

CHAPTER 5:95  
THE COUNCIL ON  
AFFORDABLE  
HOUSING



*Third Round Procedural Rules*

*For:*

*Buena Borough in Atlantic County*

*Washington Township in Morris County*

*White Township in Warren County*

**CHAPTER 95**  
**PROCEDURAL RULES OF**  
**THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING**  
**FOR THE PERIOD BEGINNING ON**  
**DECEMBER 20, 2004**  
(with amendments through October 20, 2008)

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:95-1.1 Short Title; purpose; scope**

- (a) The provisions of this chapter shall be known as the “Procedural Rules of the New Jersey Council on Affordable Housing for the period beginning December 20, 2004.”
- (b) The purpose of this chapter is to establish procedures to be used by Buena Borough in Atlantic County, Washington Township in Morris County, and White Township in Warren County, for which substantive certification was granted by the Council prior to January 25, 2007 and upheld in *In re Adoption of N.J.A.C. 5:94 and 5:95* by the Council on Affordable Housing, 390 N.J. Super. 1, certif. denied, 192 N.J. 71(2007), in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.
- (c) Municipalities that did not receive third round substantive certification prior to January 25, 2007 shall be governed by the provisions of N.J.A.C. 5:96.
- (d) If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

**5:95-1.2 Definitions**

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

“Act” means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

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

“Amendment” means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that has been adopted by the planning board and endorsed by the governing body.

“Council” means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

“Days” means calendar days.

“Fair Share Plan” means that plan that describes the projects, strategies and the funding sources, if applicable, by which a municipality proposes to address its fair share of affordable housing obligation as set forth in N.J.A.C. 5:94-2.4, and also includes the draft Fair Share Ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:94.

“Filed Housing Element and Fair Share Plan” means the municipal submission of a Housing Element and Fair Share Plan accompanied by a duly adopted resolution from the governing body endorsing the Housing Element and the Fair Share Plan adopted by the planning board, but not necessarily including a request or petition for Council review or certification of the plan per N.J.A.C. 5:95-3.

“Housing Element” means that portion of a municipality’s master plan, as required by N.J.S.A.40:55D-28b(3), consisting of at least those items identified in N.J.S.A. 52:27D-310 and the supporting information pursuant to N.J.A.C. 5:94-2.2(b) when part of a petition for substantive certification.

“Housing region” means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibits significant social, economic and income similarities, and which constitutes to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

“Mediation” means that process established by N.J.S.A. 52:27D-315 whereby objectors to a municipality’s petition for substantive certification and other parties meet with the municipality under the direction of a Council-appointed mediator to attempt to resolve disputes.

“Objector” means a person who files objections to a municipal Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:95-4.1.

“OAL” means the Office of Administrative Law.

“Participant to mediation” means any party the mediator deems necessary to conduct mediation and resolve any objections to a municipality’s petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent of participation of each participant to mediation.

“Petition for Substantive Certification” means a request made by municipal resolution which a municipality files, or is deemed to have filed in accordance with this chapter, which engages the Council’s review process seeking a determination as to whether the Housing Element and Fair Share Plan of the municipality are consistent with the Act and compliant with rules promulgated by the Council.

“Receiving municipality” means, for purposes of an RCA, a municipality, which agrees to assume a portion of another municipality’s growth share obligation.

“Regional Contribution Agreement (RCA)” means the transfer pursuant to N.J.S.A. 52:27D-312 of up to 50 percent of a municipality’s growth share obligation to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. Housing units developed pursuant to an RCA shall be included in the total number of affordable units developed in the sending municipality.

“Re-petition” means the municipal submission of a revision to a petition that has been adopted by the planning board and endorsed by the governing body, but that has not yet received substantive certification.

“Sending municipality” means, for purposes of an RCA, a municipality that transfers a portion of its growth share obligation to another willing municipality.

“Service list” means a list maintained by the Council that includes designated municipal representatives, all property owner(s)/developer(s) of sites designated for low- and moderate-income housing, objectors and interested parties that request to receive notification.

“Substantive certification” means a determination by the Council approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Act and the rules and criteria as set forth in N.J.A.C 5:94. A grant of substantive certification shall run for a period of 10 years beginning on the date that a municipality files a Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond a period of 10 years from December 20, 2005.

## **SUBCHAPTER 2. FILING A HOUSING ELEMENT AND FAIR SHARE PLAN**

### **5:95-2.1 Jurisdiction**

- (a) A municipality shall fall within the jurisdiction of the Council if:
1. The municipality has filed a Housing Element and Fair Share Plan and petitioned for substantive certification within two years of such filing,
  2. The municipality has filed a Housing Element and Fair Share Plan and is the defendant to an exclusionary zoning suit within two years of such filing, or
  3. A court transfers jurisdiction of the case to the Council pursuant to N.J.A.C. 5:95-3.3.

### **5:95-2.2 Filing requirements**



- (a) A municipal Housing Element and Fair Share Plan that is filed with the Council shall include the following information:
  - 1. A copy of the adopted Housing Element and Fair Share Plan,
  - 2. A certified copy of the resolution of the municipal planning board adopting the Housing Element and Fair Share Plan as part of the municipality's master plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and
  - 3. A certified copy of the resolution of the governing body of the municipality endorsing the Housing Element and Fair Share Plan.
- (b) The Council's Executive Director shall notify the municipality in writing of any deficiencies in its filing as required in N.J.A.C. 5:95-2.2(a) within 14 days of receipt.
- (c) A municipality receiving written notice of any deficiencies in its filing shall respond to the Council within 45 days of the date of such notice. Failure of a municipality to correct all deficiencies within 45 days shall result in the rejection of the municipality's filing and dismissal from the Council's jurisdiction.
- (d) A municipality may revise and refile before submitting a petition, but such re-filing shall not extend the period of jurisdiction described in N.J.A.C. 5:95-2.1 beyond two years from the date of the initial filing.
- (e) Notwithstanding any cited deficiencies, the date of initial filing starts the maximum ten-year period during which the Council's grant of substantive certification shall apply or the period of the benefits outlined in N.J.A.C. 5:95-3.8.

### **5:95-2.3 Transferred cases**

When a case is transferred to the Council by court order pursuant to N.J.S.A. 52:27D-316, the municipality shall file an adopted Housing Element and Fair Share Plan with the Council within 90 days from the date of transfer. The municipal plan shall conform to the petitioning requirements of N.J.A.C. 5:95-3.

## **SUBCHAPTER 3. PETITIONS FOR SUBSTANTIVE CERTIFICATION**

### **5:95-3.1 Petition**

A municipality may petition the Council for substantive certification within two years from the date of filing its Housing Element and Fair Share Plan, or may file and petition the Council simultaneously.

### **5:95-3.2 Petition requirements**

- (a) A petition for substantive certification shall be in the form of a filing pursuant to N.J.A.C. 5:95-2.2(a) and shall also include a duly adopted resolution from the governing body requesting Council review and certification of the Housing Element and Fair Share Plan.
- (b) A petition shall be reviewed and accepted according to the requirements in N.J.A.C. 5:95-2.2.
- (c) The period for which a municipality may either receive substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8 shall begin from the date of initial filing.

### **5:95-3.3 Action equivalent to a petition for substantive certification**

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts, pursuant to Section 16 of the Act, shall be deemed to have petitioned for substantive certification when the Council accepts for filing the municipality's adopted Housing Element and Fair Share Plan as required pursuant to N.J.A.C. 5:95-2.2.

### **5:95-3.4 Re-petition requirements**

- (a) A municipality that has petitioned the Council may re-petition with a revised Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:95-3.2 prior to the receipt of substantive certification. A municipality shall re-petition when the plan requires a change in site, substantial change in density, other zoning requirements that result in a change of housing type on a specific site or a fundamental change in approach to its low- and moderate-income housing obligation. Such re-petition shall not extend the period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8.
- (b) A municipality shall not re-petition with a revised Housing Element and Fair Share Plan more than two times without prior authorization of the Council.

### **5:95-3.5 Notice**

- (a) When a municipality petitions or re-petitions for substantive certification, or is deemed to have petitioned pursuant to N.J.A.C. 5:95-3.3, it shall publish notice of its petition or re-petition in a newspaper of general circulation within the municipality and county. Notice shall be published within seven days of the issuance of the notification letter from the Council's Executive Director pursuant to N.J.A.C. 5:95-2.2(b) indicating the submission is complete in order to provide the general public with an opportunity to review the municipal Housing Element and Fair Share Plan and to submit objections or comments. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation the municipality shall be required to re-publish in another appropriate newspaper.

- (b) Notice of a petition for substantive certification shall be provided in the following format:

**NOTICE OF PETITION FOR  
SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that **(MUNICIPALITY)** has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-3.1 et seq. A copy of the adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the **(MUNICIPAL CLERK, etc.)**, Municipal Building, located at **(STREET ADDRESS)**, during the hours of \_\_\_\_\_. Comments or objections to said petition for Substantive Certification shall be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by **(DATE)** which is within 45 days of publication of this notice.

\_\_\_\_\_  
Municipal Clerk

- (c) A municipality that chooses to revise its plan and re-petition or is required to re-petition with a revised plan for substantive certification shall provide notice in the following format:

**NOTICE OF RE-PETITION FOR  
SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that **(MUNICIPALITY)** has re-petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-3.4 et seq. The **(MUNICIPALITY)** Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on **(DATE)**. The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the **(TOWNSHIP/BOROUGH/TOWN/CITY)** had initially petitioned the Council on Affordable Housing for substantive certification on **(DATE)**.

A copy of the revised and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the **(MUNICIPAL CLERK, etc.)**, Municipal Building, located at **(STREET ADDRESS)**, during the hours of \_\_\_\_\_. Comments or objections to said re-petition shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by **(DATE)** which is within 45 days of publication of this notice.

\_\_\_\_\_  
Municipal Clerk

- (d) An updated list of all petitions for substantive certification received by the Council shall be published monthly on its website.

### **5:95-3.6 Public review**

A municipality that has petitioned or re-petitioned for substantive certification with the Council shall make copies of the petition and Housing Element and Fair Share Plan and all supporting documentation available for public inspection within the municipality. The Housing Element and Fair Share Plan shall be available for inspection during regular business hours for a period of 45 days beginning on the date of publication of notice of petition for substantive certification pursuant to N.J.A.C. 5:95-3.5.

### **5:95-3.7 Owners of sites designated for low- and moderate-income housing**

- (a) At the time it petitions or re-petitions for substantive certification a municipality shall provide the Council with the following information:
  1. The current names and addresses of owners of sites that were included in previously certified or court settled plans that were zoned for low- and moderate-income housing and/or were to pay a negotiated fee(s). The owners of sites that have been completely developed shall not be included; and
  2. The names and addresses of owners of all new or additional sites included in the 10-year housing plan.
- (b) The owners of sites designated in the municipal submission shall be given individual written notice by the Council's Executive Director of the filing of the petition or re-petition. Such property owners may participate in mediation and shall have the rights granted to objectors of the municipal submission.

### **5:95-3.8 Municipal/developer incentives**

- (a) When a municipality falls within the jurisdiction of the Council pursuant to N.J.A.C. 5:95-2.1(a) 1 and 2, the municipality shall not be subject to a builder's remedy beginning on the date that the municipality files a Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313 and not extending beyond a period of 10 years from December 20, 2005 unless the municipality's petition is dismissed or substantive certification is revoked by the Council.
- (b) If an exclusionary zoning lawsuit is filed either prior to the filing of a Housing Element and Fair Share Plan or after the filing of a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years, and the case is transferred to the Council by the Court, the Council shall require the municipality to include the contested site as a component of its plan provided the site is suitable pursuant to N.J.A.C 5:94.

## **SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN**

### **5:95-4.1 Objections**

- (a) Within 45 days of publication of the notice of a municipality's petition or re-petition for substantive certification any person may file objections with the Council and the municipality. An objection shall be in a form as may be determined by the Council's Executive Director and shall include, at a minimum, the following:
1. A clear and complete statement as to each aspect of the municipality's Housing Element and Fair Share Plan to which an objection is made;
  2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
  3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
  4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
  5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
  6. A demonstration that any site proposed for inclusion in the Housing Element and Fair Share Plan is suitable in accordance with N.J.A.C. 5:94-4.5.

### **5:95-4.2 Review of objections**

- (a) The Council's Executive Director shall review objections subject to the requirements of N.J.A.C 5:95-4.1. An objector who has filed a complete objection shall be permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:95-7.
- (b) Objections that are determined to be incomplete shall be returned to the objector who shall have 14 days to correct deficiencies and resubmit them in a manner conforming to N.J.A.C. 5:95-4.1. If the objections are not resubmitted within the 14 days, the Council shall consider the objections to be withdrawn.
- (c) Objections shall be reviewed and summarized in the premediation report that is issued by the Council's Executive Director.

### **5:95-4.3 Presumption of validity**

Municipal growth projections in a Housing Element and Fair Share Plan that are consistent with the projections provided pursuant to N.J.A.C. 5:94-2.2(b)4 shall have a presumption of validity in a petition for substantive certification. To rebut the presumption of validity, objectors shall have the burden of proof to demonstrate by clear and convincing evidence that the municipal growth projections are invalid and will not result in a realistic opportunity for the provision of low- and moderate-income housing within the housing region.

## **SUBCHAPTER 5. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED**

### **5:95-5.1 Overview**

This subchapter outlines the procedures for the review of a Housing Element and Fair Share Plan to which no objections have been filed.

### **5:95-5.2 Council review**

- (a) After the expiration of the 45-day objector period pursuant to N.J.A.C. 5:95-4.1, the Council's Executive Director shall conduct an in-depth review of the petition or re-petition and prepare a report within 60 days. The Council's Executive Director may extend the time for an additional 60 days in the event that the number of petitions for substantive certification exceeds the resources of the Council's staff to process such petitions. Public notice of any such extension shall be provided to the municipality and the service list. The report may:
  1. Request additional information;
  2. Recommend substantive certification;
  3. Recommend conditional substantive certification; or
  4. Recommend denial.
- (b) If the report requires additional information to be submitted or revisions to the Housing Element and Fair Share Plan that may require a re-petition, the municipality shall provide said information to the Council within 90 days of receipt of the report.
- (c) Reports shall be circulated to the municipality and to the service list.
- (d) Reports recommending substantive certification, conditional substantive certification, or denial shall be submitted to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification.

- (e) If the municipality fails to submit the necessary documentation after receiving a report requesting additional information or fails to revise its Housing Element and Fair Share Plan if requested within the 90-day period, the Council shall issue a denial requiring the submission of the additional documentation or revision to the Housing Element and Fair Share Plan within 60 days. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:95-3. If the municipality still does not submit the required documentation in response to the denial, the Council shall dismiss the petition for substantive certification.
- (f) If objections are filed upon re-petitioning the municipal submission shall follow the procedures outlined in N.J.A.C. 5:95-6.
- (g) If the initial petition is complete, or if there are no objections following the municipal revision and re-petition of its Housing Element and Fair Share Plan and any applicable objector period, the Council's Executive Director shall prepare a report pursuant to N.J.A.C. 5:95-5.2(a). A report requesting additional information shall indicate any further missing documentation and/or necessary revisions to the municipal submission to achieve certification. The municipality and the service list shall receive copies of the report requesting additional information. A compliance report shall be circulated to the municipality and the service list for a 14-day comment period prior to Council action on the re-petition for substantive certification.
- (h) If the Council's Executive Director finds that a second re-petitioned Housing Element and Fair Share Plan continues to require substantial changes, such as the designation of additional inclusionary sites, a change in inclusionary sites, a substantial change in density or a fundamental change in approach, the Council shall dismiss the petition for substantive certification unless the Council has granted prior authorization to the municipality for an additional re-petition pursuant to N.J.A.C. 5:95-3.4(b).

**5:95-5.3 Grant of substantive certification**

- (a) The Council shall issue substantive certification of a municipality's Housing Element and Fair Share Plan if:
  1. The municipality's proposed Housing Element and Fair Share Plan complies with this chapter and N.J.A.C. 5:94;
  2. The Housing Element and Fair Share Plan is not inconsistent with the achievement of the low- and moderate-income housing needs of the region as adjusted pursuant to this chapter and N.J.A.C. 5:94; and
  3. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations and the affirmative measures in the final proposed Housing Element and Fair Share Plan make the achievement of the municipality's fair share of low- and moderate-

income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

- (b) A grant of substantive certification shall run for a period of 10 years beginning on the date that a municipality files a Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, and not extending beyond a period of 10 years from one year after the effective date of N.J.A.C. 5:94 and this chapter.
- (c) A grant of substantive certification may contain such conditions and terms as the Council considers necessary to make the achievement of a municipality's fair share obligation realistically possible.
- (d) The Council may condition a grant of substantive certification upon specific changes in the Housing Element or Fair Share Plan. Any conditions for approval shall be in writing and shall set forth the reasons for the conditions. If, within 60 days of the Council's conditional approval, the municipality submits changes satisfactory to the Council, the Council shall issue substantive certification. If the municipality fails to revise its Housing Element and Fair Share Plan within the 60-day period the Council shall issue a conditional denial requiring the submission of the additional documentation or revision to the Housing Element and Fair Share Plan within 60 days. If the municipality still does not submit the required documentation in response to the conditional denial, the Council shall dismiss the petition for substantive certification.
- (e) Within 45 days of the grant of substantive certification, the municipality shall adopt its Fair Share Ordinances as approved by the Council. The Council's grant of substantive certification shall be void and of no force and effect in the event that the municipality fails to timely adopt its Fair Share Ordinances.

#### **5:95-5.4 Relief subsequent to substantive certification**

- (a) Developers of affordable housing sites in conformance with the certified Housing Element and Fair Share Plan that seek relief from the Council may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.
- (b) Developers of affordable housing sites in conformance with the certified Housing Element and Fair Share Plan and/or municipalities that cannot agree on specific standards that apply to an affordable housing site may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.
- (c) Developers of affordable housing sites in conformance with the certified Housing Element and Fair Share Plan may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:95-12. Developers need not request mediation pursuant to (b) above in order to file such a



motion. The Council may hear such a motion concurrent with any such mediation notwithstanding the provisions of N.J.A.C. 5:95-12.1(c).

- (d) Developers of affordable housing sites in conformance with the certified Housing Element and Fair Share Plan may request the Council to assist in expeditious processing or review provided the site meets the site suitability standards pursuant to N.J.A.C. 5:94-4.5 and an obligation has been incurred pursuant to N.J.A.C. 5:94-12.
- (e) If, after a hearing conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and failure to comply with any resultant administrative order, the Council determines that a municipality has delayed action on a development application for an affordable housing site that is in conformance with the certified Housing Element and Fair Share Plan, or has required unnecessary cost generating standards or obstructed the construction of an affordable housing site that is in conformance with the certified Housing Element and Fair Share Plan, the Council shall revoke substantive certification.

### **5:95-5.5 Dismissal**

If the Council dismisses or revokes a petition for substantive certification, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:95-3.8. Such a municipality may revise its Housing Element and Fair Share Plan and submit a new petition no more than two times without prior authorization of the Council. Such new petition shall not extend the period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8.

## **SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN OBJECTIONS ARE FILED**

### **5:95-6.1 Overview**

This subchapter outlines the procedures for the review of a Housing Element and Fair Share Plan when one or more objections have been filed. N.J.S.A. 52:27D-313 allows a municipality to petition for substantive certification at any time during a two-year period following the filing of a Housing Element and Fair Share Plan. A municipality that petitions within two years of filing a Housing Element and Fair Share Plan shall be processed pursuant to N.J.A.C. 5:95-6.2. All other municipalities shall be processed in accordance with N.J.A.C. 5:95-6.3 or 6.4 as applicable.

### **5:95-6.2 Municipalities that petition for substantive certification within two years of filing their Housing Element and Fair Share Plan**

- (a) Municipalities that petition for substantive certification within two years of filing their Housing Element and Fair Share Plan have complied with the Fair Housing Act and shall receive the benefits outlined in N.J.A.C. 5:95-3.8 unless and until the Council dismisses the petition for substantive certification by administrative order or denies it pursuant to N.J.S.A. 52:27D-314.
- (b) After the expiration of the 45-day objector period pursuant to N.J.A.C. 5:95-4.1, the Council's Executive Director shall conduct an in-depth review of the petition and prepare a premediation report within 60 days. The Council's Executive Director may extend the time for an additional 60 days in the event that the number of petitions for substantive certification exceeds the resources of the Council's staff to process such petitions. Public notice of any such extension shall be provided to the municipality and the service list.
- (c) The premediation report shall be forwarded to the municipality and the service list. The premediation report shall determine if there are deficiencies associated with the municipal submission that require the provision of additional documentation and/or a re-petition. While the deficiencies are being addressed, the Council's Executive Director shall schedule mediation.
- (d) If the report prepared requires additional information to be submitted or revisions to the Housing Element and Fair Share Plan, said information shall be provided by the municipality to the Council within 90 days of receipt of the premediation report.
- (e) At the end of mediation, the procedures in N.J.A.C. 5:95-7.3 shall be followed. If the Housing Element and Fair Share Plan is to be revised as a result of mediation, then the municipality shall follow the procedures in N.J.A.C. 5:95-7.4.
- (f) A municipality shall revise its Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., to reflect agreements reached in mediation. The governing body shall endorse the revised Housing Element and Fair Share Plan by resolution and re-petition for substantive certification in accordance with N.J.A.C. 5:95-3 within 90 days of the date that the mediation report has been presented to the Council. If the municipality fails to revise its Housing Element and Fair Share Plan and re-petition as a result of mediation within that time period, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.S.A. 52:27D-314.
- (g) If the Council dismisses or denies a petition for substantive certification, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:95-3.8. Such a municipality may revise its Housing Element and Fair Share Plan and submit a new petition. Such new petition shall not extend the period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8.

**5:95-6.3 Municipalities that petition for substantive certification more than two years after filing a Housing Element and Fair Share Plan**

If a municipality fails to petition for substantive certification within two years after filing a Housing Element and Fair Share Plan in accordance with N.J.S.A. 52:27D-313, the filing shall be automatically null and void. The town shall update its Housing Element and Fair Share Plan before petitioning anew in accordance with N.J.A.C. 5:95-3. Such petition shall not extend the period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:95-3.8.

#### **5:95-6.4 Other municipalities**

- (a) The class of other municipalities includes those sued for exclusionary zoning either prior to filing a Housing Element and Fair Share Plan or after filing a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years, and where the municipality has been transferred by the court to the Council.
- (b) Pursuant to N.J.A.C. 5:95-2.3, a municipality that has been transferred by the court to the Council shall petition the Council within 90 days from the date of transfer. Once a petition is filed, the Council's Executive Director shall prepare the appropriate report as outlined in N.J.A.C. 5:95-5.2(a) or a premediation report as described in N.J.A.C. 5:95-4.2(c) within 60 days after the expiration of the 45-day objector period pursuant to N.J.A.C. 5:95-4.1 and circulate it to the parties. The report shall indicate that an objector/litigant is entitled to site-specific relief pursuant to N.J.A.C. 5:95-3.8(b). The report shall determine if there are deficiencies associated with the Housing Element and Fair Share Plan that require a re-petition and/or the provision of additional documentation. While the deficiencies are being addressed the Council's Executive Director shall schedule mediation.
- (c) If mediation concludes unsuccessfully and the Council determines that material contested issues of fact remain, a municipality may contest the suitability of an objector's site pursuant to N.J.A.C. 5:94 and request a hearing on the suitability of the site before the Council. There shall be a presumption that the site is suitable and the municipality shall have the burden of proof to demonstrate that the site is not suitable. The Council may render a final decision in the matter or transfer the matter to OAL pursuant to N.J.A.C. 5:95-8.1
- (d) If at the end of mediation the Housing Element and Fair Share Plan is to be revised as a result of mediation, the municipality shall follow the procedures in N.J.A.C. 5:95-7.4. If the municipality fails to revise its Housing Element and Fair Share Plan and re-petition as a result of mediation within that time period, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.S.A. 52:27D-314.

#### **5:95-6.5 Substantive certification**

- (a) Upon review of the Housing Element and Fair Share Plan that responds to a mediation report pursuant to N.J.A.C. 5:95-7 or an initial decision from OAL pursuant to N.J.A.C. 5:95-9, the Council shall issue substantive certification if:

1. The municipality's proposed Housing Element and Fair Share Plan comply with this chapter and N.J.A.C. 5:94;
  2. The Housing Element and Fair Share Plan is not inconsistent with the achievement of the low- and moderate-income housing need of its region as adjusted pursuant to this chapter and N.J.A.C. 5:94; and
  3. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations and affirmative measures in the Housing Element and Fair Share Plan make the achievement of the municipality's fair share of low- and moderate-income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.
- (b) If the Council determines that the Housing Element and Fair Share Plan do not meet the criteria for the grant of substantive certification, the Council shall deny the petition for substantive certification or condition a grant of substantive certification upon specific changes in the Housing Element or Fair Share Plan. Any denial or conditional approval shall be in writing and shall set forth the reasons for the denial or the conditions for the approval. If, within 60 days of the Council's denial or conditional approval, the municipality submits changes satisfactory to the Council, the Council shall issue substantive certification.
- (c) In conducting its review set forth in this section, the Council's Executive Director may meet with the municipality and any objector thereto.
- (d) Within 45 days of the grant of substantive certification, the municipality shall adopt its Fair Share Ordinances as approved by the Council. The Council's grant of certification shall be void and of no force and effect in the event that the municipality fails to timely adopt its Fair Share Ordinances.

## **SUBCHAPTER 7. MEDIATION**

### **5:95-7.1 General**

The Council's Executive Director shall engage in mediation where a timely objection to a municipality's petition for substantive certification is filed. The Executive Director may appoint a designee to act as the mediator in his or her place. The mediator shall meet with the representatives of the municipality and the objectors and attempt to mediate a resolution of the objections.

### **5:95-7.2 Scope of mediation**

- (a) When objections are filed pursuant to N.J.A.C. 5:95-4.1 the mediator shall meet with the municipality and the objectors as quickly as practicable after the end of the 45-day

objector period and the issuance of the premediation report, and as often thereafter as the mediator shall determine necessary. Deadlines for the submission of information, reports, studies or other documentation may be imposed as the mediator shall find necessary.

- (b) The mediator may, upon notice to the parties during the course of mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter or any stipulations previously entered into by the parties in any such litigation.
- (c) During mediation the Council may choose to hear and decide an issue itself if, in the Council's determination, such a hearing would facilitate a satisfactory conclusion to the mediation process.
- (d) Mediation may be conducted for a period of no more than 120 days after the first scheduled mediation date. If the mediator is dissatisfied for any reason with the progress of the mediation proceedings or determines that mediation cannot resolve a dispute, the mediator may declare an end to mediation. If the Council determines there are contested issues of material fact pursuant to N.J.A.C. 5:95-8, the matter shall be referred to OAL as a contested case. The period for mediation established in this section may be extended by the mediator for good cause shown but in no event for more than an additional 30 days.
- (e) The mediator shall have full and complete discretion to permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the mediator determines appropriate.
- (f) Objectors and owners of sites in accordance with N.J.A.C. 5:95-3.7 shall be permitted mediation teams of not more than three representatives unless otherwise permitted by the mediator. A municipality shall be permitted three representatives in addition to a member of the municipal planning board, who shall participate in mediation. Prior to the commencement of mediation, objectors and owners of sites in accordance with N.J.A.C. 5:95-3.7 and the municipality shall designate their representatives, authorize the representatives to negotiate on their behalf, and also authorize one or more of the representatives to execute any written agreement reached during mediation on their behalf. Objectors and owners of sites in accordance with N.J.A.C. 5:95-3.7 shall submit such designations and authorization to the Council in writing. Municipalities shall submit such designations and authorization to the Council in the form of a duly adopted resolution of the governing body.
  - 1. Additions or replacements to mediation teams shall be made only with the approval of the mediator and shall be immediately submitted to the Council in writing by the objector or property owner, and in the form of a duly adopted resolution by the municipality.

- (g) The mediator shall have the widest possible discretion as to the manner by which mediation is conducted.

### **5:95-7.3 Mediation report**

- (a) At the conclusion of mediation, if the parties have reached an agreement, the parties shall submit the executed agreement to the Council within 60 days from the last mediation session. If the executed agreement is not submitted within 60 days the Council shall issue an Order to Show Cause to explain why the agreement has not been executed at the next scheduled Council meeting. The Council shall take whatever action it deems appropriate against the responsible party.
- (b) The mediator shall prepare a mediation report within 60 days of the conclusion of mediation or the date the Council receives the executed agreement between the parties, whichever is later. The report shall review any objections that have been successfully resolved and the status of any remaining issues, including a recommendation as to whether there are contested issues of material fact that necessitate the transfer to OAL. The municipality and all participants to the mediation, including owners of sites in accordance with N.J.A.C. 5:95-3.7 and owners of sites in any proposed revision resulting from mediation shall be served with a copy of the written mediation report. The report shall list all unresolved objections, including contested issues of material fact, and shall present the stipulations or other agreements reached by the municipality and the objectors.
- (c) The municipality and all participants to the mediation, including owners of sites in accordance with N.J.A.C. 5:95-3.7 and owners of sites in any proposed revision resulting from mediation may file comments regarding the mediation report within 14 days. The 14-day comment period shall begin at the issuance of the mediation report. At the conclusion of the 14-day comment period, the mediation report and any comments thereto shall be presented to the Council at the next scheduled Council meeting.
- (d) The parties shall be bound by any agreements entered into during mediation when formally reduced to writing and signed by the parties.

### **5:95-7.4 Revision of Housing Element and Fair Share Plan as a result of mediation**

Once mediation has concluded, if it is determined that substantial revisions to the adopted Housing Element and Fair Share Plan as originally filed are necessary, the municipality shall revise its adopted Housing Element pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The governing body shall endorse the revised Housing Element and Fair Share Plan by resolution and re-petition for substantive certification in accordance with N.J.A.C. 5:95-3 within 90 days of the date that the mediation report has been presented to the Council. If the municipality fails to revise its Housing Element and Fair Share Plan and re-petition as a result of mediation within that time period, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.S.A. 52:27D-314.

### **5:95-7.5 Reopened mediation**

- (a) If during the 45-day objector/comment period pursuant to N.J.A.C. 5:95-4.1 an objection is filed to the revised mediated Housing Element and Fair Share Plan, mediation may be reopened for a period not to exceed 60 days.
- (b) The mediator shall consider only those objections to the portions of the Housing Element and Fair Share Plan that have been revised following mediation.
- (c) If mediation is reopened, the municipality and objectors to both the initial Housing Element and Fair Share Plan and to the proposed mediated Housing Element and Fair Share Plan shall be given the opportunity to participate in the reopened mediation.
- (d) At the end of the reopened mediation or the date the Council receives the executed agreement between the parties, whichever is later, the mediator shall prepare another mediation report within 30 days and serve the municipality, objectors and other participants to the mediation with a copy of the written mediation report. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors. The municipality, objectors and participants to the mediation may file comments regarding the second mediation report within 14 days. The mediator shall present the second mediation report together with any comments or objections to the Council advising the Council of the results of the reopened mediation.
- (e) Following a reopened mediation and the presentation of the second mediation report to the Council, the procedures in N.J.A.C. 5:95-7.4 shall be followed.

## **SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW**

### **5:95-8.1 General**

- (a) In the event there remain contested issues of material fact at the conclusion of mediation, the Council, upon the motion of any party or in its own discretion, shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Prior to determining whether a case is contested, the Council's Executive Director may, in appropriate instances, require all parties to submit affidavits or certifications. Such documentation shall address issues that require expert testimony and/or affidavits or certifications of individuals with personal knowledge of the facts at issue. The affidavits or certifications shall set forth, with specificity, facts sufficient to demonstrate there is a contested issue of material fact that requires a hearing before the Council. From these submitted papers the Council may determine to refer the matter to the OAL.
- (b) Upon determining that the matter shall be referred to the OAL for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the

mediation report, the municipality's petition for substantive certification and any objections thereto, and any other documentation pertinent to the adjudication.

- (c) The cost of the transcript of all oral testimony transmitted to the OAL from the Council shall be shared equally by the municipality and the objectors.

### **5:95-8.2 Review**

Within 45 days after the issuance of an initial decision from OAL the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. Unless the Council accepts, modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council. For good cause shown the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

## **SUBCHAPTER 9. COUNCIL REVIEW OF CERTIFIED PLANS**

### **5:95-9.1 Review**

- (a) On the third, fifth and eighth anniversary of the date on which a certified municipality filed its Housing Element and Fair Share Plan, the Housing Element and Fair Share plan shall be reviewed by the Council's Executive Director pursuant to N.J.A.C. 5:94-9 to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality, and that the municipality has been in compliance with P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), the Barrier Free Subcode, N.J.A.C. 5:23-7, and N.J.A.C. 5:94-4.21.
- (b) Annual monitoring reports shall be completed by the municipality in accordance with N.J.A.C. 5:94-9.2. Within 90 days of the Council's receipt of a municipality's third, fifth and eighth annual monitoring report, the Council's Executive Director shall determine if a municipal plan continues to address the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Such a finding shall take into account the relationship between the municipality's pro-rated growth share projection as set forth in the Fair Share Plan and its actual pro-rated growth share obligation. The Council's Executive Director shall compare the actual pro-rated growth share obligation with the actual number of units that have been constructed or provided for.
- (c) When the difference between the number of affordable units constructed or provided in a municipality and the number of units required pursuant to N.J.A.C. 5:94-2.4 during the third-year, fifth-year and eighth-year period of review results in a pro-rated production shortage of 10 percent or greater, the Council may direct the municipality to amend its plan in conformance with N.J.A.C. 5:95-13 to address the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Pursuant to N.J.A.C. 5:95-9.1(b), the Council's Executive Director shall notify the municipality and the service list as to whether or not the



municipality is providing the affordable housing obligation set forth in N.J.A.C. 5:94-2.4. Upon a finding that a municipality is no longer meeting the affordable housing obligation, the notification shall set forth the reasons for such finding and provide a 90-day period for the submission of an amended Housing Element and Fair Share Plan that will meet the affordable housing obligation.

### **5:95-9.2 Notice**

- (a) The municipality shall publish notice that the monitoring report and the results of the Council's review are available for public inspection at the offices of the municipality in a newspaper of general circulation within the municipality and county within seven days of the issuance of the results of the Council's review. The public notice shall be in the legal newspaper as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, it shall require the municipality to re-publish in another newspaper.
- (b) Notice shall be provided in the following format:

**Notice of the Council on Affordable Housing Monitoring Report**  
NOTICE is hereby given that (**MUNICIPALITY**) has filed its (**third, fifth or eighth**) year New Jersey Council on Affordable Housing monitoring report with the New Jersey Council on Affordable Housing pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-9 et seq. The Council on Affordable Housing has reviewed the monitoring report and issued its review of the report. A copy of the monitoring report and the Council on Affordable Housing review are available for public inspection at the office of the (**MUNICIPAL CLERK, etc.**), Municipal Building, located at (**STREET ADDRESS**), during the hours of \_\_\_\_\_.

\_\_\_\_\_  
Municipal Clerk

### **5:95-9.3 Public review**

The municipality shall make copies of the monitoring report and the results of the Council's review available for public inspection during regular business hours within the municipality.

### **5:95-9.4 Enforcement**

- (a) If upon review of the monitoring report at the third year anniversary the municipality has not received initial plan endorsement from the State Planning Commission pursuant to N.J.A.C. 5:94-2.3(c), the Council may revoke the municipality's substantive certification. However, if the municipality has diligently pursued plan endorsement but has not received it by the third year anniversary through no fault of its own, the Council shall not

take action to revoke certification but shall continue to monitor the municipality's progress on an annual basis.

- (b) If upon review of a Housing Element and Fair Share Plan that has been amended in response to a notice of production shortage issued by the Council, the Council finds that the plan still does not provide for the affordable housing obligation set forth in N.J.A.C. 5:94-2.4, the Council shall issue an administrative order directing that specific corrective actions be taken and shall establish timeframes for such actions for a period not to exceed 120 days. Failure to comply with the administrative order shall result in the revocation of substantive certification.
- (c) Failure to submit annual monitoring reports pursuant to N.J.A.C. 5:94-9.2 by the date specified by the Council may result in an Order to Show Cause as to why the annual monitoring report was not submitted by the municipality by the specified date at the next scheduled Council meeting.
- (d) The Council may take such measures as are necessary to ensure compliance with P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), the Barrier Free Subcode, N.J.A.C. 5:23-7, and N.J.A.C. 5:94-4.21. If any units subject to the provisions of P.L. 2005, c.350 (N.J.S.A. 52:27D-311 a et seq.), the Barrier Free Subcode, N.J.A.C. 5:23-7, and N.J.A.C. 5:94-4.21 are found not to comply with the requirements set forth therein, the Council shall rescind grant of COAH credit for the noncompliant units. The Council may require the municipality to amend its fair share plan to address any shortfall within 90 days of receiving notice from the Council. In the event that the municipality fails to amend its fair share plan within 90 days of receiving such notice, the Council may revoke substantive certification.

## **SUBCHAPTER 10. GENERAL POWERS**

### **5:95-10.1 Orders to restrain scarce resources**

At any time, upon its own determination or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation.

### **5:95-10.2 Accelerated denial of substantive certification**

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

### **5:95-10.3 Administrative orders**

At any time, upon its own determination, or upon the application of an interested party, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low- and moderate-income housing. The Council may dismiss a municipal Housing Element and Fair Share Plan by administrative order. The order shall set forth in detail the reasons for the dismissal and the actions the municipality must take before it may refile its Housing Element and Fair Share Plan.

## **SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS**

### **5:95-11.1 Terms of agreement**

- (a) A municipality may propose to transfer up to 50 percent of its growth share obligation to another municipality within its housing region by means of an initial contractual regional contribution agreement (RCA) pursuant to N.J.S.A. 52:27D-312 between the two municipalities. The initial contractual agreement shall be submitted to the Council by the sending municipality and shall specify, at a minimum, the number of units to be transferred, the type of housing activity anticipated by the receiving municipality and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council's Executive Director may require revisions to the initial contract upon review of the RCA and prior to the Council's approval.
- (b) An RCA that has been approved by the Council by the granting of a petition for substantive certification to the sending municipality may be executed once the Council awards substantive certification.
- (c) A receiving municipality shall enter into an escrow agreement with the Council whereby the Council has access to the escrow account. RCA funds shall be deposited in a separate interest bearing escrow account for each RCA.

### **5:95-11.2 Statements of intent**

- (a) Municipalities which intend to enter into an RCA as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirements for their participation.
- (b) Statements of intent submitted under this section shall be in the form of a duly adopted resolution adopted by the municipality.
- (c) Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.
- (d) Statements of intent are not binding upon the municipality.

### **5:95-11.3 Project plan review by the New Jersey Housing and Mortgage Finance Agency**

- (a) The receiving municipality shall submit a proposed project plan to the Agency delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing in response to the regional contribution agreement. The project plan shall be in such a form and contain such information as the Agency may require. The Council or the Agency may impose time limitations for the submission of a project plan or any updates or conditions thereto. Project plans shall receive approval from the Agency prior to receiving approval from the Council.
- (b) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to recommend the approval of the proposed project.

### **5:95-11.4 Review by county planning board or agency**

- (a) Each RCA shall be forwarded to the county planning board or agency of the county in which the receiving municipality is located for review and recommendation. The county planning board or agency shall consider whether or not the RCA application is in accordance with sound comprehensive regional planning.
- (b) All determinations of a county planning board or agency shall be by resolution. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.
- (c) The county planning board or agency shall file its review with the Council within 45 days of receipt of a complete application for review. For good cause shown, a 15-day extension may be granted.
- (d) In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

### **5:95-11.5 Review by the Council**

- (a) The Council shall approve an RCA upon finding that:
  - 1. The agreement provides a realistic opportunity for low- and moderate-income housing within convenient access to employment opportunities;
  - 2. The agreement is consistent with sound comprehensive regional planning and the goals, policies and objectives of the State Development and Redevelopment Plan; and

3. The receiving municipality's project plan is a feasible means of achieving the purposes of the agreement, as determined by the Agency.
- (b) Upon recommendation of the Agency the Council may approve, as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low- and moderate-income units included in the proposed project may be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.
  - (c) The Council shall approve all RCAs by resolution. The Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs. The Director of the Division, pursuant to N.J.S.A. 52:27D-312(d), shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

#### **5:95-11.6 Monitoring and enforcement**

- (a) All RCAs shall require receiving municipalities to file semi-annual reports with the Council and the Agency setting forth the progress in implementing the RCA project plan to be produced with the funds from the RCA. These reports shall be in such form as the Council and the Agency may from time to time require.
- (b) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project plan by the receiving municipality. Such actions may include one or more of the following:
  1. The initiation of a lawsuit to enforce an RCA contract;
  2. The prevention of a delinquent receiving municipality from entering into further regional contribution agreements for a specified period of time;
  3. The recommendation that the Agency and the Department of Community Affairs withhold from the receiving municipality further assistance available under the Act; or
  4. Such other actions as the Council may determine necessary including ordering a sending municipality for good cause to temporarily or permanently cease payments to a receiving municipality.

## **SUBCHAPTER 12. MOTIONS**

### **5:95-12.1 Form of motion**

- (a) An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to the OAL pursuant to N.J.A.C. 1:1-12.
- (b) The Council shall not accept motions for reconsideration.
- (c) The Council shall not accept a motion if an objection has been filed pursuant to N.J.A.C. 5:95-4.1 by the same party on substantially the same matter. After the parties have completed mediation, a motion may be filed on the matter. The mediator shall determine if the motion presents a substantial change in facts or law and, upon a positive finding, shall refer the matter to the Council.

### **5:95-12.2 Oral argument**

A movant's request for oral argument shall be made either in the moving papers or in the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore. The Council's Executive Director shall determine whether motions shall be heard on the papers or through oral argument.

### **5:95-12.3 Affidavits, briefs and supporting statements**

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and supporting documents. A party shall submit an original and 20 copies of all motions and answering papers, as well as all accompanying papers. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits shall be annexed thereto.

### **5:95-12.4 Time for serving and filing motions and affidavits or briefs**

- (a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except for those that seek emergent relief, shall be made returnable at least 10 days prior to a regularly scheduled meeting of the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs or to any cross-motions shall be served and filed not later than 10 days after receipt of the opposing papers. A party seeking emergent relief shall contact the Council's Executive Director to request an emergency hearing by the Council. A determination to proceed with emergent relief shall be made by the Executive Director.
- (b) All papers shall be accompanied by a certification of service.

## **5:95-12.5 Orders**

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion the order shall so indicate.

## **SUBCHAPTER 13. AMENDMENT OF SUBSTANTIVE CERTIFICATION**

### **5:95-13.1 General**

- (a) A municipality or any other party may request amendments to the terms of substantive certification. Amendments may be approved by the Council at any time following a grant of substantive certification. Amendments may be required by the Council at any time if it is determined that the municipality is no longer meeting the affordable housing obligation set forth in N.J.A.C. 5:94-2.4.
- (b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial change in density, other zoning requirements that result in a change of housing type on a specific site, or a fundamental change in approach to its low- and moderate-income housing obligation shall petition for such an amendment.
- (c) A municipality seeking a minor, technical amendment to its certified Housing Element and Fair Share Plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:95-12.
- (d) Requests for amendments of the terms of substantive certification may be made by any party other than a municipality by motion. If the motion requests a change in site, a substantial change in density, other zoning requirements that result in a change of housing type on a specific site, or a fundamental change in approach to the municipal low- and moderate-income housing obligation, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by petition.
- (e) All parties to the substantive certification, including the municipality and all objectors, shall be permitted to comment on any proposed amendment.
- (f) A municipality shall not amend zoning on sites included in the certified Housing Element and Fair Share Plan without notice to the affected property owner. In amending zoning, a municipality shall adhere to the criteria outlined in N.J.A.C. 5:94-4.17.

### **5:95-13.2 Municipal petition to amend**

- (a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council's Executive Director may request:

1. A summary of, and detailed reasons for, the proposed amendment;
  2. A duly adopted resolution of the municipal planning board adopting the revised Housing Element and Fair Share Plan;
  3. A duly adopted resolution of the municipal governing body endorsing the revised Housing Element and Fair Share Plan and requesting Council review and approval of the petition to amend;
  4. Proof of service of notice of the petition on all objectors and owners of sites contained in both the certified and proposed Housing Element and Fair Share Plan; and
  5. Proof of public notice in conformance with the requirements of N.J.A.C. 5:95-13.4(a).
- (b) The information required in (a)1 through 4 above shall be submitted to the Council by the municipality at the time it petitions for amendment. The information required in (a)5 above shall be submitted to the Council within seven days of the date of the municipality's petition to amend.

**5:95-13.3 Amendment by motion**

- (a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:95-12 and shall include, at a minimum, the following information, as well as such other information as the Council's Executive Director may request:
1. A summary of, and detailed reasons for, the proposed amendment;
  2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed Housing Element and Fair Share Plan; and
  3. Proof of public notice pursuant to the requirements of N.J.A.C. 5:95-13.4(b).

**5:95-13.4 Notice of petition to amend**

- (a) A municipality that has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county in the following format:

**NOTICE OF PETITION TO AMEND  
SUBSTANTIVE CERTIFICATION**



NOTICE is hereby given that **(MUNICIPALITY)** has petitioned the New Jersey Council on Affordable Housing to amend its Substantive Certification pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:95-13 et seq. The **(MUNICIPALITY)** Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on **(DATE)**. The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the **(TOWNSHIP/BOROUGH/TOWN/CITY)** received substantive certification on **(DATE)**.

**(INSERT BRIEF DESCRIPTION OF AMENDMENT)**

A copy of the amended and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the **(MUNICIPAL CLERK, etc.)**, Municipal Building, located at **(STREET ADDRESS)**, during the hours of \_\_\_\_\_. Comments or objections to said petition to amend shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by **(DATE)**, which is within 45 days of publication of this notice.

\_\_\_\_\_  
Municipal Clerk

- (b) Where a party other than the municipality moves to amend the terms of certification, the Council's Executive Director shall direct the municipality to publish notice of this motion and the municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall submit proof of publication to the Council within seven days of its receipt of notification from the Council of the requirement to publish notice.
- (c) An updated list of all petitions for amendments to substantive certification received by the Council shall be published monthly on its website.

**5:95-13.5 Objections to petitions to amend**

- (a) Within 45 days of the publication of a notice of a petition to amend the terms of substantive certification, any person may file objections to the terms of the proposed amendment with the Council. These objections shall be in a form acceptable to the Council's Executive Director and shall include, at a minimum, the following:
  - 1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its Housing Element and Fair Share Plan to which an objection is made;
  - 2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
  - 3. Copies of all referenced expert reports, studies or other data relied upon by the objector;

4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
6. A demonstration that any site proposed for inclusion in the Housing Element and Fair Share Plan is suitable in accordance with N.J.A.C. 5:94.

### **5:95-13.6 Review of objections**

- (a) The Council's Executive Director shall review objections subject to the criteria in N.J.A.C. 5:95-13.5. An objector who has filed a complete objection shall be permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:95-7. The mediator may, in his or her discretion, permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification.
- (b) Objections that are determined to be incomplete shall be returned to the objectors who shall have 14 days to correct deficiencies and resubmit them in conformance with N.J.A.C. 5:95-13.5. If the objections are not resubmitted within the 14 days, the Council shall consider the objections to be withdrawn.
- (c) Objections shall be reviewed and summarized in the premediation report that is issued by the Council's Executive Director.

## **SUBCHAPTER 14. WAIVER PROVISIONS**

### **5:95-14.1 Waiver**

- (a) Any party may request a waiver from a specific requirement of the Council's rules at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:95-12, or in such other form as the Council may determine, consistent with its procedural rules in this chapter.
- (b) The Council shall grant waivers from specific provisions of its rules if it determines that the strict application of the rule would create an unnecessary financial, environmental or other hardship; or
  1. That such a waiver fosters the production of affordable housing;
  2. That such a waiver fosters the intent of, if not the letter of, its rules; and

3. That the Housing Element and Fair Share Plan provide a mix of housing options.

## **SUBCHAPTER 15. TRANSITIONAL PROCEDURES**

### **5:95-15.1 Municipalities that received third round substantive certification on or before January 25, 2007 which is still valid**

- (a) All municipalities that received third round substantive certification on or before January 25, 2007 may petition to address the revised third round obligation in accordance with N.J.A.C. 5:96 and 5:97.
- (b) All municipalities that received third round substantive certification on or before January 25, 2007 and choose not to do (a) above shall be subject to N.J.A.C. 5:94 and 5:95, for the period of substantive certification, not extending beyond 2015.

## **SUBCHAPTER 16. MUNICIPAL HOUSING LIAISON**

### **5:95-16.1 Requirement for a municipal housing liaison**

- (a) All municipalities that have created or will create affordable housing programs and/or affordable units shall establish the position of a municipal housing liaison by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.
- (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 and/or affordable units.

### **5:95-16.2 Responsibilities of the municipal housing liaison**

- (a) The following responsibilities of the municipal housing liaison 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. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality's Fair Share Plan;
  3. Compiling, verifying, and providing monitoring information at such time and in such form as the Council requires;

4. Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
  5. 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) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:95-17 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. 5:95-17.

### **5:95-16.3 Approval of the municipal housing liaison**

- (a) The appointment of the municipal housing liaison is subject to review and approval by the Council's Executive Director.
- (b) Upon petitioning the Council for substantive 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.
- (c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence of the municipal housing liaison's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:
  1. A resume;
  2. A statement of qualifications; and
  3. A statement of intent to attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.
- (d) The Council shall monitor the performance of the approved municipal housing liaison. In the event the municipal housing liaison does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

### **5:95-16.4 Education requirements**

- (a) In order to receive approval, all appointed municipal housing liaisons shall successfully complete the Council's Education Program for Municipal Housing Liaisons as described in N.J.A.C. 5:95-19 in the timeframes set forth below:
1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of December 2, 2008, or the date of the next Education Program for Municipal Housing Liaisons.
  2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of six months from the date of appointment, or the date of the next Education Program for Municipal Housing Liaisons.
- (b) If the municipal housing liaison is to perform the duties of an administrative agent, in order to receive approval, the municipal housing liaison shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:95-19 in the timeframes set forth below:
1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.
  2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.
- (c) Approved municipal housing liaisons shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

## **SUBCHAPTER 17. ADMINISTRATIVE AGENT**

### **5:95-17.1 Requirement for an administrative agent**

- (a) All municipalities that have created or will create affordable housing programs and/or affordable units may designate one or more administrative agent(s) to administer the affordable housing program and/or affordable units in accordance with the Council's rules and UHAC.

- (b) The administrative agent may be the municipal housing liaison, the RCA administrator, or a person or entity selected pursuant to UHAC.
- (c) The administrative agent may perform some or all of the duties and responsibilities of an administrative agent as set forth in UHAC.

**5:95-17.2 Approval of administrative agent**

- (a) The designation of the administrative agent is subject to review and approval by the Council's Executive Director.
- (b) An administrative agent may apply directly to the Council for approval by submitting the following:
  - 1. All documentation required for designation of an Administrative Agent as set forth in UHAC;
  - 2. A sample contract;
  - 3. A sample Operating Manual for each type of program and/or unit the administrative agent seeks to administer;
  - 4. Evidence of satisfactory completion of the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:95-19; and
  - 5. Any additional documentation required by the Council's Executive Director.
- (c) The Council shall maintain and publish on its website a list of approved administrative agents, which includes the Agency in accordance with N.J.S.A. 52:27D-324.
- (d) If the administrative agent is not currently approved, evidenced by (c) above, the municipality shall submit to the Council all documentation required for designation of each administrative agent as set forth in UHAC.
- (e) The Council shall monitor the performance of all approved administrative agents. In the event the administrative agent does not administer a municipality's affordable housing program and/or affordable units in accordance with the Council's regulations, the Council may revoke its approval.

**5:95-17.3 Education requirements**

- (a) All administrative agents shall successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:95-19 in the timeframes set forth below:

1. Any person or entity already serving as an administrative agent as of June 2, 2008 shall successfully complete the Education Program for Administrative Agents by June 2, 2010.
  2. Any person or entity who anticipates serving as an administrative agent subsequent to June 2, 2008 shall successfully complete the Education Program for Administrative Agents prior to designation by a municipality.
  3. If there is a delay in the availability of one or more sessions required to complete the Education Program for Administrative Agents, the Council may extend the period in which an administrative agent shall successfully complete the Education Program for Administrative Agents.
- (b) Approved administrative agents shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

## **SUBCHAPTER 18. RCA ADMINISTRATOR**

### **5:95-18.1 Requirement for an RCA administrator**

- (a) All municipalities receiving funds through an RCA shall establish the position of RCA administrator by ordinance and, subject to the approval of the Council's Executive Director, 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 creation, preservation and administration of affordable housing units funded through RCAs.

### **5:95-18.2 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 and the Council;
  3. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality funded through Regional Contribution Agreements;

4. Compiling, verifying, and submitting reports at such time and in such form as the Council requires;
  5. Coordinating meetings with affordable housing providers 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 N.J.A.C. 5:95-17 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 N.J.A.C. 5:95-17.
- (c) A municipality that has also appointed a municipal housing liaison pursuant to N.J.A.C. 5:95-16 shall contract with an administrative agent pursuant to N.J.A.C. 5:95-17 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

### **5:95-18.3 Approval of the RCA administrator**

- (a) The appointment of the RCA administrator is subject to review and approval by the Council's Executive Director.
- (b) Upon submission of an RCA Project Plan to the Council, 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.
- (c) If the RCA administrator is to perform the duties of an administrative agent, the municipality shall also submit evidence of the RCA administrator's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:
1. A resume;
  2. A statement of qualifications; and
  3. A statement of intent to attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.



- (d) The Council shall monitor the performance of the approved RCA administrator. In the event the RCA administrator does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

#### **5:95-18.4 Education requirements**

- (a) In order to receive approval, all appointed RCA administrators shall successfully complete the Council's Education Program for RCA Administrators as described in N.J.A.C. 5:95-19 in the timeframes set forth below:
  - 1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of December 2, 2008, or the date of the next Education Program for RCA Administrators.
  - 2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of six months from the date of appointment, or the date of the next Education Program for RCA Administrators.
- (b) If the RCA administrator is to perform the duties of an the administrative agent, in order to receive approval, the RCA administrator shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:95-19 in the time frames set forth below:
  - 1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.
  - 2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.
- (c) Approved RCA administrators shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

### **SUBCHAPTER 19. EDUCATION PROGRAM**

#### **5:95-19.1 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. 5:95-16, an administrative agent pursuant to N.J.A.C. 5:95-17, and/or an RCA administrator pursuant to N.J.A.C. 5:95-18.

### **5:95-19.2 Cost and tuition**

- (a) The Council's Executive Director 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.
- (b) Subject to the availability of funds, the Council shall provide tuition for municipal employees appointed to serve as the municipal housing liaison, administrative agent, and/or RCA administrator attending any session required by the Council pursuant to N.J.A.C. 5:95-16.4, 17.3 and 18.4. Such funding shall be limited to one municipal employee per year.

### **5:95-19.3 Curriculum and requirements**

- (a) The Education Program may include one or more sessions.
- (b) The initial session is a pre-requisite 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, and ethics.

### **5:95-19.4 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 re-take the test once without re-taking the session. Attendees who do not achieve at least a 70 percent score on the second test shall be required to re-take the session and the test.