(b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
In (a)3, substituted "review and approval" for "approval".

5:91–13.3 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. 5:91–12, and shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment; and

2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

5:91–13.4 Notice of amendment petition

(a) A municipality which 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, using this format:

NOTICE OF AMENDMENT TO SUBSTANTIVE CERTIFICATION

Notice is hereby given that the (name of municipality) Planning Board, adopted a housing element/fair share plan on (date) which was certified by the Council on Affordable Housing (COAH) on (date). Now, the (name of municipality) is proposing to amend its certified housing element and fair share plan.

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amendment to the housing element/fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of _____. Any interested party must file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, NJ 08625–0813 and with the (name of municipality) within 30 days of publication of this notice.

(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).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Amended address.

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

Authority

N.J.S.A. 52:27D–301 et seq.

New Jersey State Library

Source and Effective Date

R.1999 d.378, effective November 1, 1999.
See: 31 N.J.R. 2319(a), 31 N.J.R. 3290(a).

Subchapter Historical Note

Subchapter 14, Interim Procedures, was repealed and Subchapter 14, Interim Procedures, was adopted as new rules by R.1999 d.378, effective November 1, 1999. See: Source and Effective Date.

5:91–14.1 Municipalities that petition on or before June 6, 2000

A municipality that has not addressed its cumulative 1987–1999 fair share obligation may file an adopted housing element and fair share plan together with a petition for substantive certification on or before June 6, 2000. The Council shall grant a six-year certification if the housing element and fair share plan meet the criteria of N.J.A.C. 5:93.

5:91–14.2 Municipalities that petition after June 6, 2000

(a) A municipality that has not addressed its cumulative 1987–1999 fair share obligation may file an adopted housing element and fair share plan together with a petition for substantive certification after June 6, 2000. The Council shall grant an Interim Substantive Certification if the housing element and fair share meet the criteria of N.J.A.C. 5:93.

(b) This Interim Substantive Certification will be valid for up to one year after the effective date of the adoption of the Council's third round methodology and rules.

(c) To remain under the jurisdiction of the Council after receiving Interim Substantive Certification, a municipality shall petition before the one-year date to receive a third round certification.

5:91–14.3 Extended substantive certification

(a) A municipality whose second round substantive certification has expired prior to October 14, 2004 or will expire by December 13, 2004, including those municipalities that previously received extended second round substantive certification from the Council, may move before the Council to extend the substantive certification of its 1987–1999 Housing Element and Fair Share Plan for a period of one year after the effective date of N.J.A.C. 5:94 and 5:95. Such motion shall be filed by December 13, 2004.

(b) A municipality whose substantive certification will expire after December 13, 2004 may move before the Council to extend the substantive certification of its 1987–1999 Housing Element and Fair Share Plan for one year after the effective date of N.J.A.C. 5:94 and 5:95. Such motion must be filed prior to the expiration date of its substantive certification.

(c) A municipality that submits a motion for extended substantive certification pursuant to (a) and (b) above shall have its second round substantive certification continue in full force and effect for the period of review of such motion by the Council. The Council shall complete its review and issue its decision on such motion in a reasonable period of time.

(d) The motion submitted by a municipality pursuant to (a) or (b) above shall:

1. Comply with the requirements of N.J.A.C. 5:91–12;

2. Be served upon the service list maintained by the Council; and

3. Be accompanied by:

i. Proof of public notice in a newspaper of general circulation within the municipality and county that the municipality has moved before the Council to extend its 1987–1999 substantive certification of the municipality's Housing Element and Fair Share Plan. The public notice shall be published simultaneously with the submission of the motion to the Council and to the service list. 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. Notice shall be provided in the following format:

Notice of Motion before the Council on Affordable Housing
for Extended Substantive Certification

NOTICE is hereby given that (MUNICIPALITY) has moved before the New Jersey Council on Affordable Housing ("Council") in accordance with N.J.A.C. 5:91–12 to extend its 1987–1999 substantive certification of its Housing Element and Fair Share Plan. The Council is accepting comments to the municipality's motion for extended substantive certification in conformance with N.J.A.C. 5:91–12.3 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 (MUNICIPALITY). A copy of the motion and supporting documentation 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

On the date of publication, the municipality shall make copies of the motion and supporting documentation available for public inspection during regular business hours within the municipality.

ii. The municipality's adopted current Housing Element and Fair Share Plan;

iii. A resolution from the governing body that requests the extension, commits to continue to implement the certified second round plan, and commits to file or petition for third round substantive certification in accordance with N.J.A.C. 5:94 and 5:95. within one year of the effective date of N.J.A.C. 5:94 and 5:95;

iv. A proposed schedule for the submission of the filing or petition for third round substantive certification;

v. A statement describing the progress of the municipality's compliance with the terms of its 1987–1999 substantive certification; and

vi. The municipality's current monitoring report and development fee monitoring report.

(e) If the municipality received an adjustment pursuant to N.J.A.C. 5:93–4, the municipality shall also submit the following:

1. Documentation on the issuance of all building permits since the grant of the 1987–1999 substantive certification;

2. A statement describing how the municipality has captured or attempted to capture affordable housing opportunities since the grant of the 1987–1999 substantive certification; and

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

(f) Comments to the municipality's motion for extended substantive certification shall be accepted by the Council in conformance with N.J.A.C. 5:91–12.3 for a period of 20 days from the publication of the notice required in (d)3i above. 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.

(g) In conformance with N.J.A.C. 5:91–12.4(a), the municipality shall have 10 days to respond to any comments received pursuant to (f) above.

(h) 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 to exceed one year following the effective date of N.J.A.C. 5:94 and 5:95. 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.

(i) 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.

(j) If a municipality received a judgment of compliance that expires within one year after the effective date of N.J.A.C. 5:94 and 5:95, 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 in this section shall apply.

Emergency Repeal and New Rule, R.2004 d.424, effective October 14, 2004 (to expire December 13, 2004).
See: 36 N.J.R. 4992(a).
Section was "Municipalities with expiring substantive certifications".

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).