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ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND SUSTAINABILITY

Global Warming Solutions Fund

Proposed New Rules: N.J.A.C. 7:27D

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 26:2C-37 et seq. and 26:2C-45 et seq., specifically, 26:2C-50 to 53; and

Executive Order No. 7 (2018).

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

DEP Docket Number: 04-18-10.

Proposal Number: PRN 2018-112.

A **public hearing** concerning this notice of proposal will be held on Friday, January 25, 2019, at 1:00 P.M. at:

New Jersey Department of Environmental Protection

Hearing Room, 1st Floor

401 East State Street

Trenton, New Jersey 08625

Directions to the hearing room may be found at the Department of Environmental Protection's (Department's) website address at www.nj.gov/dep/where.htm.

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Submit comments by close of business on February 15, 2019, electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket No. 04-18-10

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The proposed new rules will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8). This rule proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

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The agency proposal follows:

Summary

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

The Department is proposing new rules to implement the relevant provisions of N.J.S.A. 26:2C-45 et seq., and Governor Murphy's Executive Order No. 7 (2018) (EO No. 7). The Executive Order directs the Commissioner of the Department and the President of the New Jersey Board of Public Utilities (BPU) to take all necessary measures to return the State to full participation in the Regional Greenhouse Gas Initiative (RGGI). Accordingly, the Department is proposing two sets of rules. In a separate notice of proposal, published elsewhere in this issue of the New Jersey Register, the Department will codify the mechanics of New Jersey's participation in RGGI's CO₂ allowance auctions (mechanics rules). The Department proposes these funding rules below to establish the framework, including the guidelines and the priority ranking system required by N.J.S.A. 26:2C-52, that the Economic Development Authority (EDA), the BPU, and the Department will use to select eligible programs and projects to receive funding from the proceeds of the auctions. Further, this chapter specifies the criteria for new, efficient electric generation facilities to be considered state of the art in accordance with N.J.S.A. 26:2C-51(b)(1). This purpose is recited at proposed N.J.A.C. 7:27D-1.1.

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The Department held a public information session on March 29, 2018, to discuss this proposed rulemaking, as well as the mechanics rules. The public information meeting materials are available on the Department's website at www.nj.gov/dep/aces/rggi/.

The Summary is organized by topic; consequently, some provisions of the new rules, such as the definitions at N.J.A.C. 7:27D-1.2, may be discussed in several places in the Summary.

Background

In 2003, New Jersey was one of nine states that began meeting to discuss a regional program that would reduce carbon dioxide (CO₂) emissions from power plants. Those early discussions resulted in a cooperative effort among participating states, known as the Regional Greenhouse Gas Initiative (RGGI), which focuses on capping and reducing power sector CO₂ emissions. In 2007, the New Jersey Legislature enacted P.L. 2007, c. 340, sometimes referred to as the Global Warming Solutions Fund Act, which authorized New Jersey's participation in RGGI. Proposed N.J.A.C. 7:27D-1.2 defines "RGGI" as the market-based cap-and-trade program initiated as a cooperative effort among states to cap and reduce power sector carbon dioxide emissions. New Jersey was an original member of RGGI and participated from December 2008, until the State withdrew, effective January 1, 2012. Notwithstanding New Jersey's withdrawal, RGGI continued to operate and evolve.

On January 29, 2018, Governor Murphy signed EO No. 7, directing New Jersey's reentry into RGGI. The proposed new mechanics rules will require all fossil-fuel-fired facilities located

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in New Jersey with the capacity to generate at least 25 megawatts of electrical output, with some specific exceptions, to hold allowances equal to their CO₂ emissions over a three-year control period. Allowances will be offered through quarterly, regional CO₂ allowance auctions. New Jersey's proportionate share of auction proceeds will then be returned to the State for investment.

N.J.S.A. 26:2C-50 directs that the proceeds from the quarterly auctions that are returned to the State for investment be credited to a special fund, known as the Global Warming Solutions Fund ("GWSF" or "Fund"). Further, the Legislature determined that the proceeds credited to the Fund should be used to provide consumer benefits incentives to reduce greenhouse gas emissions at their source, reduce the demand for energy, and to conserve natural resources. See N.J.S.A. 26:2C-51. Accordingly, the moneys credited to the Fund are to be allocated to the EDA, the BPU, and the Department, to support programs and projects that satisfy specific eligibility criteria, which are outlined for each agency at N.J.S.A. 26:2C-51.b. In addition to the eligibility criteria set forth in statute, the agencies must use the guidelines and the priority ranking system proposed in this rulemaking to assist in the selection of the programs and projects receiving funds from the Global Warming Solutions Fund. See N.J.S.A. 26:2C-52.

Framework for the Selection of Programs and Projects and Award of Economic Aid

The Strategic Funding Plan

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Three agencies will receive allocations from the Fund: the EDA, the BPU, and the Department. Proposed N.J.A.C. 7:27D-1.2 defines each of the agencies separately, and collectively refers to them as “agencies.” N.J.S.A. 26:2C-51.a requires the agencies to maximize coordination and avoid overlap between the uses of the Fund. To satisfy this mandate, proposed N.J.A.C. 7:27D-2.1 and 2.2 require the agencies to periodically develop a strategic funding plan. The purpose is to coordinate the uses of the Fund by the agencies at the strategic level, so that the ultimate selection of programs and projects by the individual agencies will complement one another, capitalize on ventures that receive funding from other State agencies, as well as non-State-funded sources, and avoid unintentional duplication. “Global Warming Solutions Fund” or “Fund” is defined at proposed N.J.A.C. 7:27D-1.2.

A “strategic funding plan” is a multi-year report in which the three agencies identify the initiatives that each agency has chosen to sponsor during the corresponding strategic funding period. The “strategic funding period” is the period of time that a particular strategic funding plan is in effect, ending with the publication of the subsequent strategic funding plan. Each strategic funding plan applies to a single strategic funding period. An “initiative” is a funding strategy predicted to advance one or more of the objectives listed in N.J.A.C. 7:27D-2.2, which the agencies have identified as critical. The strategic funding plan identifies the initiatives that each agency will sponsor and outlines the scope of the eligible programs and projects that may receive funding during the corresponding strategic funding period. Proposed N.J.A.C. 7:27D-1.2 defines “strategic funding plan,” “strategic funding period,” and “initiative.”

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The proposed rules establish a dynamic approach to the use of the proceeds in the Fund because the agencies will be required to periodically review their funding initiatives. Thus, each time the agencies develop a new strategic funding plan, they will have the ability to redirect funding to new initiatives based on changes in the State's needs and funding levels, as well as advances in technology. To inform their selection of initiatives, the agencies will review, at a minimum, materials concerning the amount of greenhouse gas emissions by sector, the level of anticipated funding from the CO₂ allowance auctions, existing technology, and information received from public meetings, State plans, and action plans. The agencies will also review materials concerning resilience planning and management in the State. See proposed N.J.A.C. 7:27D-2.2. "Resilience" is broadly defined to mean the ability to prepare for, and adapt to, changing conditions and withstand and recover timely from disruptions. "CO₂ allowance auction" is defined by reference to the relevant provision of the mechanics rules, N.J.A.C. 7:27C.

Procedure for the Development of the Strategic Funding Plan

Proposed N.J.A.C. 7:27D-2.1 sets forth the procedure the agencies must follow as they develop a strategic funding plan. The purpose is to outline the responsibilities of the agencies as they engage in this cooperative effort. Notably, the section provides that the agencies must identify, in the strategic funding plan, the materials they will rely on during their coordinated review and evaluation, list the initiative(s) that will be sponsored by each agency, and rank whether each objective is considered critical or beneficial to each initiative.

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Every time a new strategic funding plan is developed, each agency must include basic information about the programs and projects that received funding during the prior strategic funding periods. This information need only be disclosed to the extent that it is available at the time the strategic funding plan is being prepared and has not been provided in an earlier plan. Of the information that will be reported in the strategic funding plan, the agencies must include a description of each program and project, the amount of money earmarked by the agency to fund the program or project, as well as the amount of economic aid awarded (if any), the initiative that the program or project was predicted to advance, the status of the program or project, and an account of the measurable benefits of the program or project relative to the critical objective(s) it was predicted to advance.

The agencies must complete their first strategic funding plan no later than 30 days after the certification of the results of the first CO₂ allowance auction in which New Jersey participates. Before the agencies can finalize and publish the first strategic funding plan or any subsequent strategic funding plan, each agency must hold at least one independent public meeting and at least one public meeting hosted by all three agencies. The meetings will provide an opportunity for public input as the agencies select their initiatives and rank the importance of the objectives to each initiative. A public meeting, as required by this section, should not be construed as a “public hearing,” which is a defined term and is a separate prerequisite for agency rulemaking as set forth at N.J.A.C. 1:30-5.5.

Thereafter, the agencies must complete their review and evaluation of materials and publish a new strategic funding plan at least once every three years. Should any one of the

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agencies determine it is necessary to develop a new strategic funding plan sooner than three years, the proposed rule provides a mechanism for the Commissioner or Board of that agency to compel a meeting by writing to the Board(s) and/or Commissioner of the other two agencies and outlining the need to develop a new strategic funding plan based upon new information.

The Connection Between the Strategic Funding Plan and the Objectives

The purpose of the strategic funding plan is to coordinate the uses of the Global Warming Solutions Fund by the agencies as required by N.J.S.A. 26:2C-51.a. But as discussed above, N.J.S.A. 26:2C-52 has an additional requirement: the Department must adopt rules establishing guidelines and a priority ranking system that include an evaluation of each eligible program and project as to its predicted ability to advance the objectives listed at N.J.S.A. 26:2C-52.b(1) through (5), as well as any additional objectives adopted in rule. Accordingly, the proposed rules set forth a system that: (1) allows the agencies to coordinate their uses of the Fund during the development of the strategic funding plan by identifying a group of sponsored initiatives predicted to collectively advance the objectives, and (2) preserves the ability of each agency to independently select eligible programs and projects pursuant to a sponsored initiative, based upon an evaluation of the program's or project's predicted ability to advance the critical objective(s) of the initiative.

Proposed N.J.A.C. 7:27D-2.1, Procedure for development of a strategic funding plan, requires the agencies to identify, in the strategic funding plan, the initiative(s) that each agency will sponsor during the corresponding strategic funding period. For each initiative included in a

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strategic funding plan, the agencies shall evaluate the extent to which that initiative would further the objectives at proposed N.J.A.C. 7:27D-2.2(a). A description of the objectives is provided in the section below. For each initiative identified in a strategic funding plan, the agencies must rank each objective as either critical or beneficial. If an objective is ranked as critical to an initiative, the programs and/or projects an agency selects to fund pursuant to that initiative must be predicted to advance that objective. If an objective is ranked as beneficial to an initiative, the programs and/or projects an agency selects to fund pursuant to that initiative do not need to be predicted to advance that objective, but the ability to do so may be helpful in the agency's selection process. Proposed N.J.A.C. 7:27D-1.2 defines "critical" as necessary and "beneficial" as tending to help, but not necessary.

The ranking of the importance of the objectives to each initiative during the development of the strategic funding plan serves two purposes. First, it ensures that the initiatives, developed as a result of the coordinated effort among the agencies, are subsequently carried out when an agency independently selects the programs and/or projects to be funded pursuant to that initiative. As discussed above, once the strategic funding plan is published, proposed N.J.A.C. 7:27D-2.4, Agency selection of eligible projects and programs using the guidelines and the priority ranking system, requires an agency to select only those eligible programs and projects that fall within the scope of an initiative identified in the strategic funding plan and are predicted to advance the objectives identified as critical to that initiative. Thus, the ranking of the importance of the objectives, agreed upon by all three agencies during the development of the strategic funding plan, will significantly influence the

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selection of programs and/or projects made by the individual agencies during the corresponding strategic funding period.

Second, by ranking the importance of the objectives to each initiative, the proposed rules ensure that, collectively, the initiatives identified in a strategic funding plan must result in the funding of programs and projects that are predicted to advance all of the objectives. To accomplish this, proposed N.J.A.C. 7:27D-2.2 requires that each objective must be ranked as critical to at least one initiative and each initiative must include at least one objective that has been ranked as critical. By structuring the selection of a group of initiatives in the strategic funding plan in this manner, the rules allow an agency to select a single program or project that would advance targeted objective(s), rather than requiring every program and project to advance every objective.

The Objectives

As noted above, N.J.S.A. 26:2C-52.b requires the guidelines and priority ranking system developed by this chapter to include an evaluation of each eligible program or project as to its predicted ability to advance the five objectives listed in the statute. However, N.J.S.A. 26:2C-52.b permits the agencies to identify additional objectives that may be evaluated as part of the selection process. Accordingly, and as discussed in greater detail below, the Department proposes to include the purpose of EO No. 7 as an objective that will assist the agencies in their selection of programs and projects.

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N.J.S.A. 26:2C-52.b states that the guidelines and ranking system for projects and programs “shall include but need not be limited to” the following: (1) a net reduction in greenhouse gas emissions or a net sequestration of carbon; (2) significant reductions in greenhouse gas emissions, reduction of impacts on ratepayers, and a significant contribution to the achievement of the State’s 2050 Global Warming Response Act limit, relative to the cost of the project or program; (3) reductions in energy use; (4) responsiveness to the recommendations submitted by the Department to the Legislature pursuant to the Global Warming Response Act; and (5) the provision of co-benefits. All of these objectives are listed in proposed N.J.A.C. 7:27D-2.2, Selection of strategic funding plan initiatives.

The Department has omitted from the proposed objectives, the requirement in N.J.S.A. 26:2C-52.b(2) that the agencies consider a project’s or program’s predicted ability to make a significant contribution to the State’s achievement of the 2020 Global Warming Response Act limit. This exclusion was deliberate because the Department has determined that the 2020 greenhouse gas emissions limit set pursuant to the Global Warming Response Act has been attained. See Greenhouse Gas Emissions in New Jersey, Environmental Trends Report, NJDEP, Division of Science, Research, and Environmental Health (updated October 2017), <http://www.nj.gov/dep/dsr/trends>. The 2020 goal for reduction in emissions set pursuant to the Global Warming Response Act was achieved principally as a result of New Jersey’s ongoing efforts to reduce emissions in the power sector. See Pacyniak, G., N. Kaufman, J. Bradbury, A. Veysey, H. Macbeth, M. Goetz, M. Kaplan, J. Herb, J. Senick, T. Abrahamian, and K. Zyla, An Examination of Policy Options for Achieving Greenhouse Gas Emissions Reductions in New

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Jersey, Executive Summary (2017). Accordingly, the 2020 limit is no longer an objective the State must strive to meet.

As set forth above, the five statutory objectives that must be included in an agency's evaluation do not constitute an exclusive list. N.J.S.A. 26:2C-52.b permits the agencies to identify additional objectives that may be included in the guidelines and the priority ranking system. EO No. 7 directs the Department to include, as a primary consideration in the distribution of funds from the Global Warming Solutions Fund, "factors that will ensure that funds are allocated to projects that will serve communities that are disproportionately impacted by the effects of environmental degradation and climate change and which will alleviate the negative effects on human health and the environment resulting therefrom." Accordingly, proposed N.J.A.C. 7:27D-2.2(a)4 lists this principle of EO No. 7, as an additional objective to be evaluated by the agencies in selecting initiatives, programs, and projects pursuant to this chapter.

Notably, this rulemaking does not contain a definition or method for identification of the communities referred to in the objective furthering EO No. 7. On April 20, 2018, Governor Murphy signed Executive Order No. 23 (2018) (EO No. 23) directing the Department, in consultation with the New Jersey Department of Law and Public Safety, to develop guidance on Environmental Justice issues for all Executive branch departments and agencies to consider and follow when implementing their rules. The final guidance document is expected to be published nine months from the date EO No. 23 was issued, which is expected to occur prior to

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the adoption of these proposed rules. Thus, the agencies will rely on the recommendations in the guidance document in implementing this rulemaking.

The Department proposes to define the terms “greenhouse gas” and “CO₂” based upon their generally accepted meanings as used in environmental science. With respect to the term, greenhouse gas, the definition is consistent with the most recent Intergovernmental Panel on Climate Change (IPCC). A copy of the IPCC, which has been incorporated by reference in the definition of greenhouse gas, may be viewed online at <http://www.ipcc.ch>. “Global Warming Response Act” is defined by a cite to the relevant statute. The proposed definition of “co-benefits” is the same as the definition at N.J.S.A. 26:2C-52.b(4).

Selection of Programs and Projects by the Agencies

Once the strategic funding plan is finalized, proposed N.J.A.C. 7:27D-2.2, Selection of strategic funding plan initiatives, provides that each agency will independently select the programs and/or projects that will receive funding from its allocation from the Fund. Even so, the selection process each agency employs must account for the eligibility criteria, the guidelines, and the priority ranking system.

Eligibility

N.J.S.A. 26:2C-51.b requires each agency to restrict the use of its allocation from the Fund to those ventures that meet the eligibility requirements prescribed for that agency. Accordingly, proposed N.J.A.C. 7:27D-2.3, Eligible projects and programs, is modeled on the statutory language detailing the eligible uses for each agency. Specifically, the rule restates

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N.J.S.A. 26:2C-51.b(1), and requires the EDA to use its allocation from the Fund to support commercial, institutional, or industrial entities for five purposes: (1) end-use energy efficiency, including, but not limited to, renewable energy projects; (2) new, efficient electricity generation facilities that are determined to be state of the art (SOTA); (3) combined heat and power production and other high efficiency electric generation facilities; (4) innovative carbon emissions abatement or reduction technologies; and/or (5) the development of offshore wind or assistance to manufacturers of offshore wind equipment. In short, efficient renewable energy projects, offshore wind development, and innovative carbon abatement or reduction technologies are eligible for funding by the EDA. On the other hand, fossil-fuel-fired electric generating facilities may meet the statutory eligibility criteria for funding from the EDA, but only if they also meet the SOTA requirements set forth at N.J.A.C. 7:27D-3.

“Institutional” is defined at N.J.A.C. 7:27D-1.2 as serving a non-profit or public purpose, such as a library, hospital, public school, institution of higher education, municipal utility, public recreation or cultural facility, or government entity. The Department proposes to define “institutional” because the EDA advises that there is often confusion among the public about what constitutes “institutional” for purposes of funding. The proposed definition combines the text of a zoning regulation adopted by the New Jersey Sports and Exposition Authority defining “institutional use,” and the text of a Federal statute pertaining to the Energy Conservation Program for Schools and Hospitals defining “institutional entity.” See N.J.A.C. 19:4-2.2 and 42 U.S.C. § 6371h-1. The Department is not proposing definitions for “commercial” or “industrial,” as there is little confusion regarding those terms. The Department interprets the terms using

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their common meanings. The Department interprets “commercial” as concerned with or engaged in business or trade, and “industrial” as relating to the processing of raw materials and the manufacture of goods.

In accordance with N.J.S.A. 26:2C-51.b(2), the proposed rule requires BPU to use its allocation from the Fund for two purposes: (1) the reduction of electricity demand; or (2) the reduction of electricity costs to electricity customers in the low- and moderate-income residential sector.

As N.J.S.A. 26:2C-51.b(3) and (4) require, the Department must use a portion of its allocation from the Fund to enhance the stewardship and restoration of the State's forests and tidal marshes. The other portion of its allocation from the Fund must be used to promote local government efforts to plan, develop, and implement measures to reduce greenhouse gas emissions or energy demand. The proposed definition of “local government” refers to statutes that confer contracting authority on local municipal and county governments, public schools, and county colleges.

The Guidelines

Proposed N.J.A.C. 7:27D-2.4(a) provides guidelines, as required by N.J.S.A. 26:2C-52.a, to assist the agencies in selecting the projects and programs that will receive funding for the purpose of advancing an agency’s sponsored initiatives. An agency must select eligible programs or projects that both fit within the scope of an initiative set forth in the applicable strategic funding plan and advance the objectives identified as critical to that initiative.

The Priority Ranking System

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Proposed N.J.A.C. 7:27D-2.4(b) provides a priority ranking system, as required by N.J.S.A. 26:2C-52.a, to assist the agencies in selecting the projects and programs that will receive funding from its allocation from the Global Warming Solutions Fund. An agency's selection of a program or project must be supported by the agency's evaluation of the degree to which the program or project is predicted to advance the critical and beneficial objectives of the applicable initiative. If circumstances, such as limited funding, require an agency to choose between more than one eligible program and/or project, the agency must give priority to the program or project that advances the critical objectives to the greatest degree. If the programs and/or projects under consideration by the agency advance the critical objectives equally, the agency must prioritize its selection based on the degree to which the program or project is predicted to advance the beneficial objectives.

Award of Economic Aid Pursuant to a Program or Project

Once an agency selects an eligible program or project for funding, it is anticipated that the agency will, in many cases, make individual awards as part of that project or program. For example, the EDA may choose to use a portion of its allocation from the Global Warming Solutions Fund to fund a project predicted to stimulate investment in carbon emissions abatement technologies by offering loan guarantees to New Jersey-based companies that commit 50 percent of their research and development budget to advancing carbon emissions abatement technology. Once the EDA has selected this project for funding, awards of economic aid would then be made to qualified applicants. Proposed N.J.A.C. 7:27D-1.2 defines "economic

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aid” as loans, loan guaranties, investments, debt service, matching funds, cost sharing arrangements, energy cost reductions for residential electricity consumers, incentives, rebates or grants.

Proposed N.J.A.C. 7:27D-2.5, Award of economic aid pursuant to a program or project, clarifies that once a program or project is selected for funding from the Global Warming Solutions Fund, any individual award of economic aid pursuant to that program or project based upon the submission of applications, bids, or proposals, shall be made in accordance with an individual agency’s requirements. In other words, the proposed rules do not limit an agency’s due diligence and consideration of other factors when making an award of economic aid pursuant to a project or program. In the example provided above, the EDA may require applicants seeking a loan guarantee to submit information concerning the applicant’s financial feasibility, readiness to proceed, the replicability of an applicant’s results, or the scale of the applicant’s research capability. In sum, an agency may require the submission of information pursuant to an application, bid, or proposal, consistent with that agency’s funding practices, policies, or rules.

Measurable Benefits

Funding eligible programs and projects would be of little or no value if the agencies were unable to predict, and later assess and report on, the benefits the critical objectives were expected to advance. Therefore, proposed N.J.A.C. 7:27D-2.6, Measurable benefits, provides that all programs and projects must include in their design, a requirement that the critical

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objectives that are predicted to be advanced by the program or project are measurable and verifiable for the duration of the program or project. The Department recognizes that the programs and projects funded by each agency will vary widely. Some programs will be expected to demonstrate reductions of greenhouse gas emissions or energy use, while others will be required to measure the level of carbon sequestration. Indeed, some projects and programs will have multiple critical objectives that will need to be evaluated and quantified. Thus, the determination of the sufficiency of the program's or project's method used to measure and verify the benefits is left up to the funding agency. Because each of the three agencies has a separate area of expertise, the proposed rules acknowledge that an agency may consult with one or more of the other agencies to determine the sufficiency of a proposed methodology.

While the proposed rules do not specify the method of measuring benefits, the rules require that the method include a means of assessing: baselines, quantitative reduction goals, and quantities of reductions resulting from the program or project. Further, the method must include a description of the degree of uncertainty associated with the measured or estimated quantities. The acceptable degree of uncertainty for a particular program or project may vary by agency, program, or project because the precise methods of measurement and the availability of data or other information useful to the measurement process may differ considerably depending on the nature of the effort. Irrespective of the degree of uncertainty, the method of measurement must be based upon scientifically accepted protocols.

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“Measurable,” “net reduction,” “net sequestration,” “sequestration,” and “uncertainty” are defined at proposed N.J.A.C. 7:27D-1.2 based on their generally accepted meanings.

State-of-the-Art Electric Generating Facility

Pursuant to N.J.S.A. 26:2C-51.b(1), projects supporting electric generating units (EGUs) that are state of the art, as determined by the Department, are eligible for funding from the EDA’s allocation from the Global Warming Solutions Fund. Proposed N.J.A.C. 7:27D-1.2 defines an EGU as a combustion or steam generating source used for generating electricity that delivers all or part of its power to the electric power distribution grid for commercial sale. EGUs use fossil fuels, such as natural gas, to generate electricity. Accordingly, the proposed rule establishes three conditions an EGU must meet if it is to be considered state of the art for this purpose.

First, the primary activity of the EGU must be the production of useful electricity output or the production of useful electricity output and useful thermal energy output. The inclusion of combined heat and power production will promote the useful recovery of waste heat from combined cycle electric generating units, discussed below, which typically only produce useful electricity output. The Department has defined the term “useful electricity output” at proposed N.J.A.C. 7:27D-1.2 to mean the net electric energy produced for market or for use in other manufacturing or commercial processes at the facility. Similarly, the Department has defined the term “useful thermal energy output” to mean the net thermal energy produced for market or for use in other manufacturing or commercial processes at the facility.

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Second, the EGU must demonstrate advances in the art of air pollution control in accordance with N.J.A.C. 7:27-22.35 for major facilities, as defined at N.J.A.C. 7:27-22.1, or N.J.A.C. 7:27-8.12 for other facilities. If the facility is not eligible to obtain an air pollution control permit for the EGU, it would not be considered state of the art for the purposes of the proposed rule.

Third, the EGU must meet or exceed a specified efficiency threshold. The Department is proposing two groups of efficiency thresholds: (1) EGUs that produce useful thermal energy output of 16 percent or less of their total heat input, and (2) EGUs that produce useful thermal energy output of more than 16 percent of their total heat input. The Department is proposing this distinction to provide a consistent standard for EGUs that are used primarily to generate electricity (16 percent or less) and EGUs that are used for combined heat and power production (more than 16 percent).

In establishing these efficiency thresholds for electric generating units, the Department used the Gas Turbine World 2017 Performance Specs, 33rd Edition, Pequot Publishing Inc., Fairfield, CT 06824 (Gas Turbine World 2017 Performance Specs). After reviewing the Gas Turbine World 2017 Performance Specs, the Department determined that the most efficient, commercially available configuration for a fossil fuel-fired electric generating unit that only generates electricity is a combined cycle unit. Therefore, the Department relied on the combined cycle configuration to determine the efficiency thresholds set forth in the rules. A combined cycle unit uses both a gas turbine and a steam turbine to generate electricity. In contrast, a simple cycle electric generating unit only uses a gas turbine and, therefore, achieves

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lower electric generating efficiencies. Generally, simple cycle units are incapable of reaching the efficiency levels attained by combined cycle units. A simple cycle unit would only be eligible for funding if the simple cycle turbine is used in a combined heat and power (CHP) configuration obtaining at least an overall thermal efficiency equivalent to a combined cycle unit. Proposed N.J.A.C. 7:27D-1.2 defines "thermal efficiency" as the useful electricity output of an electric generating unit, plus the useful thermal energy output of the electric generating unit, expressed as a percentage of the total heat input to the electric generating unit. For purposes of N.J.A.C. 7:27D-3, thermal efficiency is based on the lower heating value of the fuel used by an electric generating unit.

After analyzing the efficiencies of the 215 combined cycle turbine units listed in the Gas Turbine World 2017 Performance Specs, the Department determined that there is a wide range of efficiency thresholds among the combined cycle units currently available. Smaller capacity combined cycle units tend to exhibit lower efficiency than larger capacity combined cycle units. Thus, rather than exclude all of the smaller capacity units from eligibility for funding, proposed new N.J.A.C. 7:27D-3.1 establishes four categories of efficiency criteria for EGUs that produce useful thermal energy output of 16 percent or less of their total heat input. These four categories are based on the electric generating capacity of the unit and the efficiency threshold, represented as the heat rate of the electric generating unit, is set at approximately mid-range of all the units available in each proposed category. The rules do not limit eligibility to the highest efficiency units because N.J.S.A. 26:2C-51.b(1) indicates that funding should be directed to "high efficiency," rather than the "highest efficiency" electric generating units.

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Utilizing the proposed criteria, the Department has determined that a reasonable number of the higher efficiency units available in each proposed category of smaller capacity units would be eligible for funding consideration.

In order to determine the efficiency threshold for an EGU that produces useful thermal energy output of 16 percent or less of its total heat input, proposed N.J.A.C. 7:27D-3.1(b)1 relies on the net heat rate. As defined in proposed N.J.A.C. 7:27D-1.2, “heat rate” is the amount of energy, in British Thermal Units (Btu), used by an electric generating unit to generate one kilowatt hour (kWhr) of useful electricity output. This ensures that the efficiency threshold that must be met or exceeded is associated with the electricity that is generated for market or for use in other manufacturing or commercial processes at the facility. Power line losses are not included in this determination because of the variability of those losses, depending on the distance to the user of the electricity.

For EGUs that produce useful thermal energy output of more than 16 percent of their total heat input (typically combined heat and power facilities), the Department is proposing a single efficiency threshold, regardless of the electric generating capacity of the unit. Proposed N.J.A.C. 7:27-1.2 defines “heat input” as the measure of energy, in British Thermal Units (Btu), consumed by an electric generating unit over a period of time. For purposes of N.J.A.C. 7:27D-3, heat input is based on the lower heating value of the fuel used by an electric generating unit. This single efficiency threshold of 65 percent is consistent with the thermal efficiency threshold for a facility that produces 16 percent or less of its combined production in the form of useful thermal energy output. For example, a 20 MW capacity EGU that produces 16 percent of its

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combined production in the form of useful thermal energy output would be required to meet an efficiency threshold of at least 6,900 Btu per KWh of useful electricity output, which represents an efficiency for its electricity production of at least 49 percent. By adding the 16 percent of its useful thermal energy production to its electricity production, the EGU's thermal efficiency is boosted to approximately 65 percent.

In order to normalize the comparison of units, for purposes of N.J.A.C. 7:27D-3, the heat rate and heat input shall be determined using the International Organization for Standardization (ISO) conditions set forth in the Gas Turbine World 2017 Performance Specs at page 22. For this reason, the Department proposes to define "ISO conditions" in N.J.A.C. 7:27D-1.2 exactly as they are defined in the Gas Turbine World 2017 Performance Specs as ambient air temperature of 59 degrees Fahrenheit, 14.7 psia sea level rise elevation, and 60 percent relative humidity. Using the ISO conditions is standard procedure for calculating various parameters. Accordingly, the proposed rule requires the heat rate and heat input to be calculated based on the low heating value of the fuel at ISO conditions.

Miscellaneous

Proposed N.J.A.C. 7:27D-1.4 is a severability provision. It is intended to allow the chapter to remain in effect, even if one or more of the provisions is deemed unconstitutional or invalid.

Social Impact

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The Department anticipates that the proposed rules will have a positive social impact.

The Global Warming Solutions Fund was established by statute to be credited with moneys received as a result of the sale of CO₂ allowances through an allowance trading program. The funds, in turn, would be invested in programs and projects that are expected to benefit all New Jersey residents by reducing greenhouse gas emissions and energy use, as well as increasing the sequestration of carbon.

The proposed rules require the EDA, the BPU, and the Department to coordinate their review and evaluation of relevant materials when they periodically develop funding initiatives that will be responsive to the State's existing needs and funding levels. To the extent that the strategies are implemented successfully, the State's efforts will offset a portion of the adverse public health, welfare, and environmental impacts that are projected to occur as a result of global climate change.

Moreover, the initiatives selected by the agencies are not solely focused on reducing greenhouse gas emissions, energy use, and increasing the sequestration of carbon. The agencies' selection process includes consideration of other consumer benefits, such as mitigation of ratepayer impacts, job creation, the reduction of other air pollutants, improvements to electric system reliability, restoration of natural resources, and responsiveness to the negative effects on human health and the environment in communities that have been negatively impacted by the effects of environmental degradation and climate change. In other words, the programs and projects that will receive funding from the agencies will include a variety of consumer benefits that will have a positive social impact.

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Economic Impact

The Department anticipates that the funding of eligible projects and programs will produce economic benefits based on an analysis of other states' investment of proceeds from RGGI's CO₂ allowance auctions. In April 2018, Analysis Group produced a White Paper entitled, *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States: Review of RGGI's Third Three-Year Compliance Period (2015-2017)*, that tracked the participating RGGI states' investment of CO₂ allowance auction proceeds between 2015 and 2017. See *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States Review of RGGI's Third Three-Year Compliance Period (2015-2017)* (The Economic Impacts of RGGI). Analysis Group concluded that RGGI spending, in general, has produced positive results for the participating states' economies, including overall job creation. See *The Economic Impacts of RGGI*.

Thus, the Department anticipates that the proposed rules will produce economic benefits including reduced costs of electricity, natural gas, or other fuels or energy; the creation of jobs; and improvements in local electric system reliability. Although the specific economic impacts that will result would depend on the initiatives, projects, and programs selected by the agencies, the Department expects a net positive economic impact due to the anticipated investments in energy efficiency, renewable energy, and greenhouse gas emission reduction measures.

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With respect to costs, some applicants for economic aid from the EDA, the BPU, and the Department may incur costs consisting primarily of staff time. A number of these applicants may even choose to utilize a consultant. Likewise, recipients of economic aid may incur administrative and reporting costs associated with their projects or programs. The Department anticipates that recipients of some types of economic aid will be able to recoup all or a portion of those costs as part of the award.

Similarly, the Department anticipates that the EDA, the BPU, and the Department may incur costs in awarding economic aid and preparing strategic funding plans. The Department anticipates that these costs will consist primarily of staff time. However, N.J.S.A. 26:2C-51.c allots a percentage of the total amount of the funding available in the Global Warming Solutions Fund to cover the justifiable administrative costs of each agency. Thus, administrative costs incurred by the agencies as a result of the proposed rules should have little to no impact on their budgets.

Environmental Impact

The Department anticipates that the proposed rules will have a positive environmental impact. Emissions of greenhouse gases are having severely negative impacts on human health and the environment. The most prevalent greenhouse gas is CO₂, which is released from the combustion of fossil fuels for energy. The proposed rules require the funding of programs and projects that reduce greenhouse gas emissions and energy use, as well as increase the sequestration of carbon. The Department anticipates that these programs and projects will

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lower CO₂ emissions or remove CO₂ from the air. To the extent that reductions of greenhouse gas emissions in New Jersey and/or reductions of atmospheric concentrations of CO₂ in New Jersey impact global levels of greenhouse gases, they will have a positive environmental effect in helping to slow down or minimize damages to the Earth's climate caused by excessive concentrations of greenhouse gases. Some programs and projects will provide additional benefits for air quality, particularly in communities that are disproportionately impacted by the effects of environmental degradation and climate change, because the projects and programs will result in the reduction of other air pollutants. Although the specific environmental impacts that will result would depend on the initiatives, projects, and programs selected by the agencies, the Department expects a net benefit to the environment as a result of the anticipated investments in energy efficiency, renewable energy and greenhouse gas emission reduction measures.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The proposed rules are not subject to any Federal standards or requirements. Accordingly, a Federal standards analysis is not required under Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq.

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Jobs Impact

Macroeconomic analysis conducted on the nine RGGI member states between 2009 and 2017 found that thousands of temporary and permanent jobs were created in those states due to consumer gains, lower producer revenues, and net positive macroeconomic impacts. See The Economic Impacts of RGGI. The Department anticipates that the proposed rules will have a similar positive impact on jobs and job creation in New Jersey. Proceeds from the CO₂ allowance auctions are expected to fund projects and programs that implement measures such as energy efficiency, community-based renewable power, credits on customers' bills, assistance to low income customers to help pay their electricity bills, greenhouse gas emission reduction measures, carbon sequestration projects, energy production and storage, and community planning and education. Although the specific impacts on employment will depend on the initiatives, projects, and programs selected by the agencies, the Department expects a net benefit because these projects and programs are expected to stimulate employment throughout the economy. In addition, long-term benefits related to the development and implementation of new technologies may lead to more jobs in these industries being developed in the State.

Agriculture Industry Impact

The proposed rules may have a small impact on the State's agriculture industry. Programs or projects that seek to increase sequestration of carbon may involve agricultural lands and could increase options available to relevant land owners by providing additional uses

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for these lands that could be economically viable and potentially reduce the energy cost of farming in the State. Additionally, projects and programs geared toward better municipal/regional planning could reduce development pressure on agricultural lands.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed rules would impose upon small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 fulltime employees.” See N.J.S.A. 52:14B-17. However, the proposed rules could impact small businesses that choose to apply for and/or receive economic aid from the EDA and the BPU.

Pursuant to N.J.S.A. 26:2C-51.b and proposed N.J.A.C. 7:27D-2.3(a)1, the EDA’s allocation from the Fund may be provided to commercial, institutional, and industrial entities to support end-use energy efficiency and new, efficient electric generation facilities that are state of the art, develop combined heat and power production or other high efficiency electric generation facility, to stimulate or reward investment in the development of innovative carbon emissions abatement technologies, and to support qualified offshore wind projects and the manufacturers of associated equipment. It is anticipated that among the entities eligible for the EDA's assistance, a sizable number will be small businesses and early stage venture

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companies. Similarly, pursuant to N.J.S.A. 26:2C-51.b and the proposed rules, the BPU's allocation from the Fund may be used to reduce electricity demand and/or costs to electricity customers in the low- and moderate-income residential sector. Accordingly, it is possible that some small businesses will be eligible for economic aid from the BPU.

Of course, only those small businesses that choose to apply for and/or receive economic aid would potentially incur associated costs. Associated costs could include staff time to prepare the application and/or administrative costs to comply with recordkeeping or reporting requirements, which are discussed in the Summary above. To the extent that a small business chooses to retain a consultant to assist in applying for or administering the economic aid, the small business would also incur professional costs. Small businesses that are recipients of economic aid may be able to recoup all or a portion of their associated administrative costs as part of the award.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules to determine their impact, if any, on the affordability of housing and the average costs of housing in the State.

The proposed rules establish guidelines and a priority ranking system for the EDA, the BPU, and the Department to use when selecting the eligible programs and projects that will receive funding from the Global Warming Solutions Fund. The proposed rules also establish criteria for new, efficient electric generation facilities to be considered state of the art. Because

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the proposed rules neither impose requirements nor confer direct benefits upon homeowners, builders, or other providers of housing, the Department has determined that the proposed rules will evoke no change in the overall cost associated with housing in the State. While it is possible that the proposed rules may have some indirect impact on the energy-efficiency of housing depending on how the funds are distributed, the impact would be too negligible to affect the overall cost of housing in the State.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed rules establish guidelines and a priority ranking system for the EDA, the BPU, and the Department to use when selecting the eligible programs and projects that will receive funding from the Global Warming Solutions Fund. The proposed rules also establish criteria for new, efficient electric generation facilities to be considered state of the art. The proposed rules do not impact residential housing. Therefore, the rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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In accordance with N.J.S.A. 52:14B-4(a)(2) and N.J.S.A. 2C:48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 27D

GLOBAL WARMING SOLUTIONS FUND RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:27D-1.1 Purpose

This chapter establishes guidelines and a priority ranking system for the EDA, the BPU, and the Department to use when they establish a multi-year strategic funding plan and select eligible programs and projects that will receive funding from the Global Warming Solutions Fund. Further, this chapter establishes criteria for new, efficient electric generation facilities to be considered state of the art for the purpose of determining eligibility for funding by the EDA.

7:27D-1.2 Definitions

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

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“Agencies” means the New Jersey Board of Public Utilities, the New Jersey Department of Environmental Protection, and the New Jersey Economic Development Authority.

“Beneficial” means tending to help, but not necessary.

“BPU” means the New Jersey Board of Public Utilities.

“CO₂” means carbon dioxide.

“CO₂ allowance” means a limited authorization to emit up to one ton of carbon dioxide or its equivalent.

“CO₂ allowance auction” means the sale of CO₂ allowances through competitive bidding as administered in accordance with N.J.A.C. 7:27C-11.

“Co-benefits” means benefits that result or are expected to result from a project or program other than a net reduction in greenhouse gas emissions, net reduction in energy use, or net sequestration of carbon. Co-benefits include, but are not limited to, the creation of job opportunities, reduction of air pollutants (other than greenhouse gases), reduction of the costs of electricity or natural gas to consumers, improvements in local electric system reliability, and contribution to regional initiatives to reduce greenhouse gas emissions.

“Critical” means necessary.

“Department” means the New Jersey Department of Environmental Protection.

“Economic aid” means loans, [loan](#) guaranties, investments, debt service, matching funds, [cost sharing](#) arrangements, energy cost reductions for residential electricity consumers, incentives, rebates, or grants provided by the EDA, the BPU, or the Department.

“EDA” means the New Jersey Economic Development Authority.

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“Electric generating unit” or “EGU” means a combustion or steam generating source used for generating electricity that delivers all or part of its power to the electric power distribution grid for commercial sale.

“Global Warming Response Act” or “GWRA” means N.J.S.A. 26:2C-37 et seq.

“Global Warming Solutions Fund” or “Fund” means the fund established by N.J.S.A. 26:2C-50 and administered by the Treasurer, State of New Jersey, which is credited with monies received as a result of the CO₂ allowance auctions held pursuant to the rules at N.J.A.C. 7:27C-11.

“Greenhouse gas” means any gas that absorbs infrared radiation in the atmosphere, which includes CO₂, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, halogenated ethers, and other halogenated species that are listed in the United Nations Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report: Climate Change 2007, which is incorporated herein by reference, as amended and supplemented.

“Heat input” means the measure of energy, in British Thermal Units (Btu), consumed by an electric generating unit over a period of time. For purposes of N.J.A.C. 7:27D-3, heat input is based on the lower heating value of the fuel used by an electric generating unit.

“Heat rate” means the amount of energy, in British Thermal Units (Btu), used by an electric generating unit to generate one kilowatt hour (kWhr) of useful electricity output.

“Initiative” means a funding strategy that is predicted to advance one or more of the objectives listed in N.J.A.C. 7:27D-2.2(a), which have been identified as critical.

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“Institutional” means serving a non-profit or public purpose, such as a library, hospital, public school, institution of higher education, municipal utility, public recreation or cultural facility, or government entity.

“International Organization for Standardization conditions” or “ISO conditions” means, for purposes of N.J.A.C. 7:27D-3, 59 degrees Fahrenheit (ambient air temperature), 14.7 psia sea level elevation, and 60 percent relative humidity.

“Local government” is one or a cooperating combination of the entities defined as a contracting unit under the Local Public Contracts Law, N.J.S.A. 40A:11-2(1); a board of education under the Public School Contracts Law, N.J.S.A. 18A:18A-2.a; or a county college under the County College Contracts Law, N.J.S.A. 18A:64A-25.2.b.

“Measurable” means quantifiable and verifiable to enable the assessment of results.

“Net reduction” means a measurable reduction relative to a baseline or standard.

“Net sequestration” means a measurable increase in sequestration of carbon relative to a baseline or standard.

“Person” means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.

“Regional Greenhouse Gas Initiative” or “RGGI” means the market-based cap-and-trade program initiated as a cooperative effort among states to cap and reduce power sector carbon dioxide emissions.

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“Resilience” means the ability to prepare for and adapt to changing conditions and withstand and recover timely from disruptions.

“Sequestration” means the measurable transfer of carbon containing substances from the atmosphere or from a flux entering the atmosphere (such as power plant exhaust) by a physical, chemical, or biological process to a repository that is expected to contain and, thus, prevent the subsequent release to the atmosphere of 99 percent or more of the carbon contained for a period not less than 20 years.

“Strategic funding period” means the period of time that a particular strategic funding plan is in effect, ending with the publication of the subsequent strategic funding plan.

“Strategic funding plan” means a multi-year report in which the agencies identify the initiatives that each agency has chosen to sponsor during the corresponding strategic funding period.

“Thermal efficiency” means the useful electricity output of an electric generating unit, plus the useful thermal energy output of the electric generating unit, expressed as a percentage of the total heat input to the electric generating unit. For purposes of N.J.A.C. 7:27D-3, thermal efficiency is based on the lower heating value of the fuel used by an electric generating unit.

“Uncertainty” means the range within which the true value of a measured quantity or estimated quantity is expected to fall with a specified level of confidence.

“Useful electricity output” means the net electric energy produced for market or for use in other manufacturing or commercial processes at a facility.

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“Useful thermal energy output” means the net thermal energy produced for market or for use in other manufacturing or commercial processes at a facility.

7:27D-1.4 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

SUBCHAPTER 2. DEVELOPMENT OF THE STRATEGIC FUNDING PLAN, SELECTION OF INITIATIVES, ELIGIBILITY OF PROGRAMS AND PROJECTS, GUIDELINES AND PRIORITY RANKING SYSTEM, AWARD OF ECONOMIC AID, AND MEASURABLE BENEFITS

7:27D-2.1 Procedure for development of a strategic funding plan

(a) The EDA, the BPU, and the Department shall coordinate the use of each agency’s allocation from the Global Warming Solutions Fund by periodically developing a strategic funding plan. The agencies shall develop initiatives in a strategic funding plan that will assist in the selection of eligible projects and programs to receive funding from the Global Warming Solutions Fund.

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(b) Each strategic funding plan shall identify the initiative(s) that each agency will sponsor during the corresponding strategic funding period, the objective(s) considered critical or beneficial to each initiative, and the information and materials the agencies relied upon in their selection of initiatives.

(c) Each strategic funding plan published subsequent to the first strategic funding plan shall also contain information about each project and program that has received funding from the Global Warming Solutions Fund, to the extent that such information is available and has not been reported in an earlier strategic funding plan. This information shall include, but not be limited to:

1. A description of the project or program;
2. The amount of money earmarked by the agency to fund the program or project, as well as the type and amount of economic aid awarded;
3. The sponsored initiative corresponding to the project or program;
4. To the extent feasible, an account of the measurable benefits the project or program reported for each critical objective it was predicted to advance; and
5. The status of the project or program.

(d) The agencies shall develop the first strategic funding plan and publish it on their websites no later than 30 days after the certification of the results of the first CO₂ allowance auction that New Jersey participates in pursuant to N.J.A.C. 7:27C-11, CO₂ Allowance Auctions. Thereafter, the agencies shall periodically develop and publish on their websites a new strategic funding plan, not less than once every three years.

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(e) Before publishing a strategic funding plan, the agencies shall host at least one public meeting with representatives from all of the agencies. Each agency shall also host at least one additional public meeting with representatives from their own agency.

(f) The Board or Commissioner of any one of the agencies may compel the initiation of the process to develop and publish a new strategic funding plan at any time by writing to the Board or Commissioner of the other two agencies. The writing shall demonstrate a need to address newly discovered information that will have a significant impact upon the initiatives, projects, or programs in the current strategic funding plan. New information may include, but need not be limited to, changes in funding sources or levels, State or national economic conditions, environmental degradation or climate change, or technology.

(g) The development of each strategic funding plan will be the product of a coordinated effort among the EDA, the BPU, and the Department. Notwithstanding the coordinated effort to develop a strategic funding plan, each agency shall employ an independent, agency-specific process to select the eligible programs and projects to be funded during the corresponding strategic funding period.

7:27D-2.2 Selection of strategic funding plan initiatives

(a) In every strategic funding plan, the agencies shall sponsor initiatives that, collectively, advance the following six objectives:

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1. Result in a net reduction in greenhouse gases in the State or in greenhouse gas emissions from electricity produced out of the State, but consumed in the State, or net sequestration of carbon;
 2. Result in significant reductions in greenhouse gas emissions relative to the cost of the project or program and the reduction of impacts on ratepayers attributable to the implementation of N.J.S.A. 26:2C-45 et seq., and the ability of the project or program to significantly contribute to achievement of the State's 2050 limit established pursuant to the Global Warming Response Act, relative to the cost of the project or program;
 3. Reduce energy use;
 4. Be directly responsive to the negative effects on human health and the environment in communities that are disproportionately impacted by the effects of environmental degradation and climate change;
 5. Be directly responsive to the recommendations submitted by the Department to the Legislature pursuant to section 6 of the Global Warming Response Act; and
 6. Provide co-benefits to the State.
- (b) For every initiative identified in a strategic funding plan, the agencies shall rank the importance of each objective as either critical or beneficial.
- (c) Every initiative sponsored in a strategic funding plan shall have at least one objective ranked as critical.

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(d) Each of the objectives shall be ranked as critical to at least one initiative sponsored in a strategic funding plan.

(e) To inform their selection of the initiatives and ranking of the objectives in a strategic funding plan, the agencies shall coordinate a review and evaluation of relevant materials and information, including, but not limited to, the level of greenhouse gas emissions by sector, the level of anticipated funding from the CO₂ allowance auctions, existing technology, resilience planning and management, input from public meetings, State plans, and action plans.

7:27D-2.3 Eligible projects and programs

(a) Each agency shall ensure that projects or programs that are selected to receive funding from the Global Warming Solutions Fund meet the following eligibility criteria:

1. Sixty percent of the Global Warming Solutions Fund shall be allocated to the EDA to provide funding to commercial, institutional, or industrial entities to:

- i. Support an end-use energy efficiency project, including, but not limited to, renewable energy applications;
- ii. Support a new, efficient electric generation facility that is state of the art in accordance with N.J.A.C. 7:27D-3, including, but not limited to, energy efficiency and renewable energy applications;
- iii. Develop a combined heat and power production and other high efficiency electric generation facility;

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- iv. Stimulate or reward investment in the development of an innovative carbon emissions abatement technology with significant carbon emissions reduction or avoidance potential; and/or
 - v. Develop qualified offshore wind projects pursuant to N.J.S.A. 48:3-87.1 and assist manufacturers of equipment associated with qualified offshore wind projects.
2. Twenty percent of the Global Warming Solutions Fund shall be allocated to the BPU to provide funding to support the reduction of electricity demand or costs to electricity customers in the low- and moderate-income residential sector with a focus on urban areas, including efforts to address the heat island effect and reduce impacts on ratepayers attributable to the implementation of N.J.S.A. 26:2C-45 et seq.
3. Ten percent of the Global Warming Solutions Fund shall be allocated to the Department to provide funding to promote local government efforts to plan, develop, and implement measures to reduce greenhouse gas emissions, to award grants and other forms of assistance to local governments to conduct and implement energy efficiency, renewable energy, and distributed energy programs, and/or land use planning where the grant or assistance results in a measurable reduction of the emission of greenhouse gases or a measurable reduction in energy demand. An additional 10 percent of the Global Warming Solutions Fund shall be allocated to the

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Department to enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

7:27D-2.4 Agency selection of eligible projects and programs using the guidelines and the priority ranking system

(a) An agency shall select for funding during a strategic funding period only those eligible programs and projects that both fall within the scope of an initiative identified in the corresponding strategic funding plan and are predicted to advance the objective(s) identified as critical to that initiative. An agency's selection of eligible projects and programs shall comply with N.J.S.A. 26:2C-51.

(b) An agency's selection of an eligible program or project shall be supported by an evaluation of:

1. The degree to which the project or program is predicted to advance the objectives ranked as critical to the applicable initiative; and
2. The degree to which the project or program is predicted to advance the objectives ranked as beneficial to the applicable initiative.

(c) If circumstances require an agency to choose between more than one eligible program and/or project, the agency shall give priority to the program and/or project that is predicted to best advance the objective(s) identified as critical to the applicable initiative. If more than one eligible program and/or project are predicted to equally advance the objective(s) identified as critical to the applicable initiative, the agency shall give priority to the program and/or project

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predicted to best advance the objective(s) considered to be beneficial to the applicable initiative.

7:27D-2.5 Award of economic aid pursuant to a program or project

Any individual award of economic aid made pursuant to a program or project shall be made in accordance with N.J.S.A. 26:2C-51. Notwithstanding the requirements of N.J.S.A. 26:2C-51, nothing in this chapter shall be construed as a limitation on an agency's authority, pursuant to that agency's funding practices, policies, or rules, to require an applicant for economic aid to submit an application, bid, or proposal disclosing other information or materials that may be considered by that agency in making an award of economic aid pursuant to an eligible program or project.

7:27D-2.6 Measurable benefits

(a) An agency shall not provide funding from the Global Warming Solutions Fund, unless the program or project includes, in its design, a requirement that the critical objectives that are expected to be advanced by the program or project are measurable and verifiable for the duration of the program or project.

(b) The method used by the program or project to measure benefits shall:

1. Be sufficient to allow the funding agency, or one of the other agencies with appropriate technical expertise, to assess baselines, quantitative goals, and

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- quantities of reductions or sequestration resulting from, or expected to result from, the project or program;
2. Include an estimate of the uncertainty associated with measured or estimated baselines, quantitative goals, and quantities of reductions or sequestration. The method shall also include a description of how the uncertainty will be addressed, or why addressing the uncertainty is impracticable; and
 3. Incorporate existing, scientifically accepted, greenhouse gas emissions accounting protocols and include existing or otherwise readily available information, such as records of fuel or electricity use.

SUBCHAPTER 3. STATE-OF-THE-ART ELECTRIC GENERATING FACILITIES

7:27D-3.1 State-of-the-art electric generating facilities

(a) An electric generating unit is state of the art, for purposes of N.J.A.C. 7:27D-2.3(a)1i and ii, if it:

1. Is a unit whose primary activity is the production of useful electricity output or the production of useful electricity output and useful thermal energy output;
2. Demonstrates advances in the art of air pollution control in accordance with N.J.A.C. 7:27-22.35 for a major facility, as defined at N.J.A.C. 7:27-22.1, or in accordance with N.J.A.C. 7:27-8.12 for other facilities; and
3. Demonstrates that the electric generating unit meets or exceeds the efficiency thresholds set forth in (b) below.

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(b) An electric generating unit shall demonstrate that it meets or exceeds the efficiency

thresholds set forth below:

1. If the useful thermal energy output from the electric generating unit is 16 percent or less of its total heat input, the heat rate shall meet one of the following efficiency thresholds:
 - i. For an EGU less than or equal to 40 megawatts of capacity, a heat rate of 6,900 or less British thermal units (Btu) consumed per kilowatt hour of useful electricity output;
 - ii. For an EGU greater than 40 megawatts of capacity and less than or equal to 120 megawatts of capacity, a heat rate of 6,550 Btu or less consumed per kilowatt hour of useful electricity output;
 - iii. For an EGU greater than 120 megawatts of capacity and less than or equal to 240 megawatts of capacity, a heat rate of 6,400 Btu or less consumed per kilowatt hour of useful electricity output; or
 - iv. For an EGU greater than 240 megawatts of capacity, a heat rate of 5,750 Btu or less consumed per kilowatt hour of useful electricity output.
2. If the useful thermal energy output from the electric generating unit is greater than 16 percent of its total heat input, the overall thermal efficiency of the electric generating unit, considering both useful electricity output and useful thermal energy output, shall be at least 65 percent.

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- (c) The heat rate shall be determined at conditions representing the continuous power output rating that can be counted upon for 6,000 or more hours of operation per year at ISO conditions without exceeding normal gas turbine wear and maintenance.
- (d) The heat input shall be determined at ISO conditions.