

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

SANDY RECOVERY DIVISION

Rules for Mortgage Forbearance for Sandy-Impacted Homeowners

Proposed New Rules: N.J.A.C. 5:65

Authorized By: Charles A. Richman, Commissioner, Department of Community Affairs.

Authority: P.L. 2017, c. 15.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-068.

Submit written comments by June 30, 2017, electronically to Geraldine.Callahan@dca.nj.gov. The Department of Community Affairs encourages electronic submittal of comments. In the alternative, comments may be submitted by regular mail, postmarked by June 30, 2017, to:

Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax Number: (609) 984-6696

The agency proposal follows:

Summary

These rules are being proposed by the Department of Community Affairs (Department) in order to implement P.L. 2017, c. 15, (the Act) which legislation took effect on February 10, 2017.

Section 5 of the Act creates a process by which a Superstorm Sandy-impacted homeowner is permitted to file, with the Department of Community Affairs, an application seeking the issuance of a Certification of Eligibility for Forbearance (Certification). Under the Act, a Sandy-impacted homeowner is a person who has either: 1) received rental assistance from the Federal Emergency Management Agency as a result of damage to his or her primary residence due to Superstorm Sandy, or 2) been approved for assistance through the State's Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) or Low-to-Moderate Income (LMI) programs. A homeowner who receives a Certification is eligible for a period of mortgage forbearance, as defined in the Act. In addition, section 5 provides that a Sandy-impacted homeowner who is the subject of a foreclosure proceeding as of August 10, 2015, may apply to the appropriate court for a stay of those proceedings; however, this provision is beyond the scope of these rules.

Proposed new N.J.A.C. 5:65-1.1 sets forth the purpose of the rules; to describe the process by which a homeowner may apply for a Certification of Eligibility for Forbearance.

Proposed new N.J.A.C. 5:65-1.2 provides the definitions applicable to the rules.

Proposed new N.J.A.C. 5:65-1.3 describes those Department responsibilities that must be carried out on or before March 31, 2017. These include notifications to potential Sandy-impacted homeowners, active mortgage lenders, and the courts, and posting of information and application requirements on the Department's website.

Proposed new N.J.A.C. 5:65-1.4 describes in detail the process for the filing of applications by homeowners seeking a Certification of Eligibility for Forbearance, and the procedures governing the Department's review and action on such applications.

Proposed new N.J.A.C. 5:65-1.5 describes the conditions that attach to forbearance, as well as the responsibilities of a homeowner who has received forbearance.

Proposed new N.J.A.C. 5:65-1.6 sets forth the different periods of time that forbearance may run, and describes how they apply to homeowners depending upon their current situation.

Proposed new N.J.A.C. 5:65-1.7 describes those attestations that must be filed with the Department by all applicants.

Proposed new N.J.A.C. 5:65-1.8 is a severability provision.

Proposed new N.J.A.C. 5:65-1.9 is a waiver provision.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The new rules implement the Act's intention that eligible Sandy-impacted homeowners may receive mortgage forbearance for a period of time permitted under the rules. The period of forbearance will allow homeowners to apply funds that would otherwise be set aside to make scheduled mortgage payments to remaining construction or elevation work that is needed as a result of Superstorm Sandy. While this results in a delay of payments for the mortgage lenders, it does not ultimately result in a reduction in the amount of mortgage payments.

Economic Impact

The Department will incur administrative costs to implement the new rules, as mandated by the enabling act. Specifically, those costs will relate to: 1) the necessity of providing initial notice to potential Sandy-impacted homeowners, active mortgage lenders, and the courts; 2) the establishment and operation of a website to provide information and to permit the filing of applications for Certifications for Eligibility for Forbearance; and 3) the Department's review and action upon those applications received, including providing notice to homeowners, mortgage lenders, and the courts.

In addition, the new rules, as mandated by the Act, will permit eligible Sandy-impacted homeowners a period of time during which they

will be granted mortgage forbearance, and, thus, by definition will not be making scheduled mortgage payments, including interest. This period may run in some instances until July 1, 2019. Therefore, mortgage lenders will not receive payments for those periods. The rules will not, however, result in a reduction of the amount owed on mortgages. Interest will not continue to accrue during a period of forbearance.

Federal Standards Statement

No Federal standards analysis is required because these new rules are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporate reference to Federal law, standards, or requirements.

Jobs Impact Statement

The Department does not anticipate that the new rules would result in the creation or loss of any jobs.

Agriculture Impact Statement

The Department does not anticipate that the new rules will impact the agriculture industry.

Regulatory Flexibility Analysis

The new rules impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in N.J.S.A. 52:14B-16 et seq. The new rules apply to the process for the filing of applications for Certification of Mortgage Forbearance by homeowners, and the Department's review of those applications. Pursuant to P.L. 2017, c. 15, the rules anticipate a compliance requirement on small business lenders, in those cases where a homeowner granted a Certification of Mortgage Forbearance has an outstanding mortgage with that business. In such a case, the business will not receive mortgage and interest payments until the end of the forbearance period, at which point those payments will resume.

Housing Affordability Impact Analysis

The new rules, which permit mortgage forbearance in certain clearly defined circumstances, relate solely to persons who currently own a residence and have an outstanding mortgage; as a result, the Department believes that there is an extreme unlikelihood that the new rules will evoke a change in the average costs of housing or on the affordability of housing.

Smart Growth Development Impact Analysis

The new rules relate solely to persons who currently own a residence and have an outstanding mortgage obligation, and, thus, the Department does not anticipate that the new rules will result in an increase or decrease in the availability of affordable housing, or that the new rules will have any impact upon housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

CHAPTER 65 RULES FOR MORTGAGE FORBEARANCE FOR SANDY- IMPACTED HOMEOWNERS

SUBCHAPTER 1. RULES FOR MORTGAGE FORBEARANCE FOR SANDY-IMPACTED HOMEOWNERS

5:65-1.1 Purpose

This chapter is established to implement the provisions of P.L. 2017, c. 15. It is the intent and purpose of this chapter to set forth the process by which Sandy-impacted homeowners may apply to the Department for issuance of a Certification of Eligibility for Forbearance. If that application is approved by the Department, the applicant may receive mortgage forbearance for the time period set forth in the Act. A Sandy-impacted homeowner may also apply to the courts for a stay of existing foreclosure proceedings.

5:65-1.2 Definitions

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

“Active mortgage lender” means those mortgage lenders that the Department is aware of that have issued residential mortgages in the State of New Jersey.

“Certificate of occupancy” means a certificate issued by the appropriate State and/or local official pursuant to the State Uniform Construction Code and applicable regulations, allowing a homeowner to reoccupy his or her residence.

“Certification of Eligibility for Forbearance” means a final determination by the Department that an applicant has satisfied all statutory and regulatory criteria and is, thus, entitled to receive mortgage forbearance from the appropriate mortgage lender.

“Complete application” means an application properly filed with the Department, which contains all information and documentation required for the Department to determine whether the applicant meets the eligibility criteria to receive a Certification of Eligibility for Forbearance.

“Department” means the State of New Jersey, Department of Community Affairs.

“Eligibility criteria” means those basic standards that must be met by every applicant for a Certification of Eligibility for Forbearance. Failure to meet any of these criteria will result in the application being rejected. These criteria include:

1. A current mortgage obligation;
2. Qualification as a Sandy-impacted homeowner;
3. Significant damage to the applicant's primary residence as a result of Superstorm Sandy, causing a period of displacement as evidenced by the need for either a certificate of occupancy or a temporary certificate of occupancy in order for the homeowner to reoccupy the residence;
4. Submission of a completed application pursuant to this chapter, including all documents required by N.J.A.C. 5:65-1.4 and all attestations required by N.J.A.C. 5:65-1.7; and
5. Construction or elevation work that remains to be done on the applicant's primary residence, which is the result of damages sustained in Superstorm Sandy and requires either a certificate of occupancy or a temporary certificate of occupancy in order for the homeowner to reoccupy the residence.

“Forbearance” or “mortgage forbearance” means a period of time during which obligations for mortgage and interest payments are suspended. The homeowner remains responsible for tax and insurance payments during the period of forbearance, as well as maintenance of the property that is the subject of the forbearance.

“LMI Program” means the State's Low-to-Moderate Income Homeowners Rebuilding Program to assist eligible owners whose primary homes were damaged by Superstorm Sandy.

“Mortgage” means a mortgage, trust deed, or other security in the nature of a residential mortgage.

“Mortgage lender” means the entity to which a homeowner is currently making mortgage payments, which processes loan payments, keeps track of principal and interest paid, and manages the escrow account.

“Recovery and rebuilding program” means the State-administered RREM and LMI programs that each provide up to \$150,000 to cover the costs of restoring eligible homes damaged by Superstorm Sandy.

“RREM Program” means the State's Reconstruction, Rehabilitation, Elevation and Mitigation Program to assist eligible owners whose primary homes were damaged by Superstorm Sandy.

“Sandy-impacted homeowner” means a person who has either received rental assistance from the Federal Emergency Management Agency as a result of damage to his or her primary residence due to Superstorm Sandy or been approved for assistance through the RREM or LMI programs. A Sandy-impacted homeowner may be eligible for forbearance regardless of whether his or her primary residence is already the subject of a foreclosure proceeding.

“Superstorm Sandy” means the major storm that made landfall in New Jersey on October 29, 2012.

“Temporary certificate of occupancy” means a certificate issued by the appropriate official pursuant to the State Uniform Construction Code and applicable regulations, allowing a homeowner to reoccupy his or her residence, subject to the conditions set forth in the certificate.

5:65-1.3 Initial Department notifications

(a) On or before March 31, 2017, the Department shall:

1. Notify as many Sandy-impacted homeowners as is reasonably possible of their potential eligibility for forbearance or a stay of foreclosure proceedings;
2. Post program information and requirements regarding eligibility and the application process on the Department's website;
3. Make an online application available from the Department's website;
4. Notify the courts of those persons and associated properties that are potentially eligible for forbearance or a stay of foreclosure proceedings; and
5. To the greatest extent reasonably possible, notify the State's active mortgage lenders of those persons and associated properties that are potentially eligible for mortgage forbearance or a stay of foreclosure proceedings.

5:65-1.4 Application and review process

(a) All Sandy-impacted homeowners may file an application with the Department requesting a Certification of Eligibility for Forbearance. Any such application must be filed with the Department by no later than May 31, 2017.

(b) Applications shall be filed utilizing the Department's online system. Instructions for filing will be provided by the Department on its website as of March 31, 2017. Applicants shall be required to file with the Department proof of current mortgage obligation and may be asked to supply additional documentation. Applicants will also be required to complete the certifications required by N.J.A.C. 5:65-1.7.

(c) If the Department's review indicates that the application or supporting documentation is not complete or is deficient, the Department shall provide notice that explains why the application is incomplete and/or deficient. The homeowner shall be permitted to resubmit the application.

(d) The Department shall have a period of 30 days from the date the application is submitted to conduct its review of the application. If an application is incomplete and/or deficient pursuant to (c) above, the applicant will have the opportunity to resubmit. Upon re-submission, the 30-day review period will begin again.

(e) If the Department fails to act on an application within the 30 days, the applicant shall be deemed to have satisfied the eligibility criteria. The applicant may request that the Department issue a Certification of Eligibility for Forbearance in such cases.

(f) If the applicant meets all eligibility criteria, the Department shall issue a Certification of Eligibility for Forbearance.

(g) If the Department issues a Certification of Eligibility for Forbearance pursuant to (e) or (f) above, the Department shall also notify the Administrative Office of the Courts and the appropriate mortgage lender as that entity is identified by the applicant in his or her application.

(h) If the Department determines, within the 30-day review period, that an applicant does not meet the eligibility criteria, it shall advise the applicant accordingly, along with an explanation and information on the applicant's ability to appeal.

5:65-1.5 Conditions of forbearance

(a) Notwithstanding the provisions of any law, rule, or regulation to the contrary, the repayment period of any mortgage that is subject to forbearance pursuant to the issuance of a Certification of Eligibility for Forbearance, shall be extended by the number of months the forbearance is in effect. During the period of forbearance, all terms and conditions of the original mortgage, except those about default and delinquency during forbearance, shall continue without modification, and there shall be no fees assessed for the forbearance, or penalty for early repayment.

(b) Forbearance shall not be construed to impact a homeowner's property tax and insurance obligations related to the property that is the subject of the forbearance.

(c) A homeowner who has received a Certification of Eligibility for Forbearance shall be responsible for maintenance of the property that is the subject of the forbearance during the period of forbearance.

(d) A homeowner who has received forbearance shall use the mortgage forbearance period and the money from the suspended

mortgage and interest payments to fund the construction or elevation work on his or her primary home that remains as a result of damage sustained in Superstorm Sandy until the earlier of the completion of the construction or elevation work or the end of the mortgage forbearance period as determined pursuant to N.J.A.C. 5:65-1.6.

5:65-1.6 Period of forbearance

(a) The forbearance period shall conclude upon the occurrence of the earlier of the following:

1. The conclusion of one year following issuance of a certificate of occupancy for all construction or elevation work, including recovery and rebuilding program work, which is the result of damage sustained in Superstorm Sandy and requires either a certificate of occupancy or a temporary certificate of occupancy in order for the homeowner to reoccupy the residence;

2. July 1, 2019; or

3. Regarding a property in foreclosure proceedings, upon the expiration of 10 days following a sheriff's sale.

(b) For purposes of this section, a certificate of occupancy includes a temporary certificate of occupancy, with the exception of a temporary certificate of occupancy where the sole remaining condition is elevation of the home.

(c) The one-year period of forbearance that commences with the issuance of a certificate of occupancy, or a temporary certificate of occupancy as qualified in (b) above, is applicable to all Sandy-impacted homeowners who are eligible for forbearance pursuant to this chapter.

(d) If a certificate of occupancy, or a temporary certificate of occupancy as qualified in (b) above, is issued after the date of a Certification of Eligibility for Forbearance, it is the responsibility of a homeowner to notify the appropriate mortgage lender.

5:65-1.7 Required attestations by applicants

(a) Each applicant for mortgage forbearance shall be required to attest under penalty of law and to the best of his or her knowledge the following:

1. Without mortgage forbearance at this time, the applicant is unable to complete the construction or elevation work on his or her primary residence that remains as a result of damage sustained in Superstorm Sandy;

2. Mortgage forbearance for the length of time allowed by N.J.A.C. 5:65-1.6 will enable the applicant to commence or continue the construction or elevation work on his or her primary residence resulting from damage sustained in Superstorm Sandy; and

3. The applicant will use the mortgage-forbearance period and the suspended mortgage and interest payments to fund the construction or elevation work on his or her primary residence that remains as a result of damage sustained in Superstorm Sandy until the earlier of the completion of the construction or elevation work or the end of the mortgage forbearance period as determined pursuant to N.J.A.C. 5:65-1.6.

(b) Each applicant shall attest to the accuracy of all information submitted to the Department in support of an application for mortgage forbearance.

(c) Each applicant shall attest that he or she understands and accepts that the Department may, as part of its review process, take necessary steps to verify the accuracy of the information submitted by the applicant and agrees to cooperate with the Department in any such verification process.

(d) Each applicant shall attest that he or she understands and accepts that the Department may require verification of compliance with (a)3 above, and agrees to cooperate with the Department in any such verification process.

5:65-1.8 Severability clause

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

5:65-1.9 Waiver

The Department may waive any part of this chapter upon its determination that strict application of the part of the chapter would be inconsistent with the underlying purposes of the statute.

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT

DIVISION OF LAND USE REGULATION

Freshwater Wetland Protection Act Rules

Flood Hazard Area Control Act Rules

Coastal Zone Management Rules

Proposed Recodifications with Amendments:

N.J.A.C. 7:7A-1.4 as 1.3; 1.7 as 21.1; 2.3, 2.4, and 2.5 as 3.1, 3.2, and 3.3; 2.6 as 2.3; 2.7 as 3.4; 2.8 as 2.4; 2.9 as 2.5; 2.10 as 2.6; 2.11 as 2.7; 3.1 as 4.2; 3.2 as 4.3; 3.3 as 4.4; 3.4 as 4.5; 3.6 as 4.6; 4.1 as 5.2; 4.2 as 5.3; 4.3 as 5.7; 4.4 as 5.4; 5.1 through 5.21 as 7.1 through 7.21; 5.23 through 5.27 as 7.22 through 7.26; 6.1, 6.2, and 6.3 as 8.1, 8.2, and 8.3; 6.5 as 8.4; 7.1 and 7.2 as 10.1 and 10.2; 7.4 as 10.3; 11.1 as 18.1; 12.1 as 19.2; 12.2 as 19.5; 12.3 as 19.6; 12.5 as 19.7; 13.1 as 20.2; 13.2 as 20.3; 13.4 as 1.2; 14.3 as 20.6; 14.4 as 20.8; 14.5 as 20.9; 14.6 as 20.4; 15.1, 15.2, 15.3, and 15.4 as 11.1, 11.2, 11.3, and 11.4; 15.5 as 11.9; 15.6 as 11.10; 15.7 as 11.8; 15.9 as 11.13; 15.10 as 11.5; 15.11 as 11.6; 15.13 as 11.17; 15.15 as 11.7; 15.16 as 11.12; 15.18 as 11.16; 15.19 as 11.15; 15.20 as 11.22; 15.23 as 11.25; 15.25 as 11.26; 15.26 as 11.11; 16.1, 16.2, and 16.3 as 22.1, 22.2, and 22.3; 16.4 as 22.14; 16.5 through 16.9 as 22.4 through 22.8; 16.12, 16.13, and 16.14 as 22.11, 22.12, and 22.13; 16.15 as 22.15; 16.17 through 16.20 as 22.17 through 22.20; and 17 as 13

Proposed New Rules: N.J.A.C. 7:7A-1.5, 4.1, 4.7, 5.1, 5.5, 5.6, 6, 8.5, 9, 11.14, 11.18 through 11.21, 11.23, 11.24, 12, 14 through 17, 19.1, 19.3, 19.4, 19.8 through 19.11, 20.1, 20.5, 20.7, 21.2, 21.3, and 21.4

Proposed Recodifications: N.J.A.C. 7:7A-1.5 as 1.6, 16.10 and 16.11 as 22.9 and 22.10, and 16.16 as 22.16

Proposed Amendments: N.J.A.C. 7:7-24.3 and 24.4; 7:7A-1.1, 1.3, 2.1, 2.2, and 15.12, and 7:7A Appendix 1; and 7:13-9.1 and 19.3

Proposed Repeals: N.J.A.C. 7:7A-1.2, 1.6, 2.12, 3.5, 4.5, 5.17, 5.22, 6.4, 6.6, 7:7A-6 Appendix, 7.3, 8, 9, 10, 12.4, 12.6, 12.7, 13.3, 13.5 through 13.9, 14.1, 14.2, 15.8, 15.14, 15.17, 15.21, 15.22, and 15.24

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: As to N.J.A.C. 7:7: N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:1D-9 et seq., 13:1D-29 et seq., and 13:9A-1 et seq.;

As to N.J.A.C. 7:7A: N.J.S.A. 13:9B-1 et seq., and 58:10A-1 et seq.;

As to N.J.A.C. 7:13: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 58:10A et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 06-17-03.

Proposal Number: PRN 2017-061.

Public hearings concerning this notice of proposal will be held as follows:

Wednesday, May 24, 2017, at 6:00 P.M.
Batsto Visitor Center Auditorium
Batsto Village, Wharton State Forest
31 Batsto Road
Hammonton, NJ 08037

AND

Thursday, June 1, 2017, at 9:30 A.M.
New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street, 1st Floor
Trenton, New Jersey 08625

Submit comments by June 30, 2017, electronically at <http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.
Attn: DEP Docket Number
New Jersey Department of Environmental Protection
Office of Legal Affairs
Mail Code 401-04L
401 East State Street, 7th Floor
PO Box 402
Trenton, NJ 08625-0402

This rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department is providing a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department of Environmental Protection (Department) is proposing comprehensive changes to the Freshwater Wetland Protection Act (FWPA) Rules, N.J.A.C. 7:7A, which implement the Freshwater Wetlands Protection Act (the Act), N.J.S.A. 13:9B-1 et seq., in order to protect the purity and integrity of the State's inland waterways and freshwater wetlands from random, unnecessary, or undesirable alteration or disturbance, and to provide predictability in the protection of freshwater wetland resources. The FWPA Rules establish the procedures by which the Department reviews applications for permits, letters of interpretation, exemptions, and mitigation proposals under the Freshwater Wetlands Protection Act. As required by the Act, the FWPA Rules govern the following activities in freshwater wetlands and transition areas: removal, excavation, disturbance, or dredging of soil, sand, gravel, or aggregate material; the drainage or disturbance of the water level or water table; dumping in, discharging to, or filling of wetlands; the driving of pilings; the placing of obstructions; and the destruction of vegetation which would alter the character of a freshwater wetland. The FWPA Rules also regulate the discharge of dredge and fill material in State open waters.

Under Section 404 of the Federal Water Pollution Control Act (also known as the Clean Water Act and referred to as either the "Federal Clean Water Act" or simply the "Federal Act" throughout this summary), 33 U.S.C. §§ 1251 et seq., the Federal wetlands permitting program, also known as the "Federal 404 program," implemented by the United States Army Corps of Engineers (USACE), was established. Since March 2, 1994, in accordance with Section 404(g) of the Federal Clean Water Act, 33 U.S.C. §§ 1344(g), New Jersey's freshwater wetlands program has operated in place of the Federal wetlands permitting program in most of New Jersey. While New Jersey's freshwater wetlands program operates in place of the Federal 404