

CHAPTER 50

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS AND DIRECT DEVELOPMENT ACTIVITIES

Authority

N.J.S.A. 52:27D-3.

Source and Effective Date

R.1993 d.505, effective September 17, 1993.
See: 25 N.J.R. 3281(a), 25 N.J.R. 4743(a).

Executive Order No. 66(1978) Expiration Date

Chapter 50, Intergovernmental Review of Federal Programs and Direct Development Activities, expires on September 17, 1998.

Chapter Historical Note

Chapter 50, Administration of Funds Received Under the Higher Education Act of 1965, was adopted pursuant to the authority of N.J.S.A. 55:27D-3 and was filed and became effective February 3, 1972, as R.1972 d.26. See: 3 N.J.R. 19(c), 4 N.J.R. 43(b). Chapter 50 was repealed by R.1989 d.227, effective May 1, 1989. See: 21 N.J.R. 367(b), 21 N.J.R. 1133(a).

Chapter 50, Intergovernmental Review of Federal Programs and Direct Developmental Activities, was adopted as R.1983 d.488 effective November 7, 1983. See: 15 N.J.R. 1494(a), 15 N.J.R. 1858(a).

Pursuant to Executive Order No. 66(1978) Chapter 50 was readopted as R.1988 d.553, effective October 27, 1988. See: 20 N.J.R. 2354(a), 20 N.J.R. 3015(a).

Chapter 50 was recodified from 5:38 by R.1991 d.211, effective March 22, 1991. See: 23 N.J.R. 1128(a).

Pursuant to Executive Order No. 66(1978), Chapter 50 was readopted as R.1993 d.505. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. STATE REVIEW PROCESS

5:50-1.1 Applicability

These rules provide the procedures to be followed by State agencies, local governments, nonprofit and for-profit organizations and areawide agencies when applying for Federal financial assistance in amounts over \$50,000 and for Federal direct development activities covered by Presidential Executive Order 12372 and implementing Federal rules.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.1.
Amended by R.1993 d.505, effective October 18, 1993.
See: 25 N.J.R. 3281(a), 25 N.J.R. 4743(a).

5:50-1.2 Definitions

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

“Applicant” means a State agency, local government, areawide agency, nonprofit organization or for profit organization.

“Areawide agency” means an agency designed to perform metropolitan or regional planning for the area within which the assistance is to be used, and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning as determined by the Federal Office of Management and Budget pursuant to the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

“Assistant Commissioner” means the Assistant Commissioner of the Department of Community Affairs who is responsible for overseeing the Division on Aging and the Division on Women.

“Days” means calendar days.

“Local government” means a local unit of government including a county, municipality, local public authority, special district, or any agency or instrumentality of a local government.

“Nonaccommodation” means a decision by a Federal agency that is not in accord with a State Process Recommendation regarding a request for Federal financial assistance or Federal direct development activity.

“Noncompeting continuation award” means Federal financial assistance the receipt of which is noncompetitive and continuing as defined by the individual Federal funding agencies.

“Nonprofit organization” means a public or private institution of higher education, hospital or other nonprofit organization such as, but not limited to, a community action agency, research institute, educational association, health center or social service agency.

“Qualifying program” means a program for Federal financial assistance subject to the State Review Process developed pursuant to Presidential Executive Board Order 12372.

“Review period” means the time designated by a Federal funding agency for the State to conduct the State Review Process review of an application for financial assistance under a qualifying program or direct Federal development activity.

“Single Point of Contact” means that agent designated by a State for intergovernmental review of applications for Federal financial assistance and Federal direct development activities pursuant to Presidential Executive Order 12372 and implementing Federal rules. In New Jersey, the Single Point of Contact is the Assistant Commissioner, as defined in this section.

“State Process Recommendation” means a statement representing a policy position of the State of New Jersey which may be transmitted to the Federal funding agency pursuant to Presidential Executive Order 12372 and implementing Federal rules.

“State Reviewing Agency” means a State department or agency designated to review applications for Federal financial assistance and Federal direct development activities as part of the State Review Process.

“Time for review” means the time available for the completion of the entire review process as set forth in these regulations.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.2; references to Local Government Services deleted.

Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.3 Review period

(a) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, except in unusual circumstances to be determined by the Federal funding agency, the review period will be 30 days for noncompeting continuation awards; 60 days for financial assistance other than noncompeting awards; and 60 days for direct Federal development activities.

(b) The date for the initiation of the review period for an application for Federal financial assistance will be set by the Secretary or Agency Administrator of the Federal funding agency.

(c) Review periods established by Federal funding agencies for financial assistance are as follows:

DURATION OF REVIEW PERIODS

Federal Agency Action	30 days/ non-competing continuation awards (1)	60 days/ financial assistance other than non-competing awards (1)	60/days all programs
Agriculture	x	x	
Commerce	x	x	
Defense			x
Education	x	x	
Energy	x	x	
Environmental Protection Agency	x	x	
Federal Emergency Management Agency			x
General Services Administration			x
Health & Human Services	x	x	
Housing & Urban Development	(2)	(3)	
Interior	x	x	
Justice	x	x	
Labor	x	x	
NASA			(4)
National Endowment for the Arts			x
National Science Foundation	x	x	
Postal Service			(4)
Small Business Administration			x
Transportation			x
Veterans Administration			x

(1) Areawide agencies are provided a 60 day review period for programs and activities subject to Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(2) 30 days on proposed assistance under a covered mortgage insurance program or under the Urban Development Action Grant Program (UDAG).

(3) 60 days on proposed financial assistance other than a covered mortgage insurance program.

(4) Direct development activities only.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.3.

5:50-1.4 Review process; applications for financial assistance

(a) Applicants for Federal financial assistance in an amount over \$50,000 under a qualifying program and reviewing agencies shall adhere to the following procedures:

1. Provide the Assistant Commissioner and appropriate reviewing agency or agencies with an application review package, as prescribed in N.J.A.C. 5:50-1.12, at least 30 days for noncompeting continuation awards, and at least 60 days for financial assistance other than noncompeting awards, prior to the end of the review period established by the Secretary or Agency Administrator of the Federal funding agency.

2. Applicants for Federal financial assistance shall submit the application review package to the appropriate reviewing agencies, as identified by the Assistant Commissioner:

i. A State Department shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s);
- (3) County reviewing agency(s); and
- (4) Areawide agency(s).

ii. A county shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s);
- (3) Adjacent county(s); and
- (4) Areawide agency(s).

iii. A municipality shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s);
- (3) County of location; and
- (4) Areawide agency.

iv. An areawide agency shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s); and
- (3) County(s) within service area.

v. A nonprofit organization shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s);
- (3) County reviewing agency(s) within service area; and
- (4) Areawide agency.

vi. A profit organization shall simultaneously submit the application review package to:

- (1) The Assistant Commissioner;
- (2) State reviewing agency(s);
- (3) County reviewing agency(s) within project area; and
- (4) Areawide agency.

vii. For purposes of subparagraphs i, ii, iii, v and vi above, submission to areawide agencies shall be re-

quired only for those programs subject to Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, as identified by the individual Federal funding agency.

3. The time for review shall commence upon receipt of the application review package by the Assistant Commissioner.

4. Upon receipt of an application review package, the Assistant Commissioner shall provide notice thereof to both the applicant and the reviewing agency(s).

5. The reviewing agency(s), when it chooses to comment, shall submit comments on the application review package to the applicant and the Assistant Commissioner simultaneously. This submission shall be received by the Assistant Commissioner prior to the termination of the time for review by at least 10 days for noncompeting continuation awards and 15 days for financial assistance other than noncompeting awards.

6. If conflicts or issues arise, the reviewing agency(s) and the applicant should seek to resolve their differences. The Assistant Commissioner shall be notified by both the applicant and reviewing agency(s) of any changes or modifications in the proposal and review comments. Any resolution of differences and changes or modifications in the proposal or comments shall be accomplished within the time for review as set forth in (a)1 above.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.4; references to Local Government services deleted.

Amended by R.1993 d.505, effective October 18, 1993.

See: 25 N.J.R. 3281(a), 25 N.J.R. 4743(a).

Amended by R.1995 d.529, effective October 2, 1995.

See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

Case Notes

Withdrawal of Community Services Block Grant funding for the Passaic Community Action Program, Inc. (PCAP) was proper. Department of Community Affairs v. Passaic Community Action Program, Inc., 92 N.J.A.R.2d (CAF) 119.

5:50-1.5 Transmittal of review comments

(a) The Assistant Commissioner shall review, coordinate and transmit to the Federal funding agency all comments received from reviewing agencies during the time for review. At his or her discretion, the Assistant Commissioner reserves the right to transmit a State Process Recommendation to the Federal funding agency in addition to transmittal of all reviewing agency(s) comments.

(b) A State Process Recommendation shall be entertained only if one or more of the following conditions is found to be present and documented by the Reviewing Agency:

1. The proposed activity is found not to be consistent with an adopted State, areawide, county or municipal plan;

2. The proposed activity duplicates or negates the efforts of a similar or on-going specifically identified program or activity;

3. The proposed activity has a specific and documented adverse environmental impact;

4. The proposed activity has a negative impact on the achievement of a specified State and/or local objectives and/or priorities relating to natural and human resources and economic development; and/or

5. The proposed activity is determined to propose an activity which is in violation of existing statutes.

(c) A State Process Recommendation may be issued for non-construction, as well as construction projects. A State Process Recommendation shall not be issued to support a proposed activity when either no comments have been received from Reviewing Agencies or when all comments received from Reviewing Agencies are supportive of the proposed activity.

(d) A State Process Recommendation shall be prepared and transmitted to the Federal funding agency prior to the close of the Review Period defined by the Federal funding agency.

(e) The Single Point of Contact shall prepare and revise, as necessary, instructions describing the procedures required to be followed in the preparation of a State Process Recommendation.

Amended by R.1988 d.553, effective December 5, 1988.
See: 20 N.J.R. 2354(a), 20 N.J.R. 3015(a).

Added (b)-(e).
Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.5.
Amended by R.1993 d.505, effective October 18, 1993.
See: 25 N.J.R. 3281(a), 25 N.J.R. 4743(a).
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.6 Nonaccommodation of review comments

(a) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, in those instances where the Federal agency cannot accommodate a State Process Recommendation forwarded by the Assistant Commissioner, the Federal funding agency will provide the Assistant Commissioner with an explanation of its nonaccommodation.

(b) The Assistant Commissioner shall have 10 days to respond to the finding of nonaccommodation. The 10 day period shall commence on the date of the original explanation to the Assistant Commissioner by the Federal agency.

(c) Under certain conditions (for example, emergency, statutory deadline) it may not be feasible for the Federal funding agency to wait the full 10 days before implementing its decision. When this condition prevails, the nonaccommodation explanation will include an explanation of the inability to provide the 10 day waiting period.

(d) Upon receipt of notification of nonaccommodation from a Federal funding agency, the Assistant Commissioner shall notify the appropriate reviewing agency(s) and the applicant.

(e) Additional comments generated by the reviewing agencies during the 10 day review period shall be forwarded to the Assistant Commissioner, who shall review, coordinate and transmit these comments to the Federal funding agency. At his or her discretion, the Assistant Commissioner reserves the right to transmit his or her own response to the Federal funding agency in addition to transmittal of all reviewing agency comments.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.6.
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.7 Interstate situations

(a) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, in those cases where an action taken by a Federal agency with respect to financial assistance and direct Federal development activity will have an impact on interstate areas, the Federal agency will notify the affected states through their single point of contact. In New Jersey, this is the Assistant Commissioner who has been so designated by the Commissioner of the State Department of Community Affairs pursuant to this chapter.

(b) Except in unusual circumstances (for example, emergencies, fiscal assistance awards at the end of the year) the Federal agency will provide the states at least 60 days for review before making a decision with respect to Federal funding assistance or direct Federal development.

(c) The Assistant Commissioner, upon notification of an intended action, shall notify the appropriate reviewing agency(s) as determined by the Assistant Commissioner and coordinate the comments received with the other affected state(s) using the affected state's single point of contact.

(d) The Assistant Commissioner shall review, coordinate and transmit to the Federal funding agency all comments received from reviewing agencies during the time for review. At his or her discretion, the Assistant Commissioner reserves the right to transmit a State Process Recommendation to the Federal funding agency in addition to transmittal of all reviewing agency(s) comments.

(e) The procedure for nonaccommodation of comments and recommendations by the Federal agency is set forth in N.J.A.C. 5:50-1.6.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.7; references to Local Government Services deleted.
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.8 Direct Federal development

(a) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, when a Federal agency undertakes an act of direct development, it shall notify the Assistant Commissioner.

(b) The Assistant Commissioner shall identify and notify the State, county, municipal and areawide agency(s) which may be affected by the proposed direct Federal development activity.

(c) Pursuant to Presidential Executive Order 12372 and implementing Federal rules, 60 days shall be provided for review of the proposed Federal action. The Federal agency reserves the right to reduce the period for review.

(d) The reviewing agencies shall forward comments to the Assistant Commissioner at least 15 days prior to the date comments are due at the Federal agency.

(e) The Assistant Commissioner shall review, coordinate and transmit to the Federal funding agency all comments received from reviewing agencies during the time for review. At his or her discretion, the Assistant Commissioner reserves the right to transmit a State Process Recommendation to the Federal funding agency in addition to transmittal of all reviewing agency(s) comments.

(f) The procedures for nonaccommodation of comments and recommendations by the Federal agency shall be set forth in N.J.A.C. 5:50-1.6.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.8.
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.9 Review of Federally required State plans

(a) Pursuant to Presidential Executive Order 12372, for State administered Federal programs which require a State Plan as a condition for funding, the State may simplify or consolidate the required State Plan or substitute a plan or other document developed by the State for its own purposes to meet Federal requirements:

1. Consolidate means that the State may meet statutory and regulatory requirements by combining two or more Federally required State plans into one document. The State may also choose the format, and select the submission date and planning period.

2. Simplify means that the State may develop its own plan format, choose its own submission date, and select the planning period covered by the plan for a Federally required State plan.

3. Substitute means that, unless prohibited by statute, the State may use a plan or other document that has been developed for its own purposes to meet Federal requirements.

(b) State plans required by the Federal Government that are eligible for modification under Presidential Executive Order 12372 are set forth in the Federal Register, Volume 48, Number 123, June 24, 1983.

(c) Any proposed plan simplification, consolidation or substitution shall be submitted to the following for review and comment on the impact of the proposed simplification, consolidation or substitution:

1. The Assistant Commissioner;
2. Office of the Governor;
3. State reviewing agency(s);
4. County reviewing agency(s); and
5. Appropriate areawide agency(s).

(d) Reviewing agencies shall be accorded a minimum of 30 days to evaluate the proposed simplification, consolidation or substitution.

(e) Reviewing agencies, if commenting, shall forward copies of comments directly to the Assistant Commissioner and the State agency requesting the review.

Recodified by R.1991 d.211, effective March 22, 1991.

See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.9.
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

5:50-1.10 Environmental reviews

(a) Direct Federal action and specific programs listed in the Catalog of Federal Domestic Assistance may require an environmental assessment or an Environmental Impact Statement (EIS) under Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) and Presidential Executive Order 11514 of March 4, 1970.

(b) When submission of such environmental information is required by a Federal agency, this environmental information including any Finding of No Significant Impact, shall be submitted to the Commissioner of New Jersey Department of Environmental Protection as the state agency responsible for review and comment under provisions of NEPA and Presidential Executive Order 11514.

Recodified by R.1991 d.211, effective March 22, 1991.

See: 23 N.J.R. 1128(a).

Recodified from N.J.A.C. 5:38-1.10.

5:50-1.11 Duration of approval

An application for financial assistance under a qualifying program that has completed the State Review Process, but has not been approved by the Federal funding agency, shall be resubmitted for the State Review Process if the same application is resubmitted to the Federal funding agency more than one year after the completion of its review by the State Review Process.

Recodified by R.1991 d.211, effective March 22, 1991.
See: 23 N.J.R. 1128(a).
Recodified from N.J.A.C. 5:38-1.11.

5:50-1.12 Application review package

(a) The application review package required to be submitted, pursuant to N.J.A.C. 5:50-1.4(a), to the Assistant Commissioner and to the reviewing agencies identified by the Assistant Commissioner, shall include the following documents:

1. An Application for Federal Assistance (Federal Form 424);
2. A one-page narrative description of the proposed activities, including a statement identifying the counties in New Jersey to be impacted or served by the project;
3. A Certification of Distribution of Application Review Package;
4. An 8½ inch × 11 inch site location map (for projects involving construction only); and
5. A completed Project Information Form (for projects involving construction only), incorporated herein by reference as Appendix A.

(b) The Certification of Distribution of Application Review Package and the Project Information Form shall be submitted on forms provided by the Assistant Commissioner.

(c) Documents that do not contain all applicable required information, that do not indicate correct distribution of the application review package, or that are not signed and dated where required, shall not be accepted.

(d) Upon request by the applicant, the Assistant Commissioner shall provide each applicant with a list of the names and addresses of the reviewing agencies to which the applicant must provide the application review package.

Repeal and New Rule, R.1993 d.505, effective October 18, 1993.
See: 25 N.J.R. 3281(a), 25 N.J.R. 4743(a).
Amended by R.1995 d.529, effective October 2, 1995.
See: 27 N.J.R. 2512(a), 27 N.J.R. 3785(a).

APPENDIX A

PROJECT INFORMATION FORM

This form must be completed for all projects involving construction.

PLEASE ELABORATE ON ANY "YES" ANSWER.
USE ADDITIONAL PAGES AS NEEDED.

	YES	NO
1. Will the project encroach upon wetlands or a waterway?	1. _____	_____
2. Will the project require potable water? If NO, go to 3.	2. _____	_____
a. If YES, is municipal water available?	a. _____	_____
b. If YES, will a well be drilled?	b. _____	_____
3. Will the project require wastewater disposal? If NO, go to 4.	3. _____	_____
a. If YES, is sewerage available?	a. _____	_____
b. If YES, will a septic system(s) be included?	b. _____	_____
4. Will the project involve demolition?	4. _____	_____