

(a) any such obligation that was duly recorded prior to the recording hereof, and (b) any such obligation that, when added to all other such obligations recorded against the Property, will result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period still in effect.

#### Article 11. SUBSEQUENT OWNERS

This Mortgage shall not be released with respect to any subsequent owner who acquires the Property through an exempt transfer unless the transferee executes and delivers to the Agency a note and mortgage substantially in the form of the Note and this Mortgage, and the mortgage has been duly recorded.

#### Article 12. AMENDMENTS

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by duly authorized representatives of both parties.

#### Article 13. SIGNATURES

By executing this Mortgage, the Owner agrees to all of its terms and conditions.

#### Article 14. ACKNOWLEDGEMENT

The Owner acknowledges receipt of a true copy of this Mortgage, at no charge.

IN WITNESS WHEREOF, the Owner(s) has executed this Mortgage for the purposes stated herein.

ATTEST:

By: \_\_\_\_\_

Signature (Owner)

Signature (Owner)

STATE OF NEW JERSEY            )  
  )    ss:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ the subscriber \_\_\_\_\_ appeared personally before me (*If more than one person signed the foregoing Mortgage and appeared before me, the words "the subscriber" and "the Owner" include all such persons*) and who, being duly sworn by me, deposed and made proof to my satisfaction that (i) they are the Owner named in the foregoing Mortgage and (ii) they executed the Mortgage with respect to the Property and for the purposes described and set forth therein.

Sworn to and subscribed before me, \_\_\_\_\_ on the date set forth above.

\_\_\_\_\_  
NOTARY PUBLIC

(a)

## DIVISION OF LOCAL PLANNING SERVICES

### Fair Housing Act

#### Adopted New Rules: N.J.A.C. 5:99

Proposed: March 17, 2025, at 57 N.J.R. 483(a).

Adopted: November 20, 2025, by Jacquelyn A. Suárez,

Commissioner, Department of Community Affairs.

Filed: November 20, 2025, as R.2025 d.156, **with non-substantial changes** not requiring additional notice and public comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2024, c. 2, § 16 (N.J.S.A. 40:55D-8.5.a); P.L. 2024, c. 2, § 27 (N.J.S.A. 52:27D-321.i); and P.L. 2024, c. 2, § 30 (N.J.S.A. 52:27D-329.2.a(4)).

Effective Date: December 15, 2025.

Expiration Date: December 15, 2032.

#### Summary of Public Comments and Agency Responses

Comments were received from Megan York, CGP&H; Adam Gordon, Fair Share Housing Center; Grant Lucking, New Jersey Builders

Association; Sharon Clark, Central Jersey Housing Resource Center Corp.; and Jean Public.

1. COMMENT: The commenter recommends that the language at N.J.A.C. 5:99-2.2(f) be clarified to specify that administrative expenditures shall not be used to pay litigation costs. Specifically, the commenter suggests that language which was already proposed at N.J.A.C. 5:99-2.4 be added to this rule to make it clear that administrative trust fund dollars cannot be utilized for administrative expenses that fall "outside of the Program," that is, administrative expenses associated with furthering litigation after the Affordable Housing Dispute Resolution Program (the Program) has already rendered a decision or where mediation before the Program has failed; late filings that are not before the Program; or for exclusionary zoning litigation.

RESPONSE: The Department of Community Affairs ("Department" or "DCA") disagrees with the commenter that the language at N.J.A.C. 5:99-2.2(f) requires clarification. Indeed, N.J.A.C. 5:99-2.4, Use of funds for administrative expenses, already provides clear parameters as to how affordable housing trust fund dollars may be spent on administrative expenses. See N.J.A.C. 5:99-2.4(b). The proposed rules, following the statute at N.J.S.A. 52:27D-329.2.c(2)(b), allow administrative expenses associated with complying with the requirements of the Program but not litigation resulting from disputes that are not resolvable by the Program.

2. COMMENT: The commenter requests that the Department limit the use of administrative fees to 20 percent of development fees. Specifically, the commenter expresses its concern that the rule as proposed "appears to authorize municipalities to include other items in the administrative cap" and that the inclusion of these other items will drive down the amount of funds that are actually expended on providing affordable housing. The commenter asserts that amending the language in this fashion will be more consistent with both the plain language and the purpose of the amendments to the Fair Housing Act.

RESPONSE: Pursuant to N.J.S.A. 52:27D-329.2.c(5), "[n]ot more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department." At proposed N.J.A.C. 5:99-2.2(g), the Department has exercised its rulemaking authority to extend this cap on administrative expenses to other sources of revenue, including, but not limited to, payments in lieu of construction, recaptured funds, and barrier-free escrow funds, which generate a similar need for administrative expenses. The proposed rule reflects and codifies the standard practice in the industry for the past 40 years. Finally, the Department believes that this rule, imposing a cap on the use of non-development fees on administrative expenses, will ensure that the majority of the non-development fees will be expended on the actual production of affordable housing units. Indeed, there would be no limitation on administrative expenses from the non-development fee funds absent this rule limiting it to 20 percent.

3. COMMENT: The commenter suggests that the Department should more clearly identify and specify the process that it will undertake in reviewing spending plans for Qualified Urban Aid Municipalities at N.J.A.C. 5:99-2.2(j), and offers that it should at least include: 1) public notice to interested parties that the review is occurring; 2) sufficient time to meaningfully participate in any review; 3) opportunity to provide written comments prior to any adjudication pursuant to such review; 4) simple access to information regarding any application which would preferably be available on a public website; and 5) an indication of a final agency action approving or denying the application.

RESPONSE: The Department thanks the commenter for their comment. While the Department undoubtedly values openness and community participation, at the present time, N.J.S.A. 52:27D-329.2.c(2), the relevant legislation does not require public participation in the Department's review process. If the Department determines at a later date that public participation will be beneficial for the review process, it will consider further refining the review and approval process in a future rulemaking, if deemed necessary.

4. COMMENT: The commenter states that they support permitting qualified urban aid municipalities to expend collected non-residential development fees in their jurisdiction. The commenter states that, in their view, N.J.A.C. 5:99-2.2(j) assumes that an urban municipality that has not adopted a Housing Element and Fair Share Plan can only collect residential development fees, and appears to exempt non-residential

development fees: “A non-compliant Qualified Urban Aid Municipality meeting the criteria set forth in paragraph (1) of subsection c. of section 7 at P.L. 2024, c. 2, which has been authorized to collect residential development fees pursuant to N.J.A.C. 5:99-3.5(b) ...” The commenter notes that the Fair Housing Act, at N.J.S.A. 52:27D-329.2.c(2), also states that Qualified Urban Aid Municipalities may expend fees regardless of whether they have a compliance certification, and that even if the Treasurer ends up collecting the non-residential fees in these municipalities and not the individual municipality, the intent is to allow Qualified Urban Aid Municipalities to expend funds collected from development in their municipalities. The commenter suggests that the Department should create an opportunity for these municipalities to place these funds into their spending plan and, if necessary, have those funds provided to the municipality from any State collection upon approval of the spending plan by the Department.

RESPONSE: The Department disagrees that the Fair Housing Act states that Qualified Urban Aid Municipalities may expend non-residential development fees regardless of whether they have a compliance certification, as this interpretation would disregard the Statewide Non-Residential Fee Act as set forth at N.J.S.A. 40:55D-8.4. In that statute, the Legislature specified that a condition for authorization for any municipality, Qualified Urban Aid or otherwise, to be able to retain non-residential development fees is a confirmed status of compliance with the Fair Housing Act, or being in the process of seeking compliance certification, including a spending plan pursuant to N.J.S.A. 52:27D-329.2, for all development fees collected.

The Statewide Non-Residential Development Fee Act proscribes who is authorized to collect non-residential development fees and the conditions thereof. To the contrary, N.J.S.A. 52:27D-329.2.c(2) discusses the expenditure of both residential and non-residential development fees, and specifies, that “municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality ... with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction[.]” Stated differently, N.J.S.A. 52:27D-329.2 presumes that the fees were properly collected, and non-residential development fees can only be properly collected pursuant to the terms of the Statewide Non-Residential Development Fee Act. Indeed, the Department does not have the authority from the Legislature to create an opportunity for non-compliant municipalities to retain non-residential development fees or to have funds previously deposited into the Statewide Affordable Housing Trust Fund returned to the municipality.

5. COMMENT: The commenter notes that N.J.A.C. 5:99-2.3(a)1 should specify additional requirements for the use of funds for rehabilitation, including that the minimum average rehabilitation cost be at least \$20,000 and that inspection and work write-up costs should be classified as housing activity (and not an administrative activity).

RESPONSE: The purpose of the rehabilitation program is to raise the condition of deficient units to a code-compliant condition. The criteria used in the methodology established to estimate municipal present need, often referred to as the rehabilitation component, does not incorporate any dollar value quantification in the identification of unit deficiency. Therefore, any minimum requirements for an average rehabilitation cost would be arbitrary. If a deficient unit is raised to code standards, it is eligible to be counted as addressing present need. The use of the term “rehabilitation program” in the proposed rule clearly references the eligible expenditures as both the hard costs associated with raising deficient units to code standard, as well as the associated “programmatic” costs, such as inspections, work write-ups, and other related costs that are necessary to effectively implement the “program” and these costs are, therefore, not construed to be included in the administrative expenses identified at N.J.A.C. 5:99-2.4. Nonetheless, the Department has changed the section to reflect that costs specific to the actual rehabilitation of a property are allowable rehabilitation program costs and are not considered administrative expenses.

6. COMMENT: The commenter recommends that the definition and discussion of accessory dwelling units at N.J.A.C. 5:99-1.2 and 2.3(a)7 include the requirement for a deed restriction, the length of the restriction, and whether the unit may be occupied by a very-low, low- or moderate-income household without affirmative marketing prior to allocating

affordable housing trust funds and that a distinction should be made throughout the rule to specify very-low, low-, and moderate-income.

RESPONSE: The Department does not believe that the definition of “accessory apartments” needs to be revised. The rules in this subchapter govern municipalities that participate in the Program to seek compliance certification regarding the municipal responsibility to produce affordable housing with deed restrictions, occupancy standards, and control periods set forth at N.J.S.A. 52:27D-304.1 and regulated by the Uniform Housing Affordability Controls (UHAC) promulgated by the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80-26. There may be other accessory apartments developed pursuant to other programs or statutory frameworks to which such Fair Housing Act requirements may or may not apply. It is, therefore, assumed that any and all types of affordable housing, including accessory dwelling units, being created to address municipal responsibilities as part of Fair Share Plans submitted to the Program will include a deed restriction, the length of the restriction, and whether the unit may be occupied by a very-low-, low-, or moderate-income household. Additionally, the Department does not believe that the rules need to be revised throughout to distinguish between very-low- and low-income households because very-low-income is, by definition, a subset of low-income.

7. COMMENT: The commenter suggests that, at N.J.A.C. 5:99-2.3, the Department further define the use of funds for certain housing activities, and that there should be a more robust rehabilitation program to maximize the use of rehabilitation funds and that the requirements be modified to fully fund the rehabilitation programs at the beginning of a round, rather than a phased-in approach. The commenter also supports allowing municipalities to utilize funds that may be earmarked for rehabilitation programs to fund other affordable housing programs that may generate credit towards a municipal obligation.

RESPONSE: The use of funds will be reviewed and authorized by the Program or court of competent jurisdiction as part of the Fair Share Plan compliance certification process established pursuant to N.J.S.A. 52:27D-304.1. Flexibility to accommodate unforeseeable opportunities has already been included in the rules at N.J.A.C. 5:99-2.3(a)14 and 15. The purpose of the rehabilitation program is to raise the condition of deficient units to a code-compliant condition. The commenter is encouraged to consider that it may not be possible for each municipality to estimate costs to fully fund the rehabilitation programs at the beginning of a round. Moreover, the approval of any such estimates and funding commitments are not within the jurisdiction of the Department, but would be part of a spending plan to be approved by the Program or a court of competent jurisdiction. Funds that may be earmarked for rehabilitation programs may be repurposed to fund other affordable housing programs that may generate credit towards a municipal obligation subject to the process set forth at proposed N.J.A.C. 5:99-4.

8. COMMENT: The commenter urges the Department to remove “RCAs approved prior to July 17, 2008” as an approved use of affordable housing trust funds pursuant to N.J.A.C. 5:99-2.3. The commenter notes that the proposed rule, as presently drafted, may imply that a sending municipality that never sent funds from an RCA approved prior to July 17, 2008, may then commit those funds to a receiving municipality. Stated differently, the commenter is concerned that the language in the proposed rule may affirmatively create a program to carry outdated, outstanding Regional Contribution Agreements (RCAs), which the commenter notes were made prohibitive for undermining the principles of the *Mount Laurel* Doctrine. The commenter also notes that technically, any remaining RCA-approved funds collected prior to July 17, 2008, should be remitted to the State Affordable Housing Trust Fund pursuant to N.J.S.A. 52:27D-329.2.d.

RESPONSE: Funding approved for RCAs prior to July 17, 2008, is part of a previously authorized affordable housing delivery mechanism that was statutorily permitted at that time. RCA fund transfers and corresponding unit production are part of contractual obligations that are outside the scope of the Department’s current purview. However, while the funds allocated in previously approved RCA project plans are likely to be fully expended, there may be instances where funds remain in a municipal RCA Receiver Trust Fund account, and it is important that these accounts be monitored and that potential availability and use of such unexpended funds be identified and used to construct affordable housing.

Funds that are subject to an RCA and are included as part of an approved RCA project plan are committed to be spent in accordance with the Fair Housing Act. Additionally, RCA funds may or may not be subject to N.J.S.A. 52:27D-329.2.d, as not all RCA funds originated as development fees.

9. COMMENT: The commenter suggests that, at N.J.A.C. 5:99-2.3, the Department further define the use of funds for certain housing activities and recommends that the Department detail criteria for providing trust funds for accessory dwelling units, extension of controls, market to affordable programs, and other activities as specified in the approved spending plan (N.J.A.C. 5:99-2.3(a)14 and 15), requiring strict adherence to UHAC.

RESPONSE: The Department is no longer assigned the responsibility of defining the terms and limits of a mechanism for providing affordable housing. The use of affordable housing trust funds will be part of the Compliance Certification granted by the Program or a court issuing a Judgment of Compliance. Pursuant to N.J.S.A. 52:27D-311.m, "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute ... or binding court decisions." Provisions for adherence to UHAC are set forth in regulations proposed by the HMFA at N.J.A.C. 5:80-26. When reviewing spending plans for non-compliant Qualified Urban Aid Municipalities or municipalities seeking approval of emergent opportunities, the Division of Local Planning Services (the "Division" or "LPS") will rely upon the statutory guidance provided at N.J.S.A. 52:27D-311.m that prior regulations can be relied upon to the extent that they do not conflict with more recent authority.

10. COMMENT: Affirmative marketing of units and income qualification of households is intricately tied to housing activity and should not be included in the administrative expenses. The commenter suggests removing those duties from the list at N.J.A.C. 5:99-2.4(c).

RESPONSE: The Department disagrees with the commenter. While the Fair Housing Act does not delineate or otherwise define an administrative expense, costs related to the marketing of affordable housing units and costs related to determining income qualifications are closely tied to the administration of affordable housing units that are created.

11. COMMENT: The commenters recommend including the previous standard of 30 percent of trust funds be expended on affordability assistance at N.J.A.C. 5:99-2.5(a), and that there be a waiver provision from this standard provided by LPS based on insufficient affordable units.

RESPONSE: The enabling legislation, at N.J.S.A. 52:27D-329.2.c(3), only specifies that municipalities must set aside a portion of their development fee trust fund for the purpose of providing affordability assistance. Spending plans that establish affordability assistance programs are a component of the municipal Fair Share Plan that is submitted to the Affordable Housing Dispute Resolution Program for compliance certification. The Program may find it necessary to vary exact percentages based on individual circumstances that will be considered during the compliance review process established by the Administrative Office of the Courts (AOC). While the Department does not believe it is necessary to establish a minimum standard at this time, the issue may be reconsidered, in consultation with the AOC, during a future rulemaking.

12. COMMENT: The commenter requests that clarifying language be added to N.J.A.C. 5:99-2.5 to specify that inclusionary developers should only receive affordability assistance funds for very-low-income units if the funds will increase the number of units above the required 13 percent or if there is a higher than customary set-aside for the development (for example, higher than 20 percent).

RESPONSE: The Department thanks the commenter and agrees with their recommendation. The Department notes that this is already implied in the language at N.J.S.A. 52:27D-329.1. Nevertheless, the Department has added a cite to the statute as a non-substantial change upon adoption.

13. COMMENT: The commenter recommends clarifying that payments in lieu are not allowed unless approved as a part of compliance certification pursuant to N.J.A.C. 5:99-2.7.

RESPONSE: The Department does not believe that the language concerning payments in lieu of construction needs to be clarified. As set forth at N.J.A.C. 5:99-1.1(a), the rules in this subchapter govern

municipalities that participate in the Program to seek compliance certification regarding the municipal responsibility to produce affordable housing.

14. COMMENT: The commenter supports clarifying that assisted living facilities are subject to the non-residential development fee requirements at N.J.A.C. 5:99-3.3.

RESPONSE: The Department notes that the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7, does not exempt assisted living facilities from non-residential development fee requirements. In accordance therewith, the proposed rules do not specify the types of developments subject to the fee, only developments exempt from paying the fee and, therefore, it is not necessary to specifically state that assisted living facilities are subject to the non-residential development fee.

15. COMMENT: The commenter requests changes at N.J.A.C. 5:99-4.1(a) and (b) to clarify the phrase "excess affordable housing trust funds," by providing examples of an under projection or unexpected funds. The commenter also requests that the Department create, adopt, and adhere to a process for the review of emergent opportunities to provide for notice, both generally and special notice to participants and parties to the municipality's Program or court action, and for an opportunity to be heard.

RESPONSE: The Department does not believe that the term "excess affordable housing trust funds" needs to be defined or otherwise clarified. Proposed N.J.A.C. 5:99-4.1(c)1 specifies that municipalities requesting authorization from the Division for expenditure of excess funds on emergent affordable housing opportunities not included in the approved municipal fair share plan shall provide documented proof that the funds are not accounted for in the spending plan approved by the Program or a court of competent jurisdiction. Moreover, the proposed rules set forth the documentation required for expedited approval of expenditure for emergent opportunities and require a certification that the proposed affordable housing activity is consistent with the Act. The nature of these requests requires that the Department have the ability to quickly respond with a decision as to whether the use of funds is permissible. Any challenge to the use of funds would appropriately be heard by a court of competent jurisdiction.

16. COMMENT: The commenter suggests that DCA be given discretion to approve minor changes to the approved spending plan, pursuant to proposed N.J.A.C. 5:99-4.1(c)4, in instances where a program or project changes or there are excess funds.

RESPONSE: The Department does not have statutory authority to approve changes to spending plans other than, as described at N.J.A.C. 5:99-4. The use of funds and approval of the municipal spending plan will be reviewed and authorized by the Program or court of competent jurisdiction as part of the Fair Share Plan compliance certification established pursuant to N.J.S.A. 52:27D-313.2. The process for approving emergent affordable housing opportunities not included in the approved municipal fair share plan anticipates that a municipality will submit an amended spending plan and fair share plan to the court for approval after the Division has approved the emergent opportunity. The timeframe within which the amended spending plan and fair share plan shall be submitted to the court for approval would be pursuant to the court's authority.

17. COMMENT: The commenter recommends the Department include requirements for spending plans, which, at a minimum, should require a realistic projection of revenues, a description of the mechanism to collect and distribute the funds, all anticipated uses of the funds, a comprehensive plan to spend the funds within four years, and a plan for any surplus or shortfall in funds.

RESPONSE: The Division anticipates releasing best practices and model documents for spending plans, as well as affordable housing mechanisms and development fee ordinances, once N.J.A.C. 5:99 and UHAC rules are adopted.

18. COMMENT: The commenter urges the Department to prepare form/template Development Fee Ordinances, Spending Plans, and other necessary documents that will be necessary to implement the rules.

RESPONSE: These model documents are dependent on various rules, including N.J.A.C. 5:99 and the UHAC, which are in the process of being amended. Once the rules are finalized, the Department will prepare and make model documents and best practices available.

19. COMMENT: The commenter recommends additional unit monitoring information be required and available immediately to the public. Pursuant to N.J.S.A. 52:27D-321.f and N.J.A.C. 5:99-5.3:

1. N.J.A.C. 5:99-5.3(a)liii should be revised to say “affordability average and affordability level”;
2. N.J.A.C. 5:99-5.3(a)liv should be revised to say “number of bedrooms and bedroom distribution”;
3. Affirmative Marketing;
4. Updated and current Administrative Agent (AA) for the units;
5. A list of all sites where the municipality plans to develop affordable housing;
6. Date of site plan approval along with builder permit and CO dates;
7. “Date and Expiration dates of deed restrictions” should be revised to say “Date by which initial affordability control period runs” with the intent, consistent with UHAC, to notify municipalities and owners of the date at which the initial controls run and the procedures specified in UHAC for extension would occur; and
8. Status of low-income and very-low-income requirement in each project and each municipality.

RESPONSE: Requirements for reporting are provided at N.J.S.A. 52:27D-329.4. The Department has developed, published, and trained municipal users on the Affordable Housing Monitoring System (AHMS), which has been in place since September 2024. While the required fields in AHMS must be submitted in order to complete annual monitoring, fields beyond the requirements are available to municipalities in order to better track and understand their proposed and completed activities. It should be noted that the results of municipal reporting are currently published on the DCA website. The Department encourages municipalities to provide as much information as possible in AHMS. Moreover, the Department notes that non-substantial revisions at N.J.A.C. 5:99-5.3 have been made to distinguish between information that is required at the unit level versus at the project level.

20. COMMENT: The commenter suggests that the Department make AHMS accounts available to challengers in the Program.

RESPONSE: AHMS has been designed as a data collection tool to assist municipalities with the reporting requirements set forth at N.J.S.A. 52:27D-329.4. Access to AHMS is limited to users who have been granted permissions by each individual municipality, for this purpose. Challengers to municipal plans that are under review by the Program may request that the Program direct the municipality to provide municipal Affordable Housing Trust Fund reports to the challenger as part of its process. Additionally, it should be noted that all municipal Affordable Housing Trust Fund reporting that has been submitted to the Department is available on the Department’s internet webpage.

21. COMMENT: The commenter suggests changes at N.J.A.C. 5:99-5.3(a)2, 3, and 4 to include rehabilitation numbers, to remove construction commencement dates due to the difficulty of obtaining that information, and to clarify what information is required at the project and unit level.

RESPONSE: The Department thanks the commenter for their comment. Please be advised that the Department has clarified that the reference to “completed affordable housing units” at N.J.A.C. 5:99-5.3(a) is intended to encompass all affordable units, including both rehabilitated units and newly constructed units, that are created in order to fulfill a municipal affordable housing obligation. The distinction between what is required at the project and unit levels will be addressed in a future rulemaking. The Department notes that construction commencement dates are required pursuant to legislation at N.J.S.A. 52:27D-329.4 and, therefore, cannot be removed from the proposed rulemaking. The Department also agrees with the commenter regarding the need for project and unit-level distinction and has amended the rule accordingly to provide that certain information is required to be provided at the project level and that certain information is required to be provided at the unit level. The majority of that information was already listed in the notice of proposal, it was just not delineated between being provided at the project level as compared to the unit level. The only additional information provided for in the non-substantial revision is that municipalities must also provide information about payments in lieu collected for the project and must provide the name and contact information of the administrative agent at the project level. The Department notes that practically, municipalities are already required to obtain this information as part of their ongoing

monitoring and, therefore, the Department does not believe this adds a substantive or substantial requirement for municipalities.

22. COMMENT: The commenter supports a monitoring and reporting requirement to elicit information about redevelopment of affordable sites to better understand the prevalence of redevelopment in affordable housing construction and the types of uses that are most often used to produce redevelopment into affordable housing.

RESPONSE: While the Department agrees that data collection can be used to inform research and policy analyses that associate affordable housing development with redevelopment initiatives, there is no statutory authority to mandate that municipalities provide such information. However, as part of future research, the Department will consider comparing its Area in Need of Redevelopment database to the location of approved affordable housing sites to aid in future policy development.

23. COMMENT: The commenter supports the Department’s strong enforcement of trust fund rules.

RESPONSE: The Department appreciates the commenter’s support.

24. COMMENT: The commenter supports creating a process for reporting issues with implementation of the rules to the Department and suggests that there should also be a clear way to get information to the Division in the event members of the public want to flag issues.

RESPONSE: The process suggested by the commenter already exists. As stated at proposed N.J.A.C. 5:99-5.6(e), any party may request that the Division review and act on a perceived enforcement issue. Contact information and instructions on how to provide information to the Division are provided in the rule.

25. COMMENT: The commenter requests that the Department require specific timeframes around initial education and certification of Municipal Housing Liaisons (MHLs) pursuant to N.J.A.C. 5:99-6.3(c)3.

RESPONSE: While the process by which an AA or an MHL obtains their certification and education is established by these rules, the substance of the education and certification programs for both AAs and MHLs are informed by the soon-to-be-adopted UHAC rules at N.J.A.C. 5:80-26. Upon the final adoption of both rulemakings and UHAC, the Department will develop associated curricula and begin to administer education and certification programs as soon as possible. The Department does not believe that a set timeline for completion of the not-yet-established curricula would be beneficial for AAs or MHLs at this time. However, the Department may consider including a timeframe for completion of initial education in a future rulemaking, if deemed appropriate.

26. COMMENT: The commenter suggests that the MHL should be responsible for approving a developer’s AA and suggests that compliance with this rule, such as providing the documentation set forth at N.J.A.C. 5:99-7.3(d) be submitted in the appendix of the Housing Element and Fair Share Plan.

RESPONSE: The Department thanks the commenter for their comment. The Department notes that it is a generally accepted practice within the industry for developers to request that a specific AA be assigned to a project when necessary. The terms by which a developer may request a specific AA should be proscribed by each municipality’s affordable housing ordinance. Nevertheless, the Department has modified the existing text of the proposed rule to reorganize the location at N.J.A.C. 5:99-7.3(a) and (b) and to separate part of N.J.A.C. 5:99-7.3(b) into new N.J.A.C. 5:99-7.3(c). Additionally, in a forthcoming rulemaking, the Department will add new N.J.A.C. 5:99-7.3(i) to specify that the developer of affordable housing may request that the municipality appoint a specific certified Administrative Agent for their project, with approval from the MHL. Finally, documents to be required as appendices to a municipal Fair Share Plan are under the jurisdiction of the Program or court of competent jurisdiction, not the Division.

27. COMMENT: The commenter requests that the Department should maintain an up-to-date and public list of MHLs.

RESPONSE: The Division is in the process of identifying MHL through AHMS reporting and anticipates publishing a list on its internet website in the near future. Moreover, please be advised that the Department has changed N.J.A.C. 5:99-6.1(a) upon adoption to add that municipalities must identify the MHL on their respective internet websites.

28. COMMENT: The commenter suggests that these rules need to be updated in lock-step with UHAC so that the two sets of rules remain consistent, giving the example that N.J.A.C. 5:80-26.2 — notifying a municipality of an owner's intent to sell a 95/5 unit — is currently subject to a proposed rulemaking issued by the Housing and Mortgage Finance Agency to be consistent with UHAC.

RESPONSE: To the extent that these rules are reliant upon UHAC, relevant sections will be updated, as necessary, when UHAC is adopted. The Department will consider amendments to N.J.A.C. 5:99-7.2(a)17 to specify that notification pertains to all units that are subject to extension of controls in a future rulemaking, if deemed necessary.

29. COMMENT: The commenter recommends that the Department clarify several provisions of N.J.A.C. 5:99-7.2(a) with respect to the responsibilities of AAs. Specifically, the commenter references the AA's responsibility to provide appropriate forms of deed restrictions and mortgages for recording at the time of conveyance pursuant to N.J.A.C. 5:99-7.2(a)7, and requests that the Department provide samples of these forms. The commenter next requests clarity with respect to N.J.A.C. 5:99-7.2(a)13 and how much the maximum value of a capital improvement that results in a new HVAC system or additional bedrooms or bathrooms will increase. Next, the commenter requests clarity with respect to an AA's authority to discharge and release any or all instruments pursuant to N.J.A.C. 5:99-7.2(a)19 and requests that the Department provide sample of discharge documents. Next, the commenter requests that the Department provide sample developer agreements so AAs can accurately calculate initial rent and sales prices pursuant to N.J.A.C. 5:99-7.2(a)21. Finally, the commenter comments that the waiver provision at N.J.A.C. 5:99-7.2(c) is subjective and should be further clarified.

RESPONSE: Administration of affordable units must be consistent with UHAC, as required above at N.J.A.C. 5:99-7.2(a). Appropriate forms of deed restrictions and mortgages for recording at the time of conveyance, information on how much the maximum value of a capital improvement that results from a new HVAC system or additional bedrooms or bathrooms will increase, and samples of discharge documents are outside the scope of this notice of proposal and relevant documents will be made available through HMFA's rulemaking authority. The Department will provide access to UHAC and its appendices on the Division's website. With respect to N.J.A.C. 5:99-7.2(c)19, both N.J.S.A. 52:27D-321.i(3) and N.J.A.C. 5:99-6.2 make clear that action taken by an AA is subject to the oversight, review, and approval of the MHL. Stated differently, an AA cannot unilaterally discharge and release any-and-all instruments. Nevertheless, the Department has made a non-substantial change to the rule to reinforce that the release and discharge of any instrument that is subject to the review and approval of the MHL. As the developer's agreement is a municipal document negotiated with the developer, the Department does not believe that a model would be appropriate. Any actions by the AA on behalf of the municipality are subject to the approval of the municipality, and therefore, the Department anticipates that the criteria developed for the purposes of determining whether a hardship waiver is appropriate will be vetted and approved by the MHL.

30. COMMENT: The commenter recommends that the rule, at N.J.A.C. 5:99-7.2(a)18, be adjusted to make it clear that a developer AA is not authorized to remove or release deed restrictions and that in the instance of a developer AA, that task should be assigned to the MHL or at least have specific approval from the municipality.

RESPONSE: The Department thanks the commenter for their comment. Please be advised that the Department has revised N.J.A.C. 5:99-7.2(a)18 to indicate that the release of deed restrictions is subject to prior written approval of the MHL. This change applies to all AAs, not only those chosen by a developer.

31. COMMENT: The commenter recommends that the Department specifically require the utilization of the Language Access Plan at N.J.A.C. 5:99-7.2(b).

RESPONSE: There is no statutory authority to require municipalities or their contractors to adhere to the Language Access Plan established by the Department. However, it is recommended that its use should be considered by AAs, where appropriate, to guide the development of materials designed to serve their respective client base and maximize exposure to the availability of affordable units. Moreover, the UHAC

regulations at N.J.A.C. 5:80-26.16(e), specifies that the AA must account for language barriers in the affirmative marketing plan.

32. COMMENT: The commenter notes that difficulty filling units due to a lack of income appropriate households occurs in rare circumstances and recommends that N.J.A.C. 5:99-7.2(c) create uniform criteria for declaring a unit difficult to sell and waiving the income requirements for the buyer, including filing the waiver with the Department that demonstrates the efforts to properly sell the unit and proof of inability to fill the unit with an eligible buyer within the timeframe allotted.

RESPONSE: This waiver provision, as the commenter notes, is a rare occurrence. Circumstances vary by individual case and housing region, and it is, therefore, difficult to create a uniform criterion for evaluation. The Department believes that the AA is best situated to identify specific criteria. The criteria should be further considered in AA Operating Manuals that are based on AA training programs. Challenges to AA actions may be submitted to the Division pursuant to N.J.A.C. 5:99-5.6(f).

33. COMMENT: The commenter requests that the term "extended period of time" at N.J.A.C. 5:99-7.2(c) be clarified as a specific time frame, that is, 180 days.

RESPONSE: As stated above, the Department believes that the AA is the most appropriate entity to specify the criteria for issuing a waiver for a difficult to sell unit. We anticipate that the education program will address the issues with regard to the subjectivity of this requirement. The rule also provides that the waiver is made pursuant to the approval of the MHL.

34. COMMENT: The commenter supports the Department creating a process that would allow a developer to utilize a different qualified AA and helping organizations with experience in related areas to become qualified as AAs.

RESPONSE: The Department thanks the commenter for their comment. The Department notes that it is a generally accepted practice within the industry for developers to request that a specific AA be assigned to a project when necessary. The Department may undertake additional rulemaking to codify a more proscriptive process by which this can be accomplished. However, in the short term, the Department will rely on the municipalities to approve these arrangements, as has been the case to date within the industry. Moreover, the Department notes that the education and certification programs offered by the Department provide the tools necessary to assist organizations with experience in related areas to become qualified as AAs.

35. COMMENT: The commenter suggests that the rules specify, at N.J.A.C. 5:99-7.3(d)1, what constitutes a valid and current AA certificate and the process for the AA to obtain an administrative certificate from the Department.

RESPONSE: The AA certificate referenced at N.J.A.C. 5:99-7.3(d)1 is the certificate issued by Rutgers University, based on a curriculum developed by the Division, upon completion of the Affordable Housing Professional Program through the Center for Government Services. This curriculum is currently being reviewed to incorporate the anticipated changes to these rules and UHAC. More broadly, the applicant AA must provide they have the capacity to address all of the responsibilities listed at N.J.A.C. 5:99-7.2.

36. COMMENT: The commenter recommends that, notwithstanding any ordinance or other regulation to the contrary, a developer, owner, or operator of affordable housing units be permitted to retain, at its discretion, any duly certified AA to oversee the leasing, sale, and administration of the units in that project. The commenter also recommends that the developer's, owner's, or operator's chosen certified AA have the latitude to affirmatively market and sell/rent the affordable units without being overridden by the municipality or the municipality's AA, and that instead, the chosen certified AA should be required to report to the municipality's designee "periodically" to provide updates about the sale or leasing of units in the project for which the chosen certified AA serves.

RESPONSE: The Department thanks the commenter for their comment. The Department notes that it is a generally accepted practice within the industry for developers to request that a specific AA be assigned to a project when necessary. The Department may undertake additional rulemaking to codify a more proscriptive process by which this can be accomplished, if deemed necessary. However, in the short term,

the Department will rely on the municipalities to approve these arrangements, as has been the case to date within the industry.

37. COMMENT: Regarding the educational requirements at N.J.A.C. 5:99-7.5(a), the commenter suggests that the rules specify who must be certified as an AA in a firm with more than one employee and suggests that all employees need not be certified, as long as they are supervised by a senior manager who has completed the education program.

RESPONSE: The Department thanks the commenter for their comment. The approval process for AAs will consider the educational attainment of the principals and supervisors in a firm and will not require that all individuals in the firm be certified.

38. COMMENT: The commenter is supportive of the Department developing continuing education requirement for MHLs and AAs pursuant to N.J.A.C. 5:99-9.

RESPONSE: The Department thanks the commenter for their comment and appreciates the commenter's support.

39. COMMENT: The commenter recommends that the Department create and manage a universal affordable housing listing database/website to further assist consumers and developers of affordable housing and cites that this concept has been introduced and has made progress in both houses of the Legislature.

RESPONSE: The Department thanks the commenter for its recommendation. In response, the Department notes that pursuant to the Fair Housing Act, the existing New Jersey Housing Resource Center serves as a universal affordable housing database which is used to advertise all affordable housing units created through the Fair Housing Act.

40. COMMENT: After providing numerous disparaging opinions regarding the Fair Housing Act, the New Jersey Legislature, the New Jersey Judiciary, the general construction of affordable housing in New Jersey, citizens of the State who may be the beneficiary of affordable housing, AAs, and immigrants, the commenter suggests that the entire law "should be done away with."

RESPONSE: The comment is outside the scope of the proposed rulemaking, as the Department lacks the authority to overturn or otherwise "do away with" either the Fair Housing Act or the municipalities' constitutional obligation to provide fair and affordable housing.

#### **Federal Standards Statement**

No Federal standards analysis is required for the adopted new rules because the new rules are not being adopted in order to implement, comply with, or participate in any program established pursuant to Federal law or a State law that incorporates or refers to Federal law, standards, or requirements.

#### **Summary of Agency-Initiated Changes Upon Adoption:**

Upon reviewing the notice of proposal, and in some cases in response to submitted comments, the Department is making non-substantial changes upon adoption as follows:

#### **Subchapter 1. General Provisions**

1. At N.J.A.C. 5:99-1.1, the Department has deleted the phrase "provided that" and replaced it with the word "and." This change was made for clarity.

2. At N.J.A.C. 5:99-1.2, the Department has added language to the definition of "administrative agent" to indicate that it is subject to the approval of the Division of Local Planning Services. This requirement was already codified at Subchapter 7, but the Department determined that clarifying the definition would be helpful.

#### **Subchapter 2. Affordable Housing Trust Funds and Spending Plans**

3. The Department has changed the name of this subchapter to include "Spending Plans." Spending plans are discussed in the subchapter and the Department believes that changing the heading of the subchapter will provide clarity for the regulated public.

4. At N.J.A.C. 5:99-2.2(g), the Department has deleted the word "may" and replaced it with "shall." As written, the changed provision prescribes a limitation on the percentage of affordable housing trust funds that may be spent on administrative costs. Thus, the "may" was functioning as a "shall." Therefore, the Department changed the wording to provide clarity to the provision.

5. At N.J.A.C. 5:99-2.2(j), the Department has removed the reference to P.L. 2024, c. 2, and replaced it with a reference to the codified statute in the New Jersey Statutes Annotated. Additionally, the Department removed an internal reference to "N.J.A.C. 5:99-3.5(b)" — a rule that did not exist — and replaced it with a cite to N.J.S.A. 52:27D-329.2. The statutory cite to N.J.S.A. 52:27D-329.2 provides support for the statement, that municipalities must first receive authorization from the Division before spending or committing to spending development fees.

6. At N.J.A.C. 5:99-2.3(a), the Department has added language to clarify that a "court of competent jurisdiction" may also approve a spending plan for the use of affordable housing trust funds. This is already established in both the Fair Housing Act and in the proposed rules but was mistakenly omitted from this section.

7. At N.J.A.C. 5:99-2.5(a), the Department has added that the municipality shall set aside a portion of all development fees collection and interest earned for the purpose of providing affordability assistance to "very low-income" households, as well as low- and moderate-income households. This addition does not require that municipalities set aside additional monies, but rather, clarifies that the money set aside may also be expended on affordable housing opportunities for very low-income households.

#### **Subchapter 5. Reporting, Monitoring, and Enforcement**

8. At N.J.A.C. 5:99-5.3, the Department has added that municipalities must provide information regarding "all" complete housing projects and clarified that this includes both newly constructed units and rehabilitated units. The original language of the rule was not clear that "completed affordable housing units" included all housing units that were constructed or rehabilitated to meet the municipality's affordable housing obligation. The change clarifies this point.

9. At N.J.A.C. 5:99-5.6(f), the Department has made two non-substantial changes that clarify internal inconsistencies that were present in the initial notice of proposal. First, the Department has added appeals from the decision of an RCA Administrator, in addition to appeals from a decision of an AA, must first be filed with the municipal housing liaison responsible for the jurisdiction. The initial notice of proposal references violations of the responsibilities of AAs, RCA Administrators, and municipal housing liaisons, but failed to discuss the appropriate recourse to address an alleged violation by an RCA Administrator. The Department has included in the rule that these decisions are appealable to the municipal housing liaison for internal consistency and clarity. Second, the Department has corrected an error in the initial notice of proposal, which provided that the Division of Local Planning Services will issue a written decision upholding, reversing, or modifying the decision of an "administrative agent." However, the rule makes clear that the Division does not review decisions of the administrative agent, but rather, reviews the decision of a municipal housing liaison. Therefore, the Department has made the change to correct this error.

#### **Subchapter 6. Municipal Housing Liaison**

10. At N.J.A.C. 5:99-6.1, the Department has added that the municipality must identify the name of the municipal housing liaison on its website. This will ensure that the municipal housing liaison is more easily accessible to members of the regulated public.

#### **Subchapter 7. Administrative Agent**

11. The Department proposes to change N.J.A.C. 5:99-7.2, Responsibilities of the administrative agent. The Department proposes to change N.J.A.C. 5:99-7.2(a)18 to clarify that the municipal housing liaison in the respective municipality must provide prior written approval for the removal of any deed restrictions or mortgage cancellations on a particular property. The addition of this language reinforces the oversight and approval role of an MHL over the actions of an AA that are proscribed in other parts of these rules and the enabling act. However, in response to a comment, the Department believed it appropriate to reiterate that level of oversight.

12. At N.J.A.C. 5:99-7.3, the Department has separated, moved, and recodified the initially proposed rules. New subsection (a) is relocated from the first sentence of proposed subsection (b). The remainder of proposed subsection (b) is recodified as new subsections (c) and (d).

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

## CHAPTER 99 FAIR HOUSING ACT REGULATIONS

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 5:99-1.1 Purpose

(a) This chapter establishes procedures to be used by municipalities in addressing requirements set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

(b) 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 its applications, the chapter shall remain in effect in all valid applications that are severable from the invalid application.

(c) The Division of Local Planning Services shall have jurisdiction regarding the enforcement of this chapter, **\*[provided that]\*** **\*and\*** any municipality that is not in compliance with this chapter, as adopted by the Division of Local Planning Services, may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund, established pursuant to N.J.S.A. 52:27D-320.

#### 5:99-1.2 Definitions

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

“Accessory dwelling unit” means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

“Act” means P.L. 2024, c. 2.

“Administrative agent” means the entity\*, **approved by the Division**,\* responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and **\*[as designated by the ]\*** UHAC at N.J.A.C. 5:80-26.15.

“Affordability assistance” means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner’s association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

“Affordable” means a sales price or rent within the economic means of a low- or moderate-income household, as defined in the UHAC as, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

“Affordable housing delivery mechanisms” means any of the methods of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, as permitted by the Act.

“Affordable housing development” means a development included in a municipality’s housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development.

“Affordable Housing Dispute Resolution Program” or “the Program” refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

“Affordable Housing Monitoring System” or “AHMS” means the Department’s cloud-based software application, which shall be the central

repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

“Affordable unit” means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

“Barrier-free escrow” means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

“Builder’s remedy” means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques that provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households in accordance with N.J.S.A. 52:27D-304.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Compliance certification” means the certification issued to a municipality by the Program pursuant to section 3 at P.L. 2024, c. 2, that provides a municipality immunity from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round of affordable housing obligations begins, which is also known as a “judgment of compliance” resulting in an “order for repose.” “Compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

“Compliant municipality” means a municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of Compliance, Order for Repose, or other court approval pursuant to the Act.

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

“County-level housing judge” means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

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

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

“Development application” means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

“Development fee” means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

“Division” means the Division of Local Planning Services within the Department of Community Affairs.

“Emergent opportunity” means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery

mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

“Equalized assessed value” or “EAV” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

“Excess RCA funds” means unspent money transferred prior to July 17, 2008, pursuant to a regional contribution agreement whose terms have been fulfilled.

“Exclusionary zoning litigation” means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the *Mount Laurel* doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder’s remedy.

“Extension of expiring controls” means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

“Fair share obligation” means the total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

“Fair share plan” means the plan or proposal, which may readily be adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs 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 the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

“Firm and binding obligation” means a demonstration by a municipality, evidenced by documentation substantiating a legally enforceable agreement entered into by the municipality with a third party, sufficient proof of building or other permits, efforts concerning land acquisition or project development, or other documentation that demonstrates a commitment to spend trust fund monies in a manner consistent with the Act, the municipality’s fair share plan, the Act, an approved spending plan, and all applicable regulations.

“HMFA” or “the Agency” means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

“Housing element” means the portion of a municipality’s master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act 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, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

“Housing project” means a project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term “housing project” may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition

of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2 for each round of low- and moderate-income housing obligations pursuant to the Act.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

“Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving a municipality’s fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

“Low-income household” means a household with a household income equal to 50 percent or less of the regional median income.

“Low-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

“Mixed use development” means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

“Moderate-income household” means a household with a household income in excess of 50 percent but less than or equal to 80 percent of the regional median income.

“Moderate-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

“Municipal affordable housing trust fund” means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter. As used in this chapter, “municipal affordable housing trust fund” shall also mean a “municipal development trust fund” and a “municipal development fee Trust fund.”

“Municipal development fee ordinance” means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

“Municipal housing liaison” or “MHL” means an appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the municipality and oversight of the authorization of individuals being provided access to the AHMS.

“New construction” means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.



“New Jersey Affordable Housing Trust Fund” means an account established pursuant to N.J.S.A. 52:27D-320.

“Non-residential development” means:

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

2. Hotels, motels, vacation timeshares, and child-care facilities; and

3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

“Non-residential development fee” means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

“Order for repose” means the protection a municipality has from a builder’s remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

“Payment in lieu of constructing affordable units” means the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

“Qualified Urban Aid Municipality” means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

“RCA administrator” means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

“RCA project plan” means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

“Receiving municipality” means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality’s fair share obligation.

“Reconstruction” means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the Uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

“Recreational facilities and community centers” means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ball fields, meeting halls, and classrooms, accommodating either organized or informal activity.

“Regional contribution agreement” or “RCA” means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality’s affordable housing obligation to another municipality within its housing region.

“Rehabilitation” means the repair, renovation, alteration, or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Residential development fee” means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

“Sending municipality” means, for purposes of an RCA, a municipality that has contractually agreed to transfer a portion of its fair share obligation to another willing municipality.

“Senior center” means any recreational facility or community center with activities and services oriented towards serving senior citizens.

“Spending plan” means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved

municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

“Treasurer” means the Treasurer of the State of New Jersey.

“UHAC” means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

“Very-low-income household” means a household with a household income less than or equal to 30 percent of the regional median income.

“Very-low-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

## SUBCHAPTER 2. AFFORDABLE HOUSING TRUST FUNDS \*AND SPENDING PLANS\*

### 5:99-2.1 Purpose

(a) This subchapter regulates the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund pursuant to the Act.

(b) Municipal affordable housing trust funds shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Act and this chapter.

(c) A compliant municipality shall maintain an affordable housing trust fund to deposit all residential and non-residential development fees, payment in lieu of constructing affordable units, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs.

(d) A Qualified Urban Aid Municipality that collects residential development fees shall maintain an affordable housing trust fund to deposit the fees and shall receive Division approval of a spending plan for the fund pursuant to N.J.A.C. 5:99-2.3.

(e) A municipality may impose, collect, and spend affordable housing trust funds if it retains its status as a compliant municipality, subject to any limitations imposed by this chapter.

(f) A municipality shall not spend, or commit to spend, any affordable housing trust funds, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the Division pursuant to N.J.S.A. 52:27D-329.2.a(4). A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Program has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.

### 5:99-2.2 Account requirements

(a) All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited.

(b) With the approval of the Department’s Division of Local Government Services, the municipality may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable.

(c) All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities included in an approved spending plan or an emergent opportunity authorized by the Division.

(d) A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Program or a court of competent jurisdiction has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.1.

(e) Any municipality with an affordable housing trust fund account shall be subject to N.J.A.C. 5:99-4.

(f) Municipal affordable housing trust funds shall not be expended:

1. To reimburse the municipality for activities that occurred prior to the authorization of a municipality to collect development fees;
2. On attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs;
3. On any costs in connection with a challenge to a determination of the municipality's fair share obligation; or
4. On any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan.

(g) In addition to the restrictions at (f) above, no more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, *\*[may]\* \*shall\** be expended on administration, in accordance with N.J.A.C. 5:99-2.4.

(h) A municipality shall set aside a portion of its affordable housing trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with N.J.A.C. 5:99-2.5.

(i) Compliant municipalities, Qualified Urban Aid Municipalities, or municipalities that have previously collected such funds while under the protection of presumptive validity of their affordable housing plan or immunity from exclusionary zoning litigation and in accordance with an approved spending plan are authorized to commit or expend affordable housing trust funds in accordance with this chapter, UHAC, and the Act.

(j) A non-compliant Qualified Urban Aid Municipality meeting the criteria set forth *\*[in paragraph (1) of subsection c. of section 7 at P.L. 2024, c. 2]\* \*at N.J.S.A. 52:27D-304.3\**, which has been authorized to collect residential development fees pursuant to *\*[N.J.A.C. 5:99-3.5(b)]\* \*N.J.S.A. 52:27D-329.2\**, may not spend, or commit to spend, any affordable housing development fees, without first obtaining the Division's approval of the expenditure by submitting a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. The Division shall review the spending plan for consistency with N.J.A.C. 5:99-2 and shall notify the municipality upon the approval of the spending plan.

#### 5:99-2.3 Use of funds for housing activity

(a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Program **\*or court of competent jurisdiction\*** or as approved by the Division as an emergent opportunity to create affordable housing. Such activities include, but are not limited to:

1. A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable\*, **and costs related to the rehabilitation of the unit\***. Any recaptured funds from a rehabilitation program shall be deposited into a municipality's affordable housing trust fund and subject to the provisions thereof;

2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

3. Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;

4. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;

5. RCAs, approved prior to July 17, 2008;

6. Acquisition and/or improvement of land to be used for affordable housing;

7. Accessory dwelling units;

8. The extension of expiring controls;

9. The construction of group homes and supportive and special needs housing;

10. Maintenance and repair of affordable housing units;

11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

12. Affordability assistance in accordance with N.J.A.C. 5:99-2.5;

13. Repayment of municipal bonds issued to finance low- and moderate-income housing activity;

14. Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or

15. Any other activity approved by the Division.

#### 5:99-2.4 Use of funds for administrative expenses

(a) No more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, shall be expended on administration.

(b) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.

(c) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.

(d) The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

#### 5:99-2.5 Use of funds for affordability assistance

(a) A municipality shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to **\*very-low-\*,\* low-\*,\* and moderate-income households in affordable units included in the municipality's fair share plan \*pursuant to N.J.S.A. 52:27D-329.1\***.

1. Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities.

(b) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or any program or activity for which the municipality expends development fee proceeds.

#### 5:99-2.6 Barrier-free escrow

An affordable housing trust fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and the Barrier Free Subcode, N.J.A.C. 5:23-7. The municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances in compliance with the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7. Funds collected

for this purpose shall at all times be identifiable from other funds. A municipality that collects, or anticipates collecting, funds to adapt affordable unit entrances shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5.

**5:99-2.7 Payments in lieu of constructing affordable units on-site**

(a) Payments in lieu of constructing affordable units shall not be imposed on any non-residential development.

(b) A municipality that chooses to collect or anticipates collecting payments in lieu of constructing affordable units shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5.2 and include a plan for the use of the funds in its spending plan.

(c) Payment-in-lieu fees shall be deposited into the municipality's affordable housing trust fund, but shall be accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu fee is assessed by a municipality pursuant to this section, a development fee authorized pursuant to N.J.S.A. 52:27D-329.2 shall not be charged in connection with the same development.

**5:99-2.8 Other funds**

(a) An affordable housing trust fund may also contain recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. A municipality that collects, or anticipates collecting, such fees shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.

(b) An affordable housing trust fund shall also contain any excess RCA funds, where the RCA has been completed in accordance with the RCA project plan.

(c) A municipality that is not a compliant municipality may not retain excess RCA funds and shall transfer any such funds to the New Jersey Affordable Housing Trust fund established pursuant to N.J.S.A. 52:27D-320.

**SUBCHAPTER 3. DEVELOPMENT FEES**

**5:99-3.1 General non-residential and residential development fee ordinance requirements for compliant municipalities**

(a) This subchapter regulates the assessment and collection of development fees, including the payment of any necessary costs related to the administration of affordable units included in the municipal plan. All non-residential development in the State is subject to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. A compliant or Qualified Urban Aid Municipality which has adopted a residential development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with this chapter and N.J.S.A. 52:27D-329.2.

(b) A compliant municipality shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 and this chapter.

(c) All amounts collected shall be deposited and shall be accounted for separately, by payer, source property or development, and date of deposit as set forth at N.J.A.C. 5:99-5.

(d) A municipality that has failed to maintain its status as a "compliant municipality" shall not impose a residential development fee on a development that receives preliminary or final approval after the expiration of the municipality's compliance certification or a judgment of compliance, nor shall a municipality retroactively impose a development fee on such a development should the municipality subsequently come into compliance. A Qualified Urban Aid Municipality may continue to impose residential development fees regardless of its compliance status.

(e) A municipality shall collect 100 percent of the development fee for residential and non-residential development at or prior to the issuance of the certificate of occupancy.

1. A municipality may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion shall be collected at, or prior to, the issuance of the certificate of occupancy. Developers shall be notified of the fee by the municipality, including

when payment is required to be made, at the time of land use board approval or application for a construction permit.

2. For residential developments, regardless of the time of collection or the date of approvals, the fee shall be based on the residential development fee percentage pursuant to the municipal ordinance in effect on the date that residential building permits are issued.

3. For non-residential developments as of July 17, 2008, the fee shall be 2.5 percent of the EAV, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(f) Imposed and collected residential development fees that are contested shall be deposited under protest in an interest-bearing escrow account by the municipality. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

(g) A developer may challenge non-residential development fees imposed pursuant to N.J.S.A. 52:27D-329.1 et seq., by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the municipality if the municipality is authorized to retain the fees, or by the State if the municipality is not authorized to retain the fees. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(h) Any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division shall be authorized, on behalf of the municipality, to direct the manner in which all funds in the affordable housing trust fund shall be expended. A three-party escrow agreement between the municipality, the institution in which funds are deposited, and the Division shall be maintained at all times.

(i) A municipality that collects or anticipates collecting development fees shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:99-2.2.

(j) The Division shall maintain, on its Internet website, a list of each municipality that is authorized to retain the development fees collected pursuant to this section and that has a confirmed status of compliance with the Act, or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to N.J.S.A. 52:27D-329.2 for all development fees collected.

**5:99-3.2 Residential development fee ordinances**

(a) A residential development fee ordinance shall impose a maximum fee of one-and-one-half percent of the EAV of the development provided no increased density is permitted.

1. The ordinance may impose an increased development fee of up to six percent of the EAV, for each additional unit that may be realized for a development that has received an increase in residential density pursuant to N.J.S.A. 40:55D-70.d(5) (known as a "d" variance). If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the increased development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

2. Ordinances imposing residential development fees may apply to new construction, additions, and alterations to existing residential development. Residential development fee ordinances shall clearly indicate which types of development are subject to the imposition of the fee. Development fees assessed on new construction shall be based on the EAV of land and improvements. Development fees assessed on additions and alterations shall be based only on the increase in EAV that results from the addition or alteration.

(b) Eligible exactions, ineligible exactions, and exemptions from residential development fees shall be treated as follows:

1. Affordable housing developments, affordable housing developments where the affordable units are being provided elsewhere in the municipality, and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from residential development fees;

2. Residential development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development fee that may be imposed and collected shall be calculated on the increase in the EAV resulting from the expansion, change to a more intense use, or replacement;

3. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval necessitating an amended preliminary or a new preliminary approval pursuant to N.J.S.A. 40:55D-46.b and 40:55-48.b. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose;

4. Municipal development fee ordinances may exempt or impose lower development fee rates for specific types of residential development, provided each classification of development is addressed consistently. Examples include, but are not limited to, exempting or reducing the fee for improvements where the EAV does not exceed a threshold minimum determined by the municipality, developments with one or two owner-occupied dwelling units, or green buildings;

5. A municipality may exempt or reduce fees in specific residential areas or zones in order to promote development in that area. Examples include, but are not limited to, exempting all residential development in a mixed-use zone, residential development within a one-half-mile radius of a train station, or residential development within areas in need of redevelopment pursuant to N.J.S.A. 40:12A-1 et seq.;

6. Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster or catastrophe shall be exempt from paying any residential development fee, even if the new structure has an increased EAV as compared to the previous structure;

7. Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee; and

8. Federal, State, county, and local governments shall be exempt from paying a development fee.

(c) Any municipality that is not in compliance with the requirements of this chapter may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-5.6. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

#### 5:99-3.3 Non-residential development fee collection for compliant municipalities

(a) Non-residential development fees shall be imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(b) A developer of property that received preliminary site plan approval, pursuant to N.J.S.A. 40:55D-46, or final approval pursuant to N.J.S.A. 40:55D-50 prior to July 17, 2008, and that was subject to the payment of a validly imposed municipal non-residential development fee ordinance shall continue to be subject to the conditions of the municipally imposed fee.

(c) Any non-residential development fee ordinance shall be consistent with the provisions of the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7, and shall not impose a payment in lieu of constructing affordable housing upon a developer of non-residential property as a condition of non-residential development.

(d) Any municipality that is not in compliance with the requirements of the Statewide Non-Residential Development Fee Act and this chapter may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund pursuant to N.J.S.A. 40:55D-8.4 and N.J.A.C. 5:99-5.6. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(e) Non-residential development fees shall be imposed as follows:

1. A fee equal to two-and-one-half percent of the EAV of the land and improvements, for all new non-residential construction on an unimproved lot or lots, or such other amount pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7; or

2. A fee equal to two-and-one-half percent of the increase in EAV, of the additions or alterations to existing structures to be used for non-residential purposes, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(f) All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7:

1. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development;

2. Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer;

3. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;

4. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;

5. Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and

6. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation.

(g) A developer of a mixed use development shall be required to pay the non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq.

(h) Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.

(i) A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to that fee at such time as the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

(j) If a property that was exempt from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees in these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

(k) The payment of non-residential development fees shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity, the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

1. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development that may be subject to a non-residential development fee.

2. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the EAV of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property that may be subject to a non-residential development fee.

(l) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated EAV of the improvements of the non-residential development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the non-residential development fee pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7; and thereafter notify the developer of the amount of the non-residential development fee.

(m) Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth at N.J.S.A. 40:55D-8.6.b.

(n) Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws or rules, the municipality shall issue a final certificate of occupancy for the subject property.

(o) Any municipality that is not in compliance with the requirements established pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7, or the rules of the Division promulgated pursuant thereto, may be subject to forfeiture, pursuant to N.J.A.C. 5:99-5.6, of any or all funds remaining within its municipal affordable housing trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(p) Failure of the municipality to comply with the timeframes or procedures set forth in this section may subject the municipality to penalties imposed by the Commissioner; any penalties so imposed shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

#### 5:99-3.4 Non-residential development fee ordinance requirements for non-compliant municipalities

A non-compliant municipality, regardless of its status as a Qualified Urban Aid Municipality, shall impose non-residential development fees pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7, as set forth at N.J.A.C. 5:99-3.3(e) through (p), which shall be paid to the Treasurer in accordance with N.J.A.C. 5:99-3.1 in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality. A non-compliant municipality shall not retain or expend non-residential development fees.

### SUBCHAPTER 4. EXPEDITED APPROVAL OF EXPENDITURES FOR EMERGENT OPPORTUNITIES TO CREATE AFFORDABLE HOUSING

#### 5:99-4.1 Consideration for emergent opportunities not in the adopted fair share plan

(a) A compliant municipality may request authorization from the Division for expenditure of excess affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan. Any such request shall be consistent with the Act and shall

not remove or reduce any approved affordable housing delivery mechanisms.

(b) Emergent affordable housing opportunities may include, but are not limited to, those activities permitted pursuant to N.J.A.C. 5:99-2.3.

(c) Any such request to the Division to utilize excess affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be in the form of a resolution from the governing body of the municipality and shall include:

1. Documented proof that the excess funds are not accounted for in the municipality's spending plan approved by the Program or a court of competent jurisdiction;

2. A description of the affordable housing activity in accordance with (b) above;

3. Documentation demonstrating that the entire municipal trust fund balance will be spent and/or committed for expenditure within four years, as set forth at N.J.A.C. 5:99-5.5, shall be submitted to the Division with the request; and

4. A certification that the affordable housing opportunity is consistent with the Act and information describing the proposed affordable housing mechanism. The certification shall demonstrate that the proposal does not alter the spending plan approved by the Program or court of competent jurisdiction.

(d) The municipality shall submit reporting pursuant to N.J.A.C. 5:99-5.2 relating to the affordable units created using affordable housing trust funds.

### SUBCHAPTER 5. REPORTING, MONITORING, AND ENFORCEMENT

#### 5:99-5.1 Applicability

(a) Compliant municipalities and Qualified Urban Aid Municipalities that maintain affordable housing trust funds are required to annually submit monitoring information to the Division in the time and form described in this subchapter.

(b) Municipalities with expired, revoked, nullified, or dismissed fair share plans shall provide monitoring information to the Division in accordance with this subchapter until the expiration of affordability controls on all affordable units.

#### 5:99-5.2 Municipal affordable housing trust fund monitoring information

(a) The Division shall conduct monitoring of affordable housing trust funds maintained by municipalities subject to the terms of a compliance certification. Monitoring reports shall include the information described at N.J.A.C. 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year.

(b) The Division shall develop and publish on the Division's Internet website a detailed summary of municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. Every municipality that is, or has been, authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, or retain and expend non-residential development fees shall provide the Division with a copy of the adopted development fee ordinance and a detailed accounting of all fees that have been collected into the affordable housing trust fund and all expenditures from the previous calendar year.

(c) Municipal monitoring information shall include a full accounting of any affordable housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. 5:99-5.5. All municipal monitoring information submissions shall be made through the online AHMS, made available by the Department on the Division's website.

(d) A municipality that fails to provide monitoring information to the Division by February 15th of each year in the form required by the Division pursuant to this subchapter may be subject to enforcement actions by the Division pursuant to N.J.A.C. 5:99-5.6.

(e) A municipality shall deposit all fees collected, including non-residential or residential development fees, into the municipal affordable housing trust fund.

#### 5:99-5.3 Completed affordable unit monitoring information

(a) Each municipality shall submit information to the Division concerning **\*all\* completed affordable housing units \*constructed or rehabilitated in order to fulfill its affordable housing obligation\*** pursuant to this subchapter on an annual basis. Municipalities shall provide the following information to the Division:

1. The number and type of affordable housing units actually constructed, including:

- i. The housing type;
- ii. The tenure of the housing \*[in the case of a rental unit]\*;
- iii. The affordability level;
- iv. The number of bedrooms;
- v. The date and expiration of affordability controls; \*[and]\*
- vi. Whether occupancy is reserved for families, senior citizens, or other special populations; **\*and**

**vii. Certificates of occupancy granted.**

**2. The following data shall be provided at the project level:\***

**\*[2.]\* \*i.\* Construction commencement dates;**

**ii. Start and expiration dates of deed restrictions;**

**iii. Any payments in lieu collected for the project; and**

**iv. The name and contact information of the administrative agent.\***

**\*[3. Certificates of occupancy granted;**

**4. Start and expiration dates of deed restrictions; and]\*\***

**\*[5.]\* \*3.\* Residential and non-residential development fees collected and expended, including:**

- i. The purposes and amounts of such expenditures; and
- ii. The current balance in the municipality's affordable housing trust fund.

(b) Monitoring reports for each calendar year shall be in the form of a certification, submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15th of each year, specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year.

(c) The Division shall maintain on its Internet website, and publish on an annual basis, an up-to-date municipal status report based on its collection of information of the information pursuant to this subchapter.

#### 5:99-5.4 Ongoing collection of fees and maintenance of the affordable housing trust fund

(a) The ability for a municipality to impose and collect and retain residential development fees and the ability to retain non-residential development fees and maintain an affordable housing trust fund is subject to maintaining its status as a compliant municipality, except that a Qualified Urban Aid Municipality may continue to retain residential development fees regardless of its compliance status pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

(b) If a court of competent jurisdiction finds that a municipality has failed to maintain its status as a compliant municipality, the municipality may be subject to forfeiture of any or all funds remaining within their affordable housing trust fund.

(c) Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

(d) A municipality that is not a compliant municipality that imposes and collects fees and maintains an affordable housing trust fund shall submit an updated spending plan in accordance with the time frames set forth at N.J.S.A. 52:27D-304.1 for municipal submission of a housing element and fair share plans.

#### 5:99-5.5 Requirement to spend or commit to expend development fees within four years of the date of collection

(a) Development fees collected by a compliant municipality or Qualified Urban Aid Municipality shall be expended or committed for expenditure within four years of the date of collection.

(b) The Division may request that a municipality submit to the Division proof of expenditure or commitment to expend trust fund monies within four years of the date of their collection, in accordance with N.J.S.A. 52:27D-329.2.d. Proof of expenditure, or a commitment to expend trust fund dollars, shall be demonstrated by a legally enforceable agreement between a municipality and a third party or other documentation that demonstrates a firm and binding obligation by the municipality to spend trust fund dollars in a manner consistent with the municipality's fair share plan, the Act, an approved spending plan, and all applicable rules. For purposes of this section, funds are expended, or committed for expenditure, if one of the following standards has been met:

1. The funds have been spent on a housing activity in accordance with N.J.A.C. 5:99-2.3;

2. The Division has been provided with an executed contract or legally enforceable agreement funding the implementation of an allowable housing activity in accordance with N.J.A.C. 5:99-2.3, and the following, as applicable: a municipal resolution or ordinance creating the affordable housing program, a policy and procedures manual, and completion of affordable housing trust fund and unit monitoring, indicating units completed or rehabilitated, or the municipality has otherwise demonstrated a firm and binding obligation to spend such funds in a manner consistent with addressing its respective affordable housing obligation;

3. For affordability assistance expenses, the Division has been provided with the following: demonstration of a firm and binding obligation to spend such funds in a manner consistent with addressing the affordability assistance obligation required by the Act or a municipal resolution or ordinance and an executed contract or agreement for expenses related to providing affordability assistance to existing low- and moderate-income households, a policies and procedures manual for any affordability assistance program executed by the municipality, and a contract with an administrative agent to carry out the program if applicable; or

4. For administrative expenses, the Division has been provided with the following: a municipal resolution or ordinance and an executed contract or agreement for expenses related to administering affordable housing.

(c) A municipality that fails to expend or commit to expend the amounts collected within four years of the date of collection pursuant to N.J.S.A. 52:27D-329.2 shall be required to transfer any unexpended and/or uncommitted revenue collected to the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320. The Division shall follow the procedures set forth at (d) through (f) below before requiring any transfer of funds.

(d) The Division shall notify a municipality and the Program of any unexpended and/or uncommitted funds indicated by the Division's records.

(e) A municipality may respond to a notification issued pursuant to (d) above within 30 days of receipt of the notification. Said response shall be, in writing, and may include any documentation to substantiate that any funds have been expended or committed to be expended within four years of the date of collection. Any written response by email shall be sent to [AHMS@deca.nj.gov](mailto:AHMS@deca.nj.gov). Any other written response may be addressed to:

New Jersey Department of Community Affairs  
Division of Local Planning Services  
101 S. Broad Street  
PO Box 813  
Trenton, New Jersey 08625

(f) The Division shall review any response submitted pursuant to (e) above and shall issue a written decision setting forth the reasons for accepting or rejecting the information submitted, or shall request additional information, within 45 days, pursuant to the procedures set forth at N.J.A.C. 5:99-5.6. The Division shall, upon notice to the municipality, be entitled to any reasonable extensions of time as the Division deems necessary.

## 5:99-5.6 Enforcement

(a) A municipality's ability to impose and collect funds and maintain its affordable housing trust fund pursuant to this chapter shall be conditioned on its compliance with all requirements of this chapter.

(b) Occurrence of any of the following deficiencies may result in the Division taking an action pursuant to (c) below:

1. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
2. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
3. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;
4. Failure to address the Division's conditions for approval of a plan to spend funds within the deadlines imposed by the Division;
5. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
6. Expenditure of funds on activities not approved by the Program or the Division or otherwise permitted by law;
7. Revocation of compliance certification;
8. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8; or
9. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

(c) If the Division determines that any of the items set forth at (b) above have occurred, or that an affordable housing program is otherwise not being administered in accordance with the rules of the Division, the Division shall notify the Program and the municipality, including the chief financial officer of the municipality, and the municipality may be subject to Division action. Such action may include, but is not limited to, one or more of the following:

1. Requiring the municipality to enact a municipal resolution appropriating funds from general revenue or its resolution of intent to bond, in the event there is a shortfall in funding for a proposed affordable housing delivery technique;
2. Revoking approval of the municipal housing liaison, the RCA administrator, and/or the administrative agent;
3. Bringing, through a summary proceeding, any findings of violation of the responsibilities for municipal housing liaisons, RCA administrators, and administrative agents before a county-level housing judge, to docket the violation, issue corrective orders, and/or levy fines; or
4. Such other actions as the Program or Division determines are necessary and appropriate to remediate the violation.

(d) In the event the Division takes action pursuant to (c) above, the Division may direct the subject municipality to cease its imposition, collection, and expenditure of affordable housing trust funds. The Division shall use the following procedures:

1. Prior to directing a municipality to cease imposition, collection, and expenditure of affordable housing trust funds, the Division shall allow the municipality to correct or provide explanation or additional information, with regard to the deficiency identified pursuant to (b) above. Any such correction shall be in writing. Said correction may be issued through email to [AHMS@dca.nj.gov](mailto:AHMS@dca.nj.gov). Any other written correction shall be addressed to:

New Jersey Department of Community Affairs  
Division of Local Planning Services  
101 S. Broad Street  
PO Box 813  
Trenton, New Jersey 08625

2. The Division shall review any submission made pursuant to (d)1 above. If, upon review, the Division makes any of the determinations set forth at (b)1 through 9 above, the Division shall provide written notice to the municipality and the bank or financial institution where the municipality's affordable housing trust fund is maintained.

3. Upon notifying the bank or financial institution in accordance with the escrow agreement pursuant to N.J.A.C. 5:99-2.2, the Division shall direct that all or a portion of the funds remaining in the municipal affordable housing trust fund shall be transferred into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320 within the time frame specified by the Program or the Division.

- (e) Any party may request that the Division review and take action pursuant to (c) above if the party suspects that any of the conditions set forth at (b) above exists. Any request to the Division shall be, in writing, and shall be supported by sufficient and credible evidence, as determined by the Division. Any written request shall be submitted to:

New Jersey Department of Community Affairs  
Division of Local Planning Services  
101 S. Broad Street  
PO Box 813  
Trenton, New Jersey 08625

(f) With regard to violations of the responsibilities for municipal housing liaisons, RCA administrators, and administrative agents, prior to bringing a summary proceeding before a county-level housing judge, an interested party shall first file an appeal from a decision made by an administrative agent **\*or RCA administrator\*** with the municipal housing liaison responsible for the jurisdiction. Any appeal from a decision of a municipal housing liaison may be made to the Division. When acting in this capacity, the Director of the Division may appoint one or more employees of the HMFA or the Department to assist in rendering the final decision whenever they, in their sole discretion, determine that their participation would materially promote a fair and just disposition of the appeal. The Division Director shall issue a written decision upholding, modifying, or reversing **\*[an administrative agent's decision]\* \*the decision of a municipal housing liaison\*** with reasons in support thereof.

(g) For all other items set forth at (b) above, a party aggrieved by a decision of the Department pursuant to (d) above may appeal that decision to the Department and request a hearing. An appeal must be filed with the Department within 15 days of receipt of notice that the Division is acting pursuant to (c) above. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Commissioner shall render a written decision upon the conclusion of the hearing. Such written decision shall be a final agency decision.

(h) A county-level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations pursuant to the compliance certification issued by the Program or a court of competent jurisdiction.

## SUBCHAPTER 6. MUNICIPAL HOUSING LIAISON

## 5:99-6.1 Requirement for a municipal housing liaison

(a) All municipalities that have created, or will create, affordable housing programs and/or affordable units pursuant to the Act and the UHAC shall establish the position of a municipal housing liaison by ordinance and, subject to the approval of the Division, appoint, by resolution of the governing body or letter from the chief executive, a municipal employee to serve in this position\*, **who shall be identified by name and title on the municipal website\***.

(b) The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation, and administration of affordable housing programs, affordable units, and reporting pursuant to the Act and this chapter.

## 5:99-6.2 Responsibilities of the municipal housing liaison

(a) The following responsibilities shall be performed exclusively by the municipal housing liaison:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
2. Overseeing the monitoring of and reporting on the status of all proposed and completed affordable housing programs and affordable units in the municipality's fair share plan;
3. Overseeing and monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the UHAC;
4. Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the municipality at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the

sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit;

5. Verifying, certifying, and providing monitoring and reporting information within the AHMS at such time and in such form as the Division requires;

6. Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the municipality;

7. Overseeing the coordination of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and

8. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.

(b) Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee.

(c) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7.

(d) Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the municipality and pursuant to the oversight of the municipal housing liaison.

#### 5:99-6.3 Approval of the municipal housing liaison

(a) The appointment of the municipal housing liaison is subject to review and approval by the Division.

(b) Upon entering the process for compliance certification, the municipality shall submit its ordinance establishing the position of the municipal housing liaison and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the municipal housing liaison to the Division.

(c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence to the Division of the municipal housing liaison's qualifications to successfully manage, including any history of managing affordable housing units, particularly those produced as a result of the Act or through an exclusionary zoning court settlement, which shall include:

1. A resume;

2. A statement of qualifications; and

3. A statement of intent to attend initial and continuing education courses authorized by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units.

(d) Upon review of the information submitted pursuant to (c) above, the Division may approve or deny the appointment of the MHL to serve dually as the administrative agent. The Division shall notify the municipality of its decision, in writing, no later than 45 days after submission. The Division shall, upon notice to the municipality, be entitled to any reasonable extensions of time as the Division deems necessary.

(e) The Division shall monitor the performance of any approved municipal housing liaison and may revoke said approval, should the Division find that the municipal housing liaison has failed to administer the municipality's affordable housing programs and/or affordable units in accordance with the rules of the Division pursuant to N.J.A.C. 5:99-5.6.

#### 5:99-6.4 Education requirements

(a) All appointed municipal housing liaisons shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframes specified by the Division.

(b) If the municipal housing liaison is to perform the duties of an administrative agent, the municipal housing liaison shall also successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 prior to engaging in any administrative agent activities.

(c) Approved municipal housing liaisons shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

### SUBCHAPTER 7. ADMINISTRATIVE AGENT

#### 5:99-7.1 Requirements for an administrative agent

(a) All municipalities that have created, or will create, affordable housing programs and/or affordable units shall designate or approve, for each project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Program, this chapter, and the UHAC.

(b) The administrative agent may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC.

(c) The administrative agent may perform the duties and responsibilities set forth in this subchapter.

#### 5:99-7.2 Responsibilities of the administrative agent

(a) The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low, low-, and moderate-income households in accordance with the provisions of the UHAC. The administrative agent is also responsible for the following:

1. Conducting an outreach process to ensure affirmative marketing of affordable housing units consistent with the municipal Affirmative Fair Marketing Plan in accordance with the provisions of the UHAC at N.J.A.C. 5:80-26.16;

2. Soliciting, scheduling, conducting, and following up on applications and/or interviews with interested households;

3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income household;

4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;

6. Employing a random selection process when referring households for certification to affordable units;

7. Furnishing to attorneys or closing agents appropriate forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

8. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate;

9. Instituting and maintaining an effective means of communicating information between owners of affordable units and the administrative agent regarding the availability of their restricted units for resale or re-rental;

10. Instituting, maintaining, and documenting an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;

11. Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;

12. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the terms of their ownership;

13. Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements that would affect the selling prices of their units. Such authorizations shall be limited to those improvements resulting in additional bedrooms or bathrooms, and the cost of a central air conditioning system installed subsequent to the initial sale of the unit;

14. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;



15. Communicating with lenders regarding foreclosures;
16. Ensuring the issuance of continuing certificates of occupancy or certified statements from municipal building inspectors pursuant to the UHAC at N.J.A.C. 5:80-26.11;
17. Notifying the municipality of an owner's intent to sell a 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2;
18. **\*[Ensuring]\* \*Subject to prior written approval from the municipal housing liaison, ensuring\*** that the removal of deed restrictions and cancellation of mortgages are effectuated and properly filed with the appropriate county's register of deeds or clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;
19. Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;
20. Providing annual reports, including a detailed description of completed units and any other information necessary for the municipality to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4, to the municipal housing liaison and the Division by February 15 of each calendar year;
21. Calculating initial rents or sales prices for affordable units; and
22. Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

(b) The administrative agent shall create and publish in plain English and in such other languages as may be appropriate to serving their respective client base, a written operating manual, as approved by the municipal housing liaison, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities in this chapter. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17.

1. Such process shall require that an applicant household be notified, in writing, of the results of its application for certification within five business days of the administrative agent's determination thereof.

2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be through the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

(c) Subject to the approval of the municipal housing liaison, administrative agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the administrative agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the applicable rules.

#### 5:99-7.3 Approval of administrative agent

**\*(a) The municipality in which restricted units are located, through its designated municipal housing liaison, shall approve one or more administrative agents for those units.\***

**\*[(a)]\* \*(b)\*** The designation of administrative agents is subject to review and approval by the Division.

**\*[(b)]\* \*(c)\*** **\*[The municipality in which restricted units are located, through its designated municipal housing liaison, shall approve one or more administrative agents for those units.]\*** A municipality itself

(through a designated municipal employee or department that receives the certification as outlined at **\*[(e)]\* \*(g)\*** below) may elect to serve as the administrative agent for some or all restricted units in the municipality, or the municipality contract with the housing affordability service (HAS), located within the HMFA, or an experienced private entity certified through the processes outlined at **\*[(e)]\* \*(g)\*** below by the Division to serve as administrative agent for some or all restricted units in the municipality.

**\*(d)\*** When a municipality selects an experienced private entity to serve as administrative agent for specific restricted units, the administrative agent must be approved by the Division.

**\*[(c)]\* \*(e)\*** If a municipality selects HAS as its administrative agent, HAS and the municipality shall enter into a contract substantially in the form set forth in the UHAC for the provision of housing affordability control services.

**\*[(d)]\* \*(f)\*** An administrative agent shall apply to the Division for approval by submitting the following:

1. A valid and current administrative agent certificate as required pursuant to N.J.S.A. 52:27D-321;

2. Evidence of satisfactory completion of the Division's Education Program for each individual serving as an administrative agent as described at N.J.A.C. 5:99-9;

3. Disclosure of any interest, monetary or otherwise, that may be held by the administrative agent, or firm or company for which the administrative agent works, and the affordable units being administered and representation that the interest will not compromise the administration of the units;

4. A template of the form of contract to be used between the entity serving as administrative agent and its municipal clients;

5. A sample operating manual for each type of program and/or unit the administrative agent seeks to administer;

6. A statement of intent to attend initial and continuing education courses provided by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units; and

7. Such other relevant documents as required by the Division to justify approval as an administrative agent.

**\*[(e)]\* \*(g)\*** If a currently practicing administrative agent has not been approved by the Division, the administrative agent shall submit all documentation required at **\*[(d)]\* \*(f)\*** above to the Division. If the current administrative agent has completed an alternate education program required pursuant to this chapter, proof of completion shall be submitted to the Division with the documentation required in this section.

**\*[(f)]\* \*(h)\*** The Division and the municipal housing liaison shall monitor the performance of all approved administrative agents for compliance with this chapter. In the event the administrative agent does not administer a municipality's affordable housing program and/or affordable units in accordance with the certificate of compliance, municipal ordinance, or the Division's rules, the Division may revoke its approval and/or require the municipality to retain a different administrative agent. The Division reserves the right to revoke approval of an administrative agent for other compelling circumstances.

#### 5:99-7.4 Procedures for changing administrative agents

(a) In order to ensure an orderly transfer of affordable housing administration responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the following minimum requirements are necessary before and during the transition:

1. A letter advising of the change shall be sent to all low- and moderate-income homeowners in the case of affordable ownership units, and to all landlords or their agents in the case of affordable rental units;

2. Hard copy and electronic files, containing, at a minimum, the original deed restriction, repayment mortgage, and mortgage note (if applicable), the application materials, verifications, and certifications of all present owners, pertinent correspondence, any documentation of home improvement, waiver, or other approvals granted by the former administrative agent, and other miscellaneous correspondence shall be physically transferred to the custody of the incoming or new administrative agent; and

3. The new administrative agent shall be provided with:

- i. A written methodology, such as the operating manual required pursuant to this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and maximum rents;
- ii. The calculations employed to determine the initial base sales price or initial base rent for each unit;
- iii. Identification for each unit as to whether categorized as low-income or moderate-income and the range of affordability at which the units was priced;
- iv. A description of the number of bedrooms and physical layout of each unit;
- v. Floor plans;
- vi. In the case of condominiums and units within a homeowner association, a copy of the master deed and/or public offering statement; and
- vii. Waiting list materials and pending applications, including contact information for all applicants and current certifications or certifications in progress.

(b) The municipality or HAS, as applicable, shall assume the duties of administrative agent by default with respect to any restricted units that are not effectively through the supervision of a competently performing administrative agent, as determined by the Department.

#### 5:99-7.5 Education requirements

(a) All administrative agents shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframe specified by the Division.

1. If there is a delay in the availability of one or more sessions required to complete the Education Program, the administrative agent shall successfully complete the Education Program at the earliest possible time.

(b) Approved administrative agents shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

### SUBCHAPTER 8. RCA ADMINISTRATOR

#### 5:99-8.1 Requirement for an RCA administrator

(a) All municipalities that have received funds through an RCA and are still administering an RCA Project Plan shall establish the position of RCA administrator by ordinance and, subject to the approval of the Division, appoint a municipal employee to serve in this position.

(b) The RCA administrator is responsible for oversight and coordination of all the activities of the municipal government as it relates to the status of funds received, creation, preservation, and administration of affordable housing units funded through RCAs.

#### 5:99-8.2 Responsibilities of the RCA administrator

(a) The following responsibilities of the RCA administrator may not be contracted out:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
2. Establishing an escrow account(s) for the funds associated with each RCA and coordinating the execution of an escrow agreement between the receiving municipality, the bank or financial institution, and the Division;
3. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality funded through RCAs;
4. Compiling, verifying, and submitting reports at such time and in such form as the Division requires;
5. Coordinating meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and

6. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), RCA Project Plan, and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units funded through regional contribution agreements.

(b) The RCA administrator may also serve as the administrative agent pursuant to this subchapter for some or all of the affordable units in the municipality funded through RCAs. These duties shall be outlined in the municipal ordinance establishing the position of the RCA administrator. All applicable tasks not performed by the RCA administrator, shall be contracted to an administrative agent pursuant to this subchapter.

(c) A municipality that has appointed a municipal housing liaison pursuant to N.J.A.C. 5:99-6 shall contract with an administrative agent pursuant to N.J.A.C. 5:99-7 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

#### 5:99-8.3 Approval of the RCA administrator

(a) The appointment of the RCA administrator is subject to review and approval by the Division.

(b) Upon submission of any RCA Project Plan amendment to the Program or a court of competent jurisdiction, the receiving municipality shall submit its ordinance establishing the position of the RCA administrator and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the RCA administrator to the Division.

(c) If the RCA administrator is to perform the duties of an administrative agent, the municipality shall also submit evidence to the Division of the RCA administrator's history of successful management of affordable housing units, particularly those produced through the Act or through an exclusionary zoning court settlement, which shall include:

1. A resume;
2. A statement of qualifications; and
3. A statement of intent to attend initial and continuing education courses authorized by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units.

(d) The Division and the municipal housing liaison shall monitor the performance of the approved RCA administrator for compliance with this chapter. In the event, the RCA administrator does not administer the municipality's affordable housing program and/or affordable units in accordance with the Program or the Division's rules, the Division may revoke its approval. The Division reserves the right to revoke approval of an RCA administrator for other compelling circumstances.

#### 5:99-8.4 Education requirements

(a) All appointed RCA administrators shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9.

(b) If the RCA administrator is to perform the duties of an administrative agent, the RCA administrator shall also successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9.

(c) Approved RCA administrators shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

(d) Any costs associated with a municipal employee attending required educational programs may be paid as an administrative expense from the municipal affordable housing trust fund subject to the limitations set forth at N.J.A.C. 5:99-2.4(a).

### SUBCHAPTER 9. EDUCATION PROGRAM

#### 5:99-9.1 Purpose

The purpose of the Education Program is to provide a basic understanding of the roles and duties of any person or entity appointed or contracted with to serve as a municipal housing liaison pursuant to N.J.A.C. 5:99-6, an administrative agent pursuant to N.J.A.C. 5:99-7, and/or an RCA administrator pursuant to N.J.A.C. 5:99-8.

#### 5:99-9.2 Cost and tuition

The Division shall determine and approve the delivery of the Education Program. The providers may charge a reasonable tuition to cover the cost of offering the Education Program, not in excess of the expense of administration and delivery of the Education Program or parts thereof. Tuition costs for municipal employees may be paid from the municipal

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affordable housing trust fund subject to the cap on administrative expenses set forth at N.J.A.C. 5:99-2.4.

### 5:99-9.3 Curriculum and requirements

(a) The Education Program may include one or more sessions.

(b) The initial session is a prerequisite for all other sessions and is required to be taken by municipal housing liaisons, RCA administrators, and administrative agents. The initial session shall, at a minimum, provide an overview of the roles and responsibilities of municipal housing liaisons, RCA administrators, and administrative agents.

(c) Additional sessions shall provide detailed instruction for the administration of affordable housing programs and affordable units, including, but not limited to: affirmatively marketing affordable units, determining affordable sales prices and rents, establishing and managing an applicant pool, matching households to available units, certifying households, implementing affordability controls, preparing legal documents, records management, fair housing, and ethics.

### 5:99-9.4 Standards for determining satisfactory completion

(a) At the conclusion of each session, all attendees shall take a multiple-choice test. Session participants will be permitted to use the session materials and notes for reference while completing the test.

(b) In order to receive a certificate of completion, attendees shall demonstrate an adequate understanding of the Education Program material by achieving at least a 70 percent score on the test. The tests shall be graded by the session providers.

(c) Attendees who do not achieve at least a 70 percent score on the test may retake the test once without retaking the session. Attendees who do not achieve at least a 70 percent score on the second test shall be required to retake the session and the test.

## ENVIRONMENTAL PROTECTION

### (a)

#### AIR, ENERGY AND MATERIALS SUSTAINABILITY WASTE AND UNDERGROUND STORAGE TANK COMPLIANCE AND ENFORCEMENT CONTAMINATED SITE REMEDIATION AND REDEVELOPMENT

##### Notice of Readoption

##### Underground Storage Tanks

##### Readoption with Technical Changes: N.J.A.C. 7:14B

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3.e, 13:1D-9, 13:1D-134 et seq., 26:2C-1 et seq., in particular, 26:2C-9.2 and 9.4, and 58:10A-21 et seq.

Effective Dates: November 20, 2025, Readoption;  
December 15, 2025, Technical Changes.

New Expiration Date: November 20, 2032.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, Underground Storage Tanks, N.J.A.C. 7:14B, has been readopted and shall continue in effect for a seven-year period. The rules were scheduled to expire on February 15, 2026. The Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt this chapter with technical changes, as explained below. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extends the expiration date of the chapter seven years from the date of filing.

The Underground Storage Tank rules, N.J.A.C. 7:14B, implement the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., and the Federal Underground Storage Tank program. The Department's rules establish requirements for tank owners and operators and are intended to prevent or abate the discharge of hazardous substances into the environment from underground storage tanks (USTs). The rules

## ENVIRONMENTAL PROTECTION

apply to USTs that store motor fuel, liquid petroleum products, waste oil, and other hazardous substances regulated pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq., and its implementing rules. Hazardous substances are listed in the Discharges of Petroleum and Other Hazardous Substances rules at N.J.A.C. 7:1E Appendix A.

As part of this notice of readoption, the Department is including technical changes to correct errors and update contact information. The Department is also including technical changes to update references to the standards of NACE International, which is now the Association for Materials Protection and Performance (AMPP), incorporated by reference at N.J.A.C. 7:14B-4.1, 4.2, 4.3, 5.2, 5.4, 13.4, 16.2, and 16.5.

**Full text** of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

#### 7:14B-2.2 Procedure to apply for, renew, or amend an UST registration

(a) (No change.)

(b) The owner and each operator shall submit the completed New Jersey Underground Storage Tank Facility Certification Questionnaire with required certification forms or attachments, as applicable, to the Department [at the following address: New Jersey Department of Environmental Protection Site Remediation Program and Waste Management Bureau of Case Assignment and Initial Notice Mail Code 401-05H 401 East State Street, 5th floor PO Box 420 Trenton, New Jersey 08625-0420 <http://www.nj.gov/dep/srp/bust>] **as provided at [www.nj.gov/dep/srp/forms/ust](http://www.nj.gov/dep/srp/forms/ust).**

(c)-(h) (No change.)

### SUBCHAPTER 3. FEES

#### 7:14B-3.5 Program fees and oversight costs

(a)-(e) (No change.)

(f) The owner and operator shall make all payments of fees required [by] **pursuant to this chapter as follows:**

1. (No change.)

2. Mail each payment to the address [listed at N.J.A.C. 7:14B-2.2(b) or as otherwise] indicated on the first page of the Department's billing invoice.

### SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION, AND INSTALLATION

#### 7:14B-4.1 Performance standards for underground storage tank systems

(a)-(e) (No change.)

(f) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a) **lii above:**

1.-2. (No change.)

3. [NACE International] **AMPP Standard [Practice] NACE SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection,"** (available at [www.NACE.org](http://www.NACE.org)) **[www.ampp.org/standards](http://www.ampp.org/standards)** and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" (available at [www.UL.com](http://www.UL.com));

4.-5. (No change.)

(g)-(h) (No change.)

(i) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a) **2ii above:**

1.-3. (No change.)

4. [NACE International] **AMPP Standard [Practice] NACE SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"** (available at [www.NACE.org](http://www.NACE.org)) **[www.ampp.org/standards](http://www.ampp.org/standards)**;

5.-6. (No change.)