Council

(a) The Council shall approve an RCA upon finding that:

1. The agreement provides a realistic opportunity for low and moderate-income housing within convenient access to employment opportunities;

2. The agreement is consistent with sound comprehensive regional planning and the goals, policies and objectives of the State Development and Redevelopment Plan; and

3. The receiving municipality's project plan is a feasible means of achieving the purposes of the agreement, as determined by the Agency. If the receiving municipality has been granted RCA recipient certification by the Council, such feasibility is established by N.J.A.C. 5:95-11.4.

(b) Upon recommendation of the Agency the Council may approve, as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low and moderate-income units included in the proposed project may be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve all RCAs by resolution. The Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs. The Director of the Division, pursuant to N.J.S.A. 52:27D-312(d), shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

5:95-11.7 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file semi-annual reports with the Council and the Agency setting forth the progress in implementing the RCA project plan to be produced with the funds from the RCA. These reports shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project plan by the receiving municipality. Such actions may include one or more of the following:

1. The initiation of a lawsuit to enforce an RCA contract;
2. The prevention of a delinquent receiving municipality from entering into further regional contribution agreements for a specified period of time;
3. The recommendation that the Agency and the Department of Community Affairs withhold from the receiving municipality further assistance available under the Act; or
4. Such other actions as the Council may determine necessary including ordering a sending municipality for good cause to temporarily or permanently cease payments to a receiving municipality.

SUBCHAPTER 12. MOTIONS

5:95-12.1 Form of motion

(a) An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made

and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to the OAL pursuant to N.J.A.C. 1:1-12.

(b) The Council shall not accept motions for reconsideration.

(c) The Council shall not accept a motion if an objection has been filed pursuant to N.J.A.C. 5:95-4.1 by the same party on substantially the same matter. After the parties have completed mediation, a motion may be filed on the matter. The mediator shall determine if the motion presents a substantial change in facts or law and, upon a positive finding, shall refer the matter to the Council.

5:95-12.2 Oral argument

A movant's request for oral argument shall be made either in the moving papers or in the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore. The Council's Executive Director shall determine whether motions shall be heard on the papers or through oral argument.

5:95-12.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and supporting documents. A party shall submit an original and 20 copies of all motions and answering papers, as well as all accompanying papers. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits shall be annexed thereto.

5:95-12.4 Time for serving and filing motions and affidavits or briefs

(a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except for those that seek emergent relief, shall be made returnable at least 10 days prior to a regularly scheduled meeting of the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs or to any cross-motions shall be served and filed not later than 10 days after receipt of the opposing papers. A party seeking emergent relief shall contact the Council's Executive Director to request an emergency hearing by the Council. A determination to proceed with emergent relief shall be made by the Executive Director.

(b) All papers shall be accompanied by a certification of service.

5:95-12.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

**SUBCHAPTER 13. AMENDMENT OF
SUBSTANTIVE CERTIFICATION**
5:95-13.1 General

(a) A municipality or any other party may request amendments to the terms of substantive certification. Amendments may be approved by the Council at any time following a grant of substantive certification. Amendments may be required by the Council at any time if it is determined that the municipality is no longer meeting the affordable housing obligation set forth in N.J.A.C. 5:94-2.4.

(b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial change in density, other zoning requirements that result in a change of housing type on a specific site, or a fundamental change in approach to its low and moderate-income housing obligation shall petition for such an amendment.

(c) A municipality seeking a minor, technical amendment to its certified Housing Element and Fair Share Plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:95-12.

(d) Requests for amendments of the terms of substantive certification may be made by any party other than a municipality by motion. If the motion requests a change in site, a substantial change in density, other zoning requirements that result in a change of housing type on a specific site, or a fundamental change in approach to the municipal low-and moderate-income housing obligation, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by petition.

(e) All parties to the substantive certification, including the municipality and all objectors, shall be permitted to comment on any proposed amendment.

(f) A municipality shall not amend zoning on sites included in the certified Housing Element and Fair Share Plan without notice to the affected property owner. In amending zoning, a municipality shall adhere to the criteria outlined in N.J.A.C. 5:94-4.17.

5:95-13.2 Municipal petition to amend

(a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council's Executive Director may request:

1. A summary of, and detailed reasons for, the proposed amendment;
2. A duly adopted resolution of the municipal planning board adopting the revised Housing Element and Fair Share Plan;
3. A duly adopted resolution of the municipal governing body endorsing the revised Housing Element and Fair Share Plan and requesting Council review and approval of the petition to amend;
4. Proof of service of notice of the petition on all objectors and owners of sites contained in both the certified and proposed Housing Element and Fair Share Plan; and
5. Proof of public notice in conformance with the requirements of N.J.A.C. 5:95-13.4(a).

(b) The information required in (a)1 through 4 above shall be submitted to the Council by the municipality at the time it petitions for amendment. The information required in (a)5 above shall be submitted to the Council within seven days of the date of the municipality's petition to amend.

5:95-13.3 Amendment by motion

(a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:95-12 and shall include, at a minimum, the following information, as well as such other information as the Council's Executive Director may request:

1. A summary of, and detailed reasons for, the proposed amendment;
2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed Housing Element and Fair Share Plan; and
3. Proof of public notice pursuant to the requirements of N.J.A.C. 5:95-13.4(b).

5:95-13.4 Notice of petition to amend

(a) A municipality that has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county in the following format:

**NOTICE OF PETITION TO AMEND
SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing to amend its Substantive Certification pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-13 et seq. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (TOWNSHIP/BOROUGH/ TOWN/CITY) received substantive certification on (DATE).