

CHAPTER 91

PROCEDURAL RULES OF THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING

Authority

N.J.S.A. 52:27D-301 et seq., specifically N.J.S.A. 52:27D-307.

Source and Effective Date

R.1992 d.491, effective December 7, 1992.  
See: 24 N.J.R. 2671(a), 24 N.J.R. 4344(b).

Executive Order No. 66(1978) Expiration Date

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, expires on December 7, 1997.

Chapter Historical Note

Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was adopted as R.1986 d.221, effective June 16, 1986. See: 18 N.J.R. 821(a), 18 N.J.R. 1267(a).

Pursuant to Executive Order No. 66(1978), Chapter 91 was readopted as R.1991 d.119. See: 22 N.J.R. 3610(b), 23 N.J.R. 688(a). Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was repealed and a new Chapter 91, Procedural Rules of the New Jersey Council on Affordable Housing, was adopted by R.1992 d.491, effective December 7, 1992. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:91-1.1 Short title**

The provisions of this chapter shall be known as "the procedural rules of the New Jersey Council on Affordable Housing."

**Case Notes**

Township could adopt housing element of master plan at properly noticed open meeting. *Hills Development Co. v. Township of Bernards*, 229 N.J.Super. 318, 551 A.2d 547 (A.D.1988).

**5:91-1.2 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.).

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

"Days" means calendar days.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing need of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. 5:93.

"Filed" means accepted for filing by the Council.

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing, as further described by N.J.A.C. 5:93.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to July 2, 1985.

"Objector" means a person who files objections to a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-4.1 or is the owner of record of a site designated for low and moderate income housing in a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-7.2(e).

"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. A participant to mediation is not to be considered an objector to the municipality's petition for substantive certification.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Receiving municipality" means, for the purposes of a regional contribution agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Sending municipality" means, for the purposes of a regional contribution agreement (RCA), a municipality which seeks to transfer a portion of its fair share obligation to another willing municipality.

"Submission" means an adopted housing element and fair share plan.

Amended by R.1995 d.491, effective September 5, 1995.  
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

**5:91-1.3 Waiver**

Any party desiring a waiver or release from the express provisions of the rules in this chapter may submit a written request to the Council to the attention of the Executive Director, in accordance with the provisions of N.J.A.C. 5:93-15.1.

(b) Where a party other than the municipality moves to amend the terms of certification, the Council may direct the municipality to publish notice of this motion and the municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall file with the Council proof of publication within seven days of its receipt of notification from the Council of the necessity of publishing notice.

(c) The Council shall publish a monthly list of all petitions for amendments to certification it has received in newspapers of general circulation within the State.

Amended by R.1995 d.491, effective September 5, 1995.  
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

### 5:91-13.5 Objections to amendment petitions

(a) Within 30 days of the publication of a notice of a petition to amend the terms of certification, any person may file objections to the terms of the proposed amendment with the Council. These objections shall be in a form acceptable to the Council and shall include, at a minimum, the following:

1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its housing element and fair share plan to which an objection is made;
2. An explanation of the basis for each objection, including, where appropriate, citations to expert reports, studies, or other data relied upon;
3. Copies of all expert reports, studies and data relied upon;
4. Proposed modifications, changes, or other measures which will resolve the objection consistent with the Council's criteria and guidelines; and
5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

### 5:91-13.6 Review of objections

(a) The Council shall review objections subject to the criteria in N.J.A.C. 5:91-13.5. An objector that has met these criteria shall participate in the Council's administrative process beginning with mediation as set out at N.J.A.C. 5:91-7.

(b) Objections that are determined to be incomplete shall be returned to the objectors and they will be given 14 days to amend their objections and resubmit them in a manner conforming to 5:91-13.5.

## SUBCHAPTER 14. INTERIM PROCEDURES

### Subchapter Historical Note

Subchapter 14, originally Interim Substantive Certification, was repealed by R.1993 d.407 and new rules were adopted, effective August 16, 1993. See: 25 N.J.R. 1118(a), 25 N.J.R. 3753(a). See, also, Chapter Historical Note.

### 5:91-14.1 Interim substantive certification

(a) A municipality that has received substantive certification from the Council for a housing element and fair share plan addressing the municipality's affordable housing obligation for 1987-1993 may move for an interim substantive certification if its certification expires prior to or by March 6, 1995. If a municipality's judgment of repose has expired, the municipality may, by October 6, 1994, also file such a motion providing no exclusionary zoning lawsuit has been filed against the municipality. The motion seeking interim certification must:

1. Comply with the requirements of N.J.A.C. 5:91-12;
2. Be served upon all objectors and/or litigants that participated in the substantive certification or court settlement process; and
3. Be accompanied by:
  - i. The municipality's current housing element and fair share plan;
  - ii. A resolution of the governing body of the municipality expressing the intention to submit to the Council, by March 6, 1995, a housing element and fair share plan addressing the municipality's fair share housing obligation;
  - iii. A proposed schedule for this submission;
  - iv. A statement as to the progress of the municipality's compliance with the terms of substantive certification; and
  - v. Any additional information the Council may require.

(b) The Council will issue interim substantive certification for a period of time not to exceed March 6, 1995 that responds to the submitted municipal schedule for filing its housing element and fair share plan if no objection is filed to the municipality's motion for interim substantive certification. The Council will condition its grant of 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 municipal fair share obligation.

(c) Objections filed to a municipality's motion for interim substantive certification shall set out how the municipality has failed to comply with the terms of substantive certification or otherwise failed to satisfy its fair share obligation and also articulate what relief is requested of the Council.

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

(e) If a municipality received a judgment of repose that expires on or before March 6, 1995, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth above shall apply.

Amended by R.1994 d.290, effective June 6, 1994.  
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

#### **5:91-14.2 Municipalities that have not received substantive certification**

(a) A municipality that has petitioned for substantive certification of a housing element and fair share plan designed to address its 1987-1993 obligation, but has not received a final determination of the Council on its plan by June 6, 1994, may either:

1. Move to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and repetition for certification of the amended plan; or
2. Choose to continue to seek substantive certification on its 1987-1993 obligation.

(b) A municipal motion to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 shall be accompanied by a resolution of the governing body of the municipality expressing the intention to submit to the Council, by March 6, 1995, an amended housing element and fair share plan addressing the municipality's 1987-1999 obligation pursuant to N.J.A.C. 5:93; a proposed schedule for this submission; and the intention to repetition for substantive certification by March 6, 1995.

(c) When granting such motion, the Council will set out a schedule for the municipal submission of its housing element and fair share plan and will require the municipality to repetition for substantive certification of the new housing element and fair share plan upon this filing.

(d) The Council will condition any grant of substantive certification for a municipal housing element and fair share plan that addresses only the 1987-1993 fair share obligation by a requirement that the municipality file a housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and petition for the substantive certification of that housing element and plan within two years of the date of the granting of substantive certification of the 1987-1993 plan.

Amended by R.1994 d.290, effective June 6, 1994.

See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

#### **5:91-14.3 Other municipalities**

(a) A municipality that filed its housing element and fair share plan with the Council on or before June 6, 1992, but did not petition for substantive certification prior to June 6, 1994, must file a new housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and petition for substantive certification prior to an exclusionary lawsuit to re-enter the Council's process.

(b) A municipality that has filed a housing element and fair share plan after June 6, 1992 may seek to extend the period of protection afforded by N.J.S.A. 52:27D-313 for up to March 6, 1995 in order to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93. To seek such an extension, the municipality shall file a resolution of the governing body within whichever of the following dates occurs earlier: two years of the initial filing of the municipal housing element and fair share plan; or October 6, 1994. In addition to a schedule for submitting a housing element and fair share plan, the governing body's resolution shall state an intent to petition for substantive certification upon filing the housing element and fair share plan.

(c) The Council shall review the municipality's resolution of intent and grant a schedule for the municipal submission of the housing element and fair share plan conditioned on the municipality's petitioning for substantive certification upon filing its submission. The schedule for submitting the housing element and fair share plan shall require the filing and petition to occur by March 6, 1995.

Amended by R.1994 d.290, effective June 6, 1994.  
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

### **SUBCHAPTER 15. RETENTION OF DEVELOPMENT FEES**

#### **5:91-15.1 Procedures for retaining development fees**

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 18.5, and 5:93-8.4 and 8.5 may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a) and 5:93-8.8(a) (Development fee ordinance review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 and 5:93-8.8(a)9 within seven days of the governing body's resolution to request review of its development fee ordinance.

(c) Municipalities that fail to provide all information to the Council, or fail to provide information to developers that paid development fees prior to December 13, 1990 within the time limits imposed by the Council, may be required by the Council to return the development fees to the developers that paid them.

(d) Developers shall have 14 days from the receipt of the information provided in (b) above to submit comments to the Council regarding the submissions made by the municipality. The developer shall simultaneously serve the municipality with a copy of the comments.

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18 and 5:93-8.

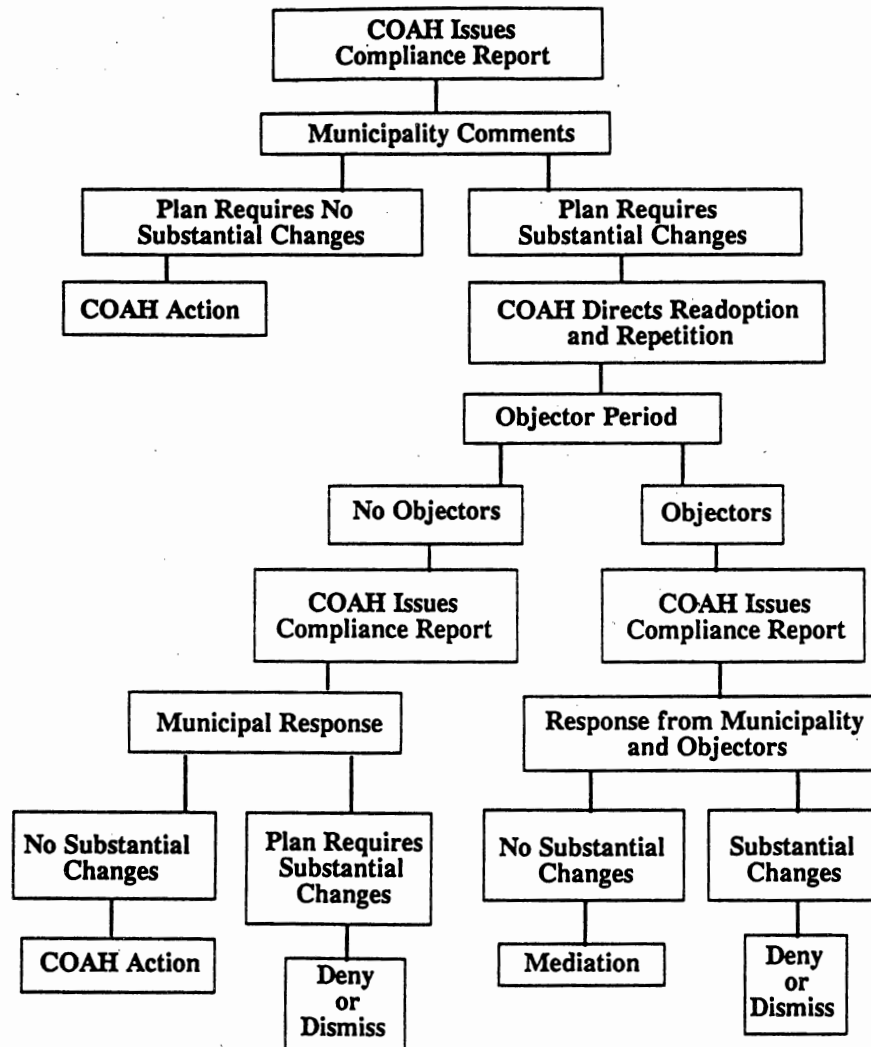
Amended by R.1995 d.491, effective September 5, 1995.  
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

**Law Review and Journal Commentaries**

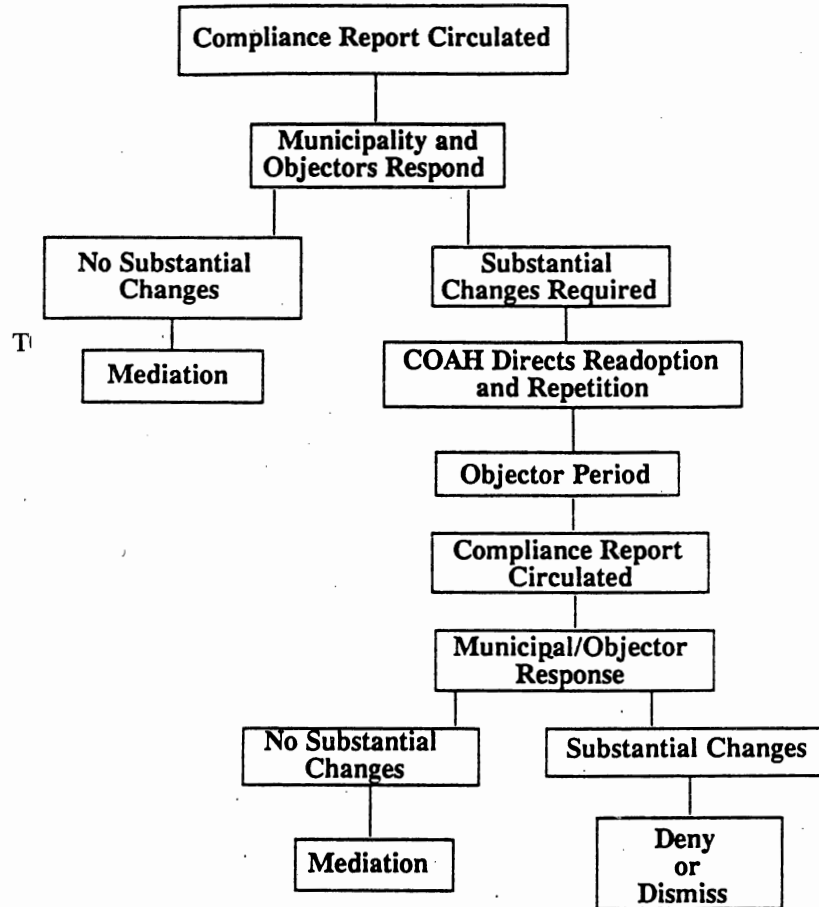
COAH Rules Permit Retroactive fee Ordinances, Thomas F. Carroll, III, 135 N.J.L.J. No. 7, 56 (1993).

## APPENDIX

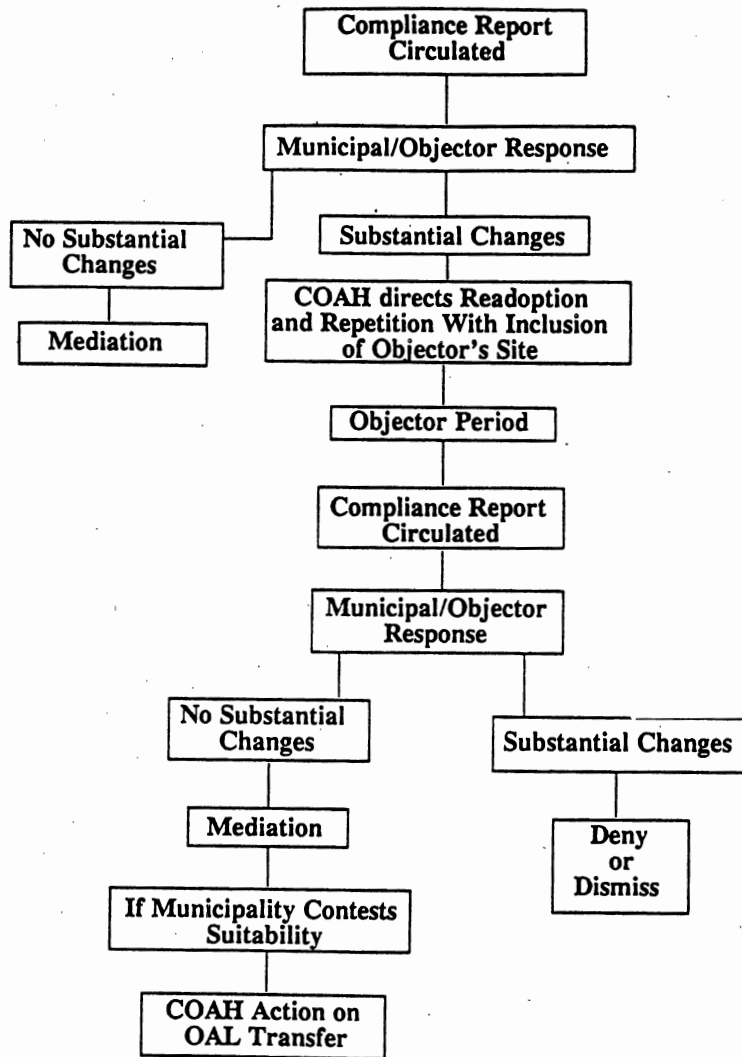
**CHART1**  
**VOLUNTARY TOWNS**  
**NO OBJECTORS**  
**N.J.A.C. 5:91-5.2**



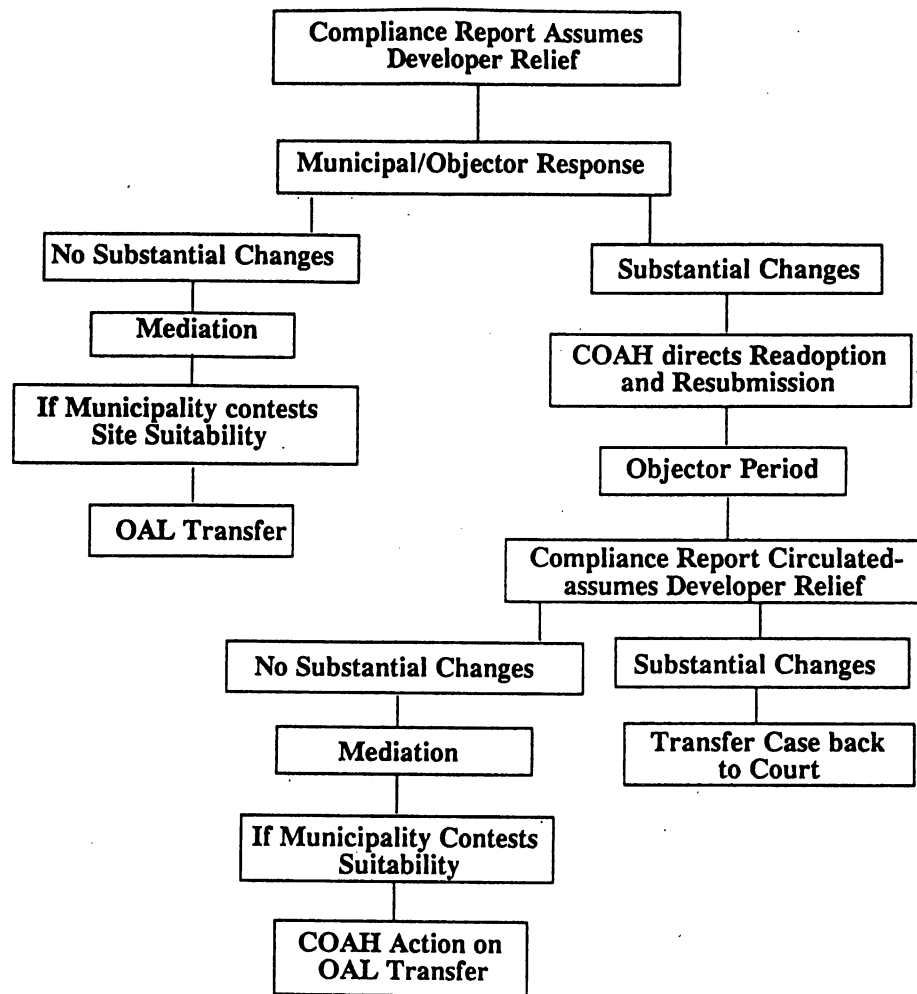
**CHART 2**  
**PETITION WITHIN TWO YEARS/OBJECTIONS**  
**N.J.A.C. 5:91-6.2**



**CHART 3**  
**PETITION AFTER TWO YEARS, BUT BEFORE LAWSUIT**  
**N.J.A.C. 5:91-6.3**



**CHART 4**  
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**CHART 5**  
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