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**ENVIRONMENTAL PROTECTION**

**OFFICE OF POLICY, PLANNING AND SCIENCE**

**Global Warming Solutions Fund Rules**

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

Authorized by: Mark N. Mauriello, Acting Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 26:2C-37 et seq., and 26:2C-50 et seq.

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

DEP Docket Number: 01-09-01/696

Proposal Number: PRN 2009-

A public hearing concerning this proposal will be held on March 23, 2009 at 9 A.M. at the following location:

First Floor Public Hearing Room  
New Jersey Department of Environmental Protection  
401 E. State Street  
Trenton, New Jersey

Submit written comments by April 18, 2009 to:

Alice A. Previte, Esq.  
Attn: DEP Docket No. 01-09-01/696  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, 4th Floor  
PO Box 402  
Trenton, NJ 08625-0402

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittal on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word™ 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.state.nj.us/dep>.

The agency proposal follows:

### **Summary**

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

The Regional Greenhouse Gas Initiative (RGGI), implemented in New Jersey through the Carbon Dioxide (CO<sub>2</sub>) Budget Trading Program, N.J.A.C. 7:27C, requires all facilities with the capacity to generate at least 25 megawatts of electrical output, with some specific exceptions, to obtain allowances for emissions of CO<sub>2</sub>. Facilities will purchase these allowances through an auction. New Jersey participates in this auction, and receives proceeds from the sale of allowances. The proceeds of the RGGI auctions will be disbursed to the Economic Development Authority (EDA), the Board of Public Utilities (BPU), and the Department, to be used in accordance with the Global Warming Solutions Fund law, N.J.S.A. 26:2C-50 et seq. (the Act). The Act establishes the Global Warming Solutions Fund (Fund) and provides for the use of that Fund by the EDA, the BPU, and the Department to establish programs and projects for the purposes authorized by N.J.S.A. 26:2C-51.

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The Act directs the Department, in consultation with the EDA and the BPU, to adopt rules establishing a priority ranking system to be used to assist those agencies in their allocation of funds to eligible program areas or projects. N.J.S.A. 26:2C-52. The rules must provide for an evaluation of each eligible project or program area in light the predicted ability of the project or program area to achieve objectives including, but not necessarily limited to, those identified at N.J.S.A. 26:2C-52b(1) through (5).

The Department proposes the within rules setting forth and expanding upon these criteria.

Under the proposed rules, each agency will first identify eligible program areas to which it wishes to provide assistance from the Fund, based on factors set forth at proposed N.J.A.C. 7:27D-2.1(a) through (f). This first step addresses broad policy determinations identifying funding areas for programs each agency intends to address. The proposed rules at N.J.A.C. 7:27D-2.2 then provide for the application of a points-based ranking system to be used to rank the individual projects (if any) within each eligible program area.

The Department recognizes that some program areas outlined in N.J.S.A. 26:2C-51(b), because of their nature, will not have “projects” associated with them. Although the term “project” is not defined in N.J.S.A. 26:2C, the Department understands the term to involve an undertaking that will have a particular scope of work toward a specific, tangible end product. For example, N.J.S.A. 26:2C-51b(3) provides for the Department to support “programs designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions.” Under such a program area, the Department might fund a “project” in which the end result is energy audits in municipalities. In contrast, program areas set forth in N.J.S.A. 26:2C-51b(2) include “programs that are designed to reduce...costs to electricity customers in the low-income and moderate income residential sector...” A program area that provides such electricity customers with direct financial assistance in paying an electricity bill helps each individual customer who participates in the program area, but the lack of a discrete product or undertaking calling for a proposal or a scope of work toward a tangible end

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product precludes that assistance from being considered a “project.” Similarly, a program area that provides funding to the Department for restoration of tidal marshes would also not have a project associated with it. Therefore, in such instances the proposed rule provisions for selecting projects (N.J.A.C. 7:27D-2.2 and 2.3) would not apply.

The Act at N.J.S.A. 26:2C-51b(1) allocates 60 percent of the Fund to the EDA to be used, in part, for efficient electric generation facilities that are state of the art, as determined by the Department. Accordingly, the Department proposes criteria for determining whether an electric generation facility is state of the art.

The Act at N.J.S.A. 26:2C-51b(3) allocates 10 percent of the Fund to the Department to support program areas designed to promote local government agencies’ efforts to plan, develop and implement measures to reduce greenhouse gas emissions. Therefore, in addition to the priority ranking system for the EDA, BPU and the Department, the proposed rules establish the procedure by which local government agencies will apply for grant funding from the Department. Local government agencies may seek grant funding for projects that plan, develop and implement measures to reduce greenhouse gas emissions, or that implement energy efficiency, renewable energy, distributed energy programs, or land use planning, each of which is expected to result in a measurable reduction in greenhouse gas emissions or energy demand. The program under which the Department will distribute these funds is the Local Government Greenhouse Gas Reduction Program.

The Act also allocates 10 percent of the Fund to the Department to support programs that enhance the stewardship and restoration of the State’s forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases. As discussed below in the summary of proposed N.J.A.C. 7:27D-2.2, the proposed rule provisions for selecting projects would not apply to this portion of the Fund.

A discussion of the proposed rules follows.

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## **Chapter 27D: Global Warming Solutions Fund Priority Ranking System**

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

#### **N.J.A.C. 7:27D-1.1 Purpose**

Proposed N.J.A.C. 7:27D-1.1 sets forth the purpose of the chapter. As discussed above, the proposed chapter establishes a priority ranking system for the EDA, BPU, and the Department to use when allocating funds from the Global Warming Solutions Fund. The chapter also sets forth the criteria the Department will use to determine whether a new electric generating facility is state of the art, and establishes the policies and procedure by which the Department will allocate funds from the Global Warming Solutions Fund through the Department's Local Government Greenhouse Reduction Program.

#### **N.J.A.C. 7:27D-1.2 Definitions**

Proposed N.J.A.C. 7:27D-1.2 contains definitions and acronyms applicable to this chapter. "Act" means the Global Warming Solutions Fund law, N.J.S.A. 26:2C-50 et seq.

"BPU" and "EDA" are commonly used acronyms for the New Jersey Board of Public Utilities and New Jersey Economic Development Authority. "Department" means the Department of Environmental Protection.

The proposed definitions of "carbon dioxide equivalent" and "global warming potential" or "GWP" are the same as the definitions of the terms in the Department's Carbon Dioxide Budget Trading Program rules, N.J.A.C. 7:26C-1.2.

The proposed definition of "greenhouse gas" is the same as the Department proposed in its recent amendment to N.J.A.C. 7:27-21.1, related to the Greenhouse Gas Monitoring and Reporting Program, 40 N.J.R. \_\_\_\_ (a). The definition is based on the definition of "greenhouse gas" in the Global Warming Response Act at N.J.S.A. 26:2C-39.

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The proposed definitions of “Global Warming Response Act” and “Global Warming Solutions Fund” or “Fund” refer to legislation, and to the Fund that the Act creates from the proceeds of the RGGI auctions.

The proposed definition of “local government agency” cross references proposed N.J.A.C. 7:27D-4.1(b)1 through 3. The entities that qualify as local government agencies are consistent with the BPU Local Energy Audit Program, as discussed below in the summary of proposed N.J.A.C. 7:27D-4.1.

The Department proposes definitions of “co-benefits,” “measurable,” “measurable reduction,” “net reduction,” “net sequestration,” “project,” “program area,” “sequestration,” “significant contribution to the achievement of the State’s 2020 Global Warming Response Act limit,” “significant contribution to the achievement of the State’s 2050 Global Warming Response Act limit,” and “uncertainty.” Each of these terms is used in proposed subchapter 2 with regard to the EDA, BPU and the Department’s determination of program areas and projects to fund.

The definitions of “measurable,” “measurable reduction,” “net reduction,” “net sequestration,” and “sequestration” relate to the program area or project’s ability to contribute to reductions in greenhouse gas emissions, and are related to the agencies’ choosing program areas and projects. The proposed definitions of “thermal efficiency,” “uncertainty,” “useful electricity,” and “useful thermal energy,” like the definitions of “measurable,” “measurable reduction,” “net reduction,” “sequestration” and “net sequestration,” are based on generally accepted meanings, standards, and guidelines used in engineering, environmental science and environmental measurement.

The definitions of “significant contribution to the achievement of the State’s 2020 Global Warming Response Act limit” and “significant contribution to the achievement of the State’s 2050 Global Warming Response Act limit” refer to the limits that the Global Warming Response Act sets for greenhouse gases. The Global Warming Response act at N.J.S.A. 26:2C-39 defines the 2020 limit at the level of greenhouse gas emissions equal to the 1990 level of Statewide greenhouse gas emissions. The same law defines the 2050 limit as the level of greenhouse gas emissions equal to 80 percent less than the 2006 level

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of Statewide greenhouse gas emissions. In evaluating program areas and projects, the agencies will consider to what extent the program area or project will assist the State in achieving the limits.

### **N.J.A.C. 7:27D-1.3 Severability**

Proposed N.J.A.C. 7:27D-1.3 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.

## **Subchapter 2. Program Area Determination, Priority Ranking, Award and Reporting System**

Proposed N.J.A.C. 7:27D-2 establishes the process by which the EDA, BPU and the Department will select projects and program areas for funding under the Global Warming Solutions Fund and for awarding such funding. It also establishes a means by which the Department can track the State's progress in reducing greenhouse emissions, and measure other benefits achieved by program areas and projects.

### **N.J.A.C. 7:27D-2.1 Determination of eligible program area**

Proposed N.J.A.C. 7:27D-2.1(a) requires the three agencies to choose program areas in accordance with proposed subsections (b) through (d), which reflect the criteria stated by the Act at N.J.S.A. 26:2C-51b. Proposed N.J.A.C. 7:27D-2.1(b) through (d) identify the eligible program areas in which each agency is authorized to make expenditures from the Fund. Once an agency has identified a proposed program area as eligible for funding under these criteria, it will then consider the additional criteria listed in N.J.A.C. 26:2C-2.1(e), as applicable, as part of its determination to fund a particular program area.

A program area is eligible for funding by the EDA if, in accordance with proposed N.J.A.C. 7:27D-2.1(b), it is proposed by a commercial, institutional or

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industrial entity and is designed to support end-use energy efficiency projects; new, efficient electricity generation facilities that are state of the art in accordance with proposed N.J.A.C. 7:27D-3; combined heat and power production facilities; or innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential.

A program area is eligible for funding by the BPU if, in accordance with proposed N.J.A.C. 7:27D-2.1(c), it is designed to reduce electricity demand or costs to electricity customers in the low and moderate income residential sectors with a focus on urban areas, including efforts to address heat island effects and reduce impacts on ratepayers attributable to the implementation of the Act.

A program area is eligible for funding by the Department if, in accordance with proposed N.J.A.C. 7:27D-2.1(d), it is designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, or enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

Proposed N.J.A.C. 7:27D-2.1(e) calls for each agency, in determining the program area(s) to be funded from its share of the Global Warming Solutions Fund, to consider the predicted ability of the program area(s) to: 1) result in a net reduction in greenhouse gas emissions in the State or in greenhouse gas emissions from electricity produced out of the State but consumed in the State or result in net sequestration of carbon; 2) result in significant reductions in greenhouse gas emissions relative to the cost of the program area(s) 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 program area(s) to significantly contribute to the achievement of the State's 2020 limit and 2050 limit established pursuant to N.J.S.A. 26:2C-37 et seq., relative to the cost of the program area(s); 3) reduce energy use; 4) provide co-benefits to the State, such as creating job opportunities, reducing other air pollutants, reducing costs to electricity and natural gas consumers, improving local electric system reliability, and contributing to regional initiatives to reduce greenhouse gas emissions; and 5) be directly responsive to the



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recommendations submitted by the Department to the Legislature pursuant to the Global Warming Response Act at N.J.S.A. 26:2C-37. The criteria in proposed N.J.A.C. 7:27D-2.1(e)1 through 5 are listed in the Act at N.J.S.A. 26:2C-51 and, in the Department's view, represent the breadth of benefits expected to be achieved by program areas funded through the Global Warming Solutions Fund.

Proposed N.J.A.C. 7:27D-2.1(e)6 directs each agency to consider, in its selection of a program area to fund, the degree to which the program area advances the environmental, economic and public health and welfare needs of the State. This provision provides each agency with the flexibility to adjust its decision-making to better reflect the current environmental, economic and public and health and welfare needs of the State. For example, in a period when the State is experiencing economic difficulty, an agency could emphasize those program areas and projects that will stimulate the economy of the State, while also advancing the goals of the Act.

Proposed N.J.A.C. 7:27D-2.1(f) expressly allows the BPU to provide direct financial assistance to electricity customers in the low-income or moderate income residential sector based on consideration of potential hardship to individual customers within that sector and the extent to which direct financial assistance could reduce or eliminate that hardship. Such hardship could include loss of ability to heat a home or protect pipes from freezing in cold weather, cook or refrigerate food, or cool a room during a heat stress event, if the customer is unable to pay his or her electricity bill. Direct financial assistance falls within the scope of program areas eligible for funding by the BPU at proposed N.J.A.C. 7:27D-2.1(c), which includes the reduction of costs to electricity customers in the low and moderate income residential sectors and the reduction of impacts on ratepayers attributable to the implementation of the Act.

If the BPU provides direct financial assistance to electricity customers, proposed N.J.A.C. 7:27D-2.1(f) requires the BPU to accompany the assistance with efforts encourage reduction in energy demand and greenhouse gas emissions. Such efforts could include, but need not be limited to, the performance of energy efficiency audits, targeted assistance for implementation of energy efficiency measures, and/or direct outreach and

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education regarding the financial benefits of energy efficiency. This requirement is consistent with the Act's overall goal of reducing energy demand and greenhouse gas emissions.

#### **N.J.A.C. 7:27D-2.2 Project award criteria**

Proposed N.J.A.C. 7:27D-2.2 addresses the criteria for award or selection of individual projects within program areas. Proposed N.J.A.C. 7:27D-2.2(a) requires each agency to apply a priority point system to rank each project it finds eligible. The assignment of priority points reflects the degree to which a proposed project furthers the goals of the New Jersey Energy Master Plan, the Global Warming Response Act, the Act, and, as applicable, the policy objectives of the State Development and Redevelopment Plan.

The factors and point value ranges for this system are listed in proposed N.J.A.C. 7:27D-2.2(b). As discussed above, some program areas, such as those in which direct financial assistance is provided to electricity customers in the low-income and moderate income residential sector, and the Department's funding of program areas that enhance the stewardship and restoration of the State's forests and tidal marshes, will have no "projects" associated with them; accordingly, the project award criteria do not apply to such program areas.

Proposed N.J.A.C. 7:27D-2.2(b) identifies three categories of expected benefits from proposed projects. The first category, listed in proposed N.J.A.C. 7:27D-2.2(b)1, includes a net reduction in greenhouse gas emissions in the State; a net reduction in greenhouse gas emissions from electricity produced out of the State, but consumed in the State; a measurable reduction in greenhouse gases relative to the cost of the project or program and the reduction of impacts on ratepayers; a significant contribution to the achievement of the State's 2020 greenhouse gas emissions limit; and a significant contribution to the achievement of the State's 2050 greenhouse gas emissions limit. Benefits in this first group are those that represent the primary goal of the Act and the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq., which is to address the

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problem of global warming through the direct reduction of emissions of greenhouse gases. These criteria are designed to advance the State's goal to limit Statewide greenhouse gas emissions to the 1990 level by 2020, and to 80 percent below the 2006 level by 2050, expressed at N.J.S.A. 26:2C-38. The agency will assign up to 50 points to a project based on the criteria in N.J.A.C. 7:27D-2.2(b)1.

Expected benefits that fall into the second category are listed in proposed N.J.A.C. 7:27D-2.2(b)2. These include a measurable reduction in energy use; a net sequestration of carbon; co-benefits to the State (co-benefits are defined at proposed N.J.A.C. 7:27D-1.2 as including creating jobs, reducing other air pollutants, reducing the costs to electricity and natural gas consumers, improving local electric system reliability, and contributing to regional initiatives to reduce greenhouse gas emissions); and a response to the recommendations submitted by the Department to the Legislature pursuant to the Global Warming Response Act at N.J.S.A. 26:2C-37 et seq. Benefits in this second group, although they are not necessarily directly related to reductions of greenhouse gas emissions, are listed in the Global Warming Response Act, N.J.S.A. 26:2C-37 et seq., and are of intermediate importance, as reflected by the maximum of 30 points that projects having these benefits may be assigned.

A project that is a new combined heat and power production facility or that is expected to increase the electrical and thermal output of an existing combined heat and power production facility will gain or lose points relative to other projects under consideration due to that project's not reducing energy use. The Act at N.J.S.A. 26:2C-51b(1)(b) specifically exempts such projects from an analysis of measurable reduction in energy use.

Expected benefits that fall into the third category are listed in proposed N.J.A.C. 7:27D-2.2(b)3. These include an assessment that the project has not been previously funded in whole or in part by another source; the expected production of results that could be readily replicated by others in New Jersey and elsewhere; the expected production of measurable data or quantitative information important to future efforts to reduce greenhouse gas emissions or energy use; an assessment that the project

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demonstrates readiness to proceed through achievement of milestones including, but not limited to control of land, permitting, and financial commitments; an assessment that the developer or owner of the project demonstrates the experience and capacity to complete the project; an assessment that the project is financially feasible and sustainable and demonstrates ability to leverage public funding with private investment; and/or the expectation that the project will accomplish other results considered to be important to the agency.

The agency will assign up to 20 points to a project based on the criteria in N.J.A.C. 7:27D-2.2(b)3. These benefits could be important, although they would not normally be as important as benefits that are listed in groups one and two; hence the lower overall total to be assigned. For example, a project that has received funding from another State agency, the Federal government, or another source would not receive as many points under N.J.A.C. 7:27D-2.2(b)3i as a project that has not yet received funding. A project that is so well developed that it is practically “shovel in the ground” would likely receive more points under proposed N.J.A.C. 7:27D-2.2(b)3iv than a project for which land has not been acquired, or permits have not been issued. A project with a developer or owner who has experience with the type of project to be funded may receive more points under proposed N.J.A.C. 7:27D-2.2(b)3v than a project with a developer or owner with little or no experience.

### **N.J.A.C. 7:27D-2.3 Ranking and evaluation**

Proposed N.J.A.C. 7:27D-2.3(a) provides that after each agency assigns points to an eligible project, it shall rank the projects on a priority list, with the project assigned the most points ranking first.

Notwithstanding the project award criteria under proposed N.J.A.C. 7:27D-2.2(b), each agency may fund a project if the agency concludes that such a project will provide an exceptional opportunity to advance the science of greenhouse gas emissions control, energy use reduction, climate change, or some other significant environmental or public benefit, or will address extraordinary circumstances. These projects may receive funding

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priority, provided they otherwise meet the purposes and goals of each agency as set forth in the Act.

The flexibility provided by this section is necessary to fully and effectively implement the goals of the Global Warming Response Act. The effort to reduce greenhouse gas emissions is new, and the science and technology associated with greenhouse gas emissions and energy use reduction technologies is rapidly evolving. In addition, efforts to reduce greenhouse gas emissions necessarily must take into account economic conditions as well as the public health and safety. The Global Warming Response Act recognizes the importance of, for example, economic concerns. In fact, the law authorizes the BPU to undertake programs that will reduce costs to customers (N.J.S.A. 26:2C-51a(2)), and requires all three agencies to consider co-benefits of projects (N.J.S.A. 26:2C-52(b)(4)), and ratepayer impacts (N.J.S.A. 26:2C-52b(2)). In addition, the EDA, BPU, and the Department have significant responsibilities that extend beyond their implementation of the Act. The authority and goals established by the Global Warming Response Act are best understood in the context of these agencies' existing authority and statutory responsibilities. Thus, the proposed rules at N.J.A.C. 7:27D-2.3(b) allow special ranking for projects, otherwise within each agency's authority under the Global Warming Response Act, on the basis that the project may provide an exceptional opportunity to advance the science of climate change, greenhouse gas emissions control or energy use reduction; some significant environmental or public benefit; or the project will address extraordinary circumstances, provided that the project otherwise meets the purposes and goals of each agency as set forth in the Act.

As discussed in the summary of N.J.A.C. 7:27-2.5 below, the agencies will make publicly available information regarding the program areas and projects to which funds are provided.

#### **N.J.A.C. 7:27D-2.4 Measurability**

The use of the priority ranking system in allocating funds to eligible program areas and projects would be of little or no value in achieving measurable reductions in

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greenhouse gas emissions or in energy demand if these reductions were not, in fact, measurable. Therefore, the proposed rules at N.J.A.C. 7:27D-2.4 specify in a broad manner elements that must be included in the design of program areas and projects in order for them to be capable of producing measurable results. These elements include the identification of methods of determining baseline greenhouse gas emission or energy use quantities, quantitative reduction goals, and quantities of reductions resulting from the program area or project. The elements also specify that the degree of uncertainty associated with both measured and estimated quantities must be clarified to a level acceptable to each funding agency and consistent with the objectives of the rule. The acceptable degree of uncertainty for a particular program area or project may vary by agency, program, or project because the precision of methods of measurement and the availability of data or other information useful to the measurement process may vary considerably depending on the nature of the effort.

**N.J.A.C. 7:27D-2.5 Agency disclosure of benefits, funding and program area or project status**

The Global Warming Response Act at N.J.S.A. 26:2C-43 requires the Department to prepare and transmit to the Governor, State Treasurer and Legislature a biennial report on the status of the greenhouse gas emissions monitoring and reporting program established under the Act, the current level of greenhouse gas emissions in the State and the progress made toward compliance with the 2020 and 2050 limits established under the Act. In addition, in accordance with the Act, the report is to also include updated and comparative inventories of greenhouse gas emissions.

Because one of the goals of the Global Warming Solutions Fund is to fund projects that will assist in achieving these limits, the proposed rules call for the agencies to make public the estimates of the greenhouse gas emissions reductions or other benefits expected from each project or program area funded, the amount of funding provided to each program area or project, the anticipated duration of each project or program area, and the estimated progress towards completion of previously funded projects and

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program areas. This information is necessary for the Department to compile its biennial report.

Because the report is biennial, it is necessary for the Department to obtain the information at least every two years. Because the RGGI auctions that provide funding for the Fund take place quarterly, thereby providing funds to the agencies, an agency may fund projects or program areas as often as every few months, and choose to evaluate progress and make information available more frequently than every two years.

#### **N.J.A.C. 7:27D-2.6 Condition of funding award**

Proposed N.J.A.C. 7:27D-2.7 prohibits the EDA, BPU or the Department from disbursing funding to a program area or project until all necessary permits or approvals are obtained. This provision is intended to avoid potential problems in awarding funding to a project or program area that is incapable of proceeding due to inability to obtain any necessary permits or approval. This provision, in combination with N.J.A.C. 7:27D-2.2(b)3iv, which allows points for projects that demonstrate that permitting is obtained, will encourage agencies to commit funds to projects that can be begun in a reasonable amount of time. This does not preclude the EDA, BPU or the Department from disbursing funds to cover the cost of initial efforts necessary for a program area or project if the initial efforts themselves do not require permits or approvals. For example, the agency may award a grant and disburse payment for a feasibility study that does not require permits or approvals, although the ultimate activity for which the feasibility study is performed does require permits or approvals. In this example, the feasibility study itself would be a project to be funded.

### **Subchapter 3. State of the Art Electric Generating Facility**

#### **N.J.A.C. 7:27D-3.1 State of the art electric generating facility**

Proposed N.J.A.C. 7:27D-3.1 defines “state of the art” for purposes of EDA’s funding of new electricity generating facilities. The Act at N.J.S.A. 26:2C-51b(1) limits funding to electric generation facilities that are “state of the art, as determined by the

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Department, including but not limited to energy efficiency and renewable energy applications, to develop combined heat and power production and other high efficiency electric generation facilities.” Thus, the Department is including in the definition of state of the art specific efficiency thresholds that indicate an electric generation facility is “high efficiency.”

A state of the art electric generation facility demonstrates advances in the art of air pollution control in accordance with N.J.A.C. 7:27-22.35 for major facilities, or N.J.A.C. 7:27-8.14 for other facilities. A demonstration of advances in the art of air pollution control is necessary for any facility to obtain an air pollution control permit. Thus, a facility that is not eligible to obtain an air pollution control permit is not state of the art, and is not eligible for funding from the EDA. This is consistent with proposed N.J.A.C. 7:27D-2.6, which precludes funding of any program area or project until all necessary permits or approvals are obtained.

A state of the art electric generation facility is also an efficient electric generation facility, which is one that meets or exceeds a specified threshold efficiency in terms of heat rate per kilowatt hour of electricity produced or overall thermal efficiency. Where 16 percent or less of a facility’s heat input is converted to useful thermal energy, the facility must meet one of four thresholds of efficiency. These thresholds are at proposed N.J.A.C. 7:27D-3.1(a)3, and are based on electricity generation capacity. The threshold efficiencies are based on an analysis by the Department of efficiencies of 150 combined cycle turbine units operating throughout the world. Heat rate is a common power generation parameter that provides a measure of overall efficiency based on the heat input of the fuel in Btu, divided by the net output of electric generation in KWh. Thus, the efficiency threshold is expressed in terms of heat rate.

The most efficient commercially available configuration for a fossil fuel fired facility that only generates electricity is a combined cycle unit, which has both a gas turbine and a steam turbine to generate electricity. Hence, the Department is basing its efficiency threshold on the combined cycle configuration. In contrast, simple cycle electric generation units have only one turbine and, therefore, achieve lower electric



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generation efficiencies. Simple cycle units would not be eligible for funding since they are not sufficiently efficient when compared to combined cycle units, unless the simple cycle turbine is used in a combined heat and power (CHP) configuration obtaining at least an equivalent overall thermal efficiency.

The Department used the document, *Gas Turbine World 2008 Performance Specs, 25<sup>th</sup> Edition*, Pequot Publishing Inc., Fairfield, CT 06824, to review the efficiencies of combined cycle electric generating units that are currently commercially available. Among the combined cycle units that are available, there are higher and lower efficiency units. Smaller units tend to be lower efficiency than larger units. Rather than exclude smaller units from being eligible for funding, the Department proposes to establish efficiency criteria for four categories of facilities based on generation capacity. Within each of those categories, except for the smallest sized units, the Department has selected a proposed efficiency criterion that is approximately mid range for the units available in that category. Hence, a reasonable number of the higher efficiency units in each category would be eligible for funding consideration. The Department did not limit the funding to the highest efficiency units because the Act at N.J.S.A. 26:2C-51b(1) uses the term “high efficiency,” rather than “highest efficiency.”

For the smaller units, those less than 40 megawatts (MW), the Department has selected a high efficiency criterion that a reasonable number of units over 20 MW can achieve. Generally, smaller electric only units are no longer constructed because of lower efficiencies and higher costs per megawatt hour (MWh). Hence, there is not a need to promote the construction of less than 20 MW electric only units. Funding is not excluded for these units; however, the efficiencies of those less than 20 MW units, if used for electricity production only, would need to be improved to the better efficiencies achieved in the under 40 MW size range.

The proposed efficiency threshold of 7000 Btu per KWh for less than 40 MW units is relatively high compared to the proposed threshold for larger units. Enabling the funding of smaller units with this higher heat rate may help promote distributed

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generation, where the generator is located close to the users, avoiding line losses inherent in very large electric power facilities located much farther from the users.

To determine the efficiency threshold for an electric generating facility, the Department is proposing to use net heat rate as the criterion for funding eligibility to ensure that the efficiency being determined is associated with the electric generation that is available for use by other than the electric generation facility. The electricity could be used for 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 combined heat and power facilities in which more than 16 percent of the facility's heat input is converted to useful thermal energy, the facility must meet one of two thresholds of efficiency in terms of overall thermal efficiency. If the facility's electric production capacity is 20 MW or less, it must have a thermal efficiency of at least 65 percent. If the facility's electric production capacity is greater than 20 MW, it must have a thermal efficiency of at least 70 percent.

The distinction between facilities that use 16 percent or less of their heat input for useful thermal energy and those that use more than 16 percent their heat input for useful thermal energy is intended to provide consistency between the thresholds that apply to facilities that are primarily electricity production facilities and facilities that are combined heat and power facilities. For example, a 20 MW capacity facility that produces 16 percent of its combined production in the form of useful thermal energy would be required to meet an efficiency of at least 7000 Btu per KWh of useful electricity produced, which represents an efficiency for its electricity production of at least 49 percent. Adding the 16 percent of its useful thermal energy production boosts its thermal efficiency to approximately 65 percent, which is consistent with the standard that is proposed for combined heat and power facilities.

As long as it meets the efficiency thresholds in proposed N.J.A.C. 7:27D-3.1(a)3, a facility that is primarily electric generating can be eligible for funding consideration even if up to 16 percent of its heat input is converted to useful energy other than

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electricity. This will promote the useful recovery of waste heat from combined cycle electric generation units which typically only produce useful electricity.

As provided in proposed N.J.A.C. 7:27D-3.1(a)5, the heat rate is calculated based on International Organization for Standardization (ISO) conditions for gas turbines in order to normalize the determination and comparison of units. ISO conditions for gas turbines are that the heat rate is the heat rate that is achieved at the continuous power output rating that can be counted upon for 6000 or more hours of operation per year at 59 degrees Fahrenheit, sea level, and 60 percent relative humidity, without exceeding normal gas turbine wear and maintenance. (These specifications can be found on page 5 of the document, *Gas Turbine World 2008 Performance Specs, 25<sup>th</sup> Edition*, Pequot Publishing Inc., Fairfield, CT 06824.) Using ISO conditions is standard procedure for calculating various parameters for gas turbines. Under proposed N.J.A.C. 7:27D-3.1(a)6, the heat input shall be based on the high heating value of the fuel at the same conditions specified in paragraph (a)5.

#### **Subchapter 4. Local Government Greenhouse Gas Reduction Program**

Proposed N.J.A.C. 7:27D-4 describes the general process, policies and procedures associated with the Department's Local Government Greenhouse Gas Reduction Program (Program).

##### **N.J.A.C. 7:27D-4.1 Purpose and applicability**

Proposed N.J.A.C. 7:27D-4.1 sets forth the purpose of the Program. The Program disburses funds that are provided to the Department from the Fund, in accordance with N.J.S.A. 26:2C-51b(3), for use by local government agencies.

The proposed subchapter also identifies the entities and costs that are eligible for funding. Under the Program, as specified by the Act at N.J.S.A. 26:2C-51b(3), only local government agencies will be eligible for funding. For purposes of this Program, and to be consistent with the New Jersey Board of Public Utilities (BPU) Local Government Energy Audit Program (<http://www.njcleanenergy.com/commercial->

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[industrial/programs/local-government-energy-audit/local-government-energy-audit](#)), a local government agency must be 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-2a); or a county college under the County College Contracts Law (N.J.S.A. 18A:64A-25.2b).

BPU has determined that, collectively, this group of statutes most appropriately defines the universe of eligible local government agencies for purposes of its Local Government Energy Audit Program. Since the intent of the BPU Local Government Energy Audit Program very closely matches the intent of the Department's Program, the Department deemed it appropriate to use the same parameters for defining eligible local government agencies. Joint and cooperative requests for funding from any combination of these entities are also eligible.

In accordance with N.J.S.A. 26:2C-51b(3), projects eligible for funding are those that "conduct and implement energy efficiency programs, renewable energy programs, distributed energy programs, 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." In order to maximize the effectiveness of the Program's limited funds, allowable project costs include equipment, materials, supplies, printing and professional services. Disallowed costs include costs for acquisition of real property and charges for time spent by local government employees and volunteers. The Department proposes that acquisition of real property is not an allowable cost because the Program's funds are limited. The costs associated with local government employees (such as salaries) and volunteers (such as travel reimbursement) are not allowable, because local governments must demonstrate their commitment to the proposed project by allocating their own personnel resources where necessary

#### **N.J.A.C. 7:27D-4.2 Notice of grant availability**

In accordance with proposed N.J.A.C. 7:27D-4.2, the Department will post on its web site a notice announcing the availability of grant funding under the Program. The

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notice of grant availability will contain a request for project applications, and will identify the program area priorities, provide a program area overview and guidance regarding program purpose and eligibility, procedures, a funding schedule, and the template grant agreement. This is the information that a local government agency will need in order to participate in the Program. The projects that the Department funds will be those for which the Department has determined funding is appropriate in accordance with proposed N.J.A.C. 7:27D-2.

#### **N.J.A.C. 7:27D-4.3 Amount of a grant**

In accordance with proposed N.J.A.C. 7:27D-4.3, the Department will determine the amount of the grant at the time of award in order to ensure that selected projects receive sufficient funding to meet respective project objectives. Because funds for the Program are limited and the Department anticipates that not all requests for funding can be met in a given grant cycle, the Department may establish a maximum grant award in order to assist as many local government agencies as possible, and to ensure that a reasonable number of awards is made Statewide. Not every project eligible for funding may be funded if the available funding is limited.

The Department may decide to partially fund a project (e.g., certain tasks) based on funding availability and/or a determination that only selected aspects of the proposed project are consistent with selection criteria and merit funding.

#### **N.J.A.C. 7:27D-4.4 Preliminary application of interest**

In accordance with proposed N.J.A.C. 7:27D-4.4, local government agencies interested in applying for funding must first submit a preliminary application of interest outlining the proposed project. This information will be used by the Department only to determine if the proposed project meets the eligibility requirements of the Program and this determination will not necessarily imply any intention to fund the proposed project. Local government agencies whose projects are deemed eligible will be invited to submit a grant application. The Department proposes this requirement in order that it reviews

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only those final applications that are consistent with the notice of grant availability published in accordance with proposed N.J.A.C. 7:27D-4.2.

#### **N.J.A.C. 7:27D-4.5 Application procedure**

Proposed N.J.A.C. 7:27D-4.5 sets forth the required elements of an application, and the procedure for a local government agency to follow when it applies for funds from the Program. An application for funding under the Program includes the essential information that the Department needs to evaluate the project, such as a detailed project description, anticipated project benefits, project team qualifications and project budget. The application must also include additional information that relates to other objectives of the Act, such as to what extent the project will create jobs, and whether the project can be replicated by other local government agencies. To ensure that the governing body of the local government in which the local government agency operates supports the application, a resolution is required.

All of the information required at proposed N.J.A.C. 7:27D-4.5 is necessary for the Department to evaluate the proposed project in accordance with the priority ranking system established at proposed N.J.A.C. 7:27D-2. Based on the information that the local government agency submits, the Department will assign points and rank the proposed project in relation to other proposed projects for which applications are submitted.

A local government agency that submits an application under the rule agrees to be bound by the grant agreement, which the Department provides as part of the notice of grant availability under proposed N.J.A.C. 7:27D-4.2. An application is not an invitation for the local government agency to negotiate with the Department.

The application shall be sent to the Department at the address provided in the rule.

#### **N.J.A.C. 7:27D-4.6 Use and disclosure of information**

Proposed N.J.A.C. 7:27D-4.6 provides that all grant applications, preliminary applications of interest and other submittals received by the Department, constitute

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government records and, as such, the Department will make them available for review or copying to persons who request them, to the extent required by New Jersey law.

#### **N.J.A.C. 7:27D-4.7 Evaluation of grant application**

Proposed N.J.A.C. 7:27D-4.7 describes the Department's evaluation of the project applications that it receives. In accordance with proposed N.J.A.C. 7:27D-4.7(a), the Department will notify each applicant that its application has been received and is under review. Each application will be subject to preliminary administrative review, and a program, technical and budget evaluation. Applications considered administratively incomplete will be rejected and not receive any further review. The Department will review each application against the others received in response to the notice of grant availability under proposed N.J.A.C. 7:27D-4.2, using the criteria in proposed N.J.A.C. 7:27D-2.2 and 2.3.

Proposed N.J.A.C. 7:27D-4.7(b) provides that the Department, at any time in the evaluation process, may ask the local government agency to provide additional documents or information that Department deems necessary to fully review the grant application in light of the requirements of the rules. Based upon the scope of the necessary information, the Department may suspend its evaluation until such information has been received. The request for supplemental information applies only to additional technical information that further clarifies the nature, characteristics and projected success of the proposed project. This provision is not intended to allow an application determined to be administratively incomplete under N.J.A.C. 7:27D-4.7(a)1 to be completed.

#### **N.J.A.C. 7:27D-4.8 Grant award**

In accordance with proposed N.J.A.C. 7:27D-4.8, after a full review and evaluation of a grant application, the Department will notify a local government agency if the agency has been awarded the grant. A local government agency that is not awarded a grant in response to its application may resubmit an application for funding of the same

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project, with or without modification, in response to a subsequent notice of grant availability. Not every project will be eligible for funding under a future notice of grant availability, since each notice identifies particular program priorities for which funding is available.

#### **N.J.A.C. 7:27D-4.9 Execution of grant agreement**

Proposed N.J.A.C. 7:27D-4.9 requires that a grant agreement be executed for each grant recipient. After the Department advises a local government agency that it has been awarded a grant, the Department will prepare and execute a grant agreement and transmit the agreement to the local government agency. Within 30 calendar days the local government agency must execute and return the agreement to the Department. The Department may, at its discretion, extend the time for execution for an additional 30 days. An extension may be necessary, for example, because of a holiday or summer schedule that makes it difficult for a local government agency's governing body to act within 30 days.

The Department proposes to limit the period for execution of the agreement in order to ensure that only those local government agencies that are committed to the projects and are in a position to proceed will receive funding. The Department anticipates that 60 days is sufficient for a local government agency to return the fully executed agreement.

The Department proposes to require each local government agency to certify that it is in compliance with the requirements and conditions of the grant agreement, that it and its contractors and subcontractors are maintaining appropriate financial records, and that it has not and will not retain anyone who has been debarred (in accordance with N.J.A.C. 7:1D-2) for purposes of the project funded under the grant. Such individuals are ineligible for contracting with the Department, or any agency within the control of the Department. (See N.J.A.C. 7:1D-2.) Thus, the Department proposes to prohibit those persons from receiving funds under a Local Government Greenhouse Gas Reduction Program grant.



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The individual who executes the certification also certifies that he or she has examined the information submitted to the Department and, based on an inquiry of the individuals responsible for obtaining the information, that he or she believes that the information is true, accurate, and complete.

#### **N.J.A.C. 7:27D-4.10 Reporting requirements**

Proposed N.J.A.C. 7:27D-4.10 sets forth reporting requirements for grant recipients. As defined in the grant agreement, and to ensure accountability of grant recipients, all grant recipients will be required to submit periodic progress reports, a final report describing project implementation success and actual or expected greenhouse gas reductions resulting from project completion, and financial reports describing and justifying project expenditures relative to the approved project budget.

#### **N.J.A.C. 7:27D-4.11 Grant conditions**

Proposed N.J.A.C. 7:27D-4.11 requires a local government agency that receives a grant award to comply with statutory and regulatory requirements, and any special conditions in the grant agreement. The conditions are not open ended, but are limited to conditions necessary to accomplish the project or Department objectives as expressed in the notice of grant availability. For example, the Department may require a local government agency to obtain permits or approvals within a specified period of time, in order to ensure that funding is provided only those projects that can be commenced within a reasonable period of time. The Department also proposes that funding not be provided to any local government agency that has defaulted on a State loan. This is intended to encourage local government agencies to repay loans that are outstanding.

#### **Social Impact**

The Department anticipates that the proposed new rules will have a positive social impact. The proposed rules will facilitate the decision-making process of EDA, BPU and

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the Department in fulfilling their responsibilities to disburse the Fund in accordance with the Act. In addition, through these funding processes, the agencies will fund program areas and projects, some of which will reduce the costs of electricity, natural gas, or other fuels or energy to consumers. A variety of co-benefits, including creation of jobs, reduction of air pollutants other than greenhouse gases, and improvements in local electric system reliability may also result. Many of the program areas and projects are expected to lead to reductions in greenhouse gas emissions. To the extent that these reductions impact those negative aspects of the global climate change problem that impact New Jersey, they will offset a portion of the adverse public health, welfare, and environmental impacts that are projected to occur as a result of climate change. The specific social benefits that will result depend on the program areas and projects that the agencies fund.

### **Economic Impact**

The Department anticipates that the proposed new rules will have a positive economic impact throughout the State. The proposed new rules provide a framework within which the EDA, BPU and Department will allocate money from the Fund to specific program areas and projects under the Act. It is expected that a number of these program areas and projects 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. Until a specific program area or project is proposed and funded, the Department is unable to quantify the economic benefits that may result.

Applicants for grant funding from the EDA, BPU and the Department will incur costs associated with preparing the grant application. The Department anticipates that this will consist primarily of staff time; however, some applicants may choose to make use of professionals. The applicant will need to research and compile the necessary information required by the application.

When a grant is ultimately awarded, the grant recipient will need to administer the funds and comply with the terms of the grant. If required under the terms of the grant, or

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as required at proposed N.J.A.C. 7:27D-10, the recipient of a grant will be required to prepare reports to the administering agency. There may be costs, either in staff time, or for professional services (if the recipient chooses to retain same), associated with these reports. However, the Department anticipates that the recipient of the grant will be able to recoup all or a portion of the cost of administering and complying with the grant as part of the grant award.

### **Environmental Impact**

The Department anticipates that the proposed new rules will have a positive environmental impact, insofar as they encourage funding of program areas and projects that reduce greenhouse gas emissions. Greenhouse gas emissions are causing changes to the Earth's climate that may be catastrophic and irreversible on human time scales. These changes may have severely negative impacts on human health and the environment. The most important greenhouse gas is carbon dioxide, which is released from the combustion of fossil fuels for energy. The reductions of emissions of greenhouse gas emissions and energy use and the sequestration of carbon will benefit the environment in that they will reduce the quantity of greenhouse gas emissions or will reduce the quantity of carbon dioxide in the atmosphere.

The Department anticipates that the projects and program areas that the EDA, BPU, and Department fund will lead to reductions in greenhouse gas emissions or energy use, or both, or will increase the sequestration of carbon, which will lower carbon dioxide emissions or remove carbon dioxide from the air. To the extent that reductions of greenhouse gas emissions in New Jersey and/or reductions of atmospheric concentrations of carbon dioxide 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.

Benefits from some projects may include reduction of other air pollutants or other actions that are responsive to recommendations of the Department that are made pursuant to the Global Warming Response Act, N.J.A.C. 26:2C-42 et seq.

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Until a specific program area or project is proposed and funded, the Department is unable to quantify the environmental benefits that may result.

### **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, re-adopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The proposed new rules are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

### **Jobs Impact**

The Department anticipates that the proposed rules will have a small positive impact on jobs and job creation in New Jersey. Projects and program areas to be funded may include construction and related activities, such as retrofitting buildings for energy efficiency. Such activities are expected to stimulate employment. In addition, long-term benefits related to development of new technologies related to energy efficiency, greenhouse gas emissions reduction and carbon sequestration program areas and projects that are expected to be funded may lead more jobs in these fields being developed in the State. The Department is unable to quantify the impact on employment, because the impact will depend on the specific program areas and projects that receive funding under the proposed rules.

### **Agriculture Industry Impact**

The Department has evaluated this rulemaking to determine the nature and extent of impact of the proposed rules on the agricultural industry.

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The proposed new rules should have a small impact on the State's agricultural industry. Program areas or projects that seek to increase sequestration of carbon may involve agricultural lands, and could increase options available to relevant land owners or others by providing additional uses of these lands that could be economically viable. Also, funded projects could reduce the energy cost of farming in the State, as well as through better municipal/regional planning, reduce development pressure on agricultural lands. The impact on the agriculture industry will depend on the specific program areas and projects that receive funding.

### **Regulatory Flexibility Statement**

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 new rules would impose upon small businesses. The primary impact of the proposed rules will be on the Department, the EDA, and the BPU, which are not small businesses. In addition, Subchapter 4 of the proposed rules impacts local governments, which are also not small businesses. However, the grants that the EDA and the BPU award could impact small businesses.

The Act at N.J.S.A. 26:2C-51 and the proposed rules at N.J.A.C. 7:27D-2.1 direct the EDA to provide grants and other forms of financial assistance to commercial, institutional and industrial entities to support end-use energy efficiency projects and to stimulate or reward investment in the development of innovative carbon emissions abatement technologies. It is anticipated that among the entities eligible for the EDA's assistance, a sizable number will be small businesses and early stage venture companies. Similarly, the Act and the proposed rules direct the BPU to support programs designed to reduce electricity demand or costs to electricity customers in the low-income and moderate-income residential sector. It is likely that some small businesses will be eligible for funding from the BPU.

Only those small businesses that choose to apply for funding will incur costs associated with applying for and administering grant funds. The costs associated with

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the applications for grants include staff time to prepare the application and gathering any necessary information, and administering the grants. To the extent that the small business chooses to retain professionals to assist in applying for or administering grant funding, the small business would also incur the cost of a professional; however, the rules do not require that professionals be retained. If the ultimate grant agreement contains recordkeeping or reporting requirements, then these costs would apply to all grant recipients, including small businesses. Nevertheless, it is anticipated that the recipient of the grant could recoup all or a portion of the cost of administering the grant, as well as the cost of recordkeeping and reporting, as part of the grant awarded.

### **Smart Growth Impact**

Executive Order Number 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact Statement that describes the impacts of the proposed rule on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of impacts, if any, of the proposed new rules would have on the implementation of smart growth and the State Plan.

To the extent that local government agencies receive funding from the Department through the Global Warming Solutions Fund, it is expected that this funding will be used to foster efforts that are consistent with smart growth and the policies objectives of the State Plan. Therefore, the proposed new rules are likely to positively impact smart growth and the implementation of the State Plan.

Similarly, to the extent that BPU funds programs to address the heat island effect and reduce electricity demand or costs to electricity customers in the low-income and moderate income residential sectors, with a focus on urban areas, such funding may encourage smart growth and the policies and objectives of the State Plan.

To the extent that funding from EDA encourages end-use energy efficiency projects and new, efficient electric generation facilities, the development of combined

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heat and power production and other high efficiency electric generation facilities, and stimulates or rewards investment in the development of innovative carbon emissions abatement technologies with significant carbon emissions reduction or avoidance potential, the proposed new rules encourage smart growth and further the policies and objectives of the State Plan.

### **Housing Affordability Impact Statement**

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed rules to determine their impact, if any, on the affordability of housing.

The proposed rules establish a priority ranking system by which the EDA, BPU, and the Department will allocate funds from the Global Warming Solutions Fund; the process for determining whether new electric generation facilities are state of the art; and the procedures by which the Department will allocate funds from the Global Warming Solutions Fund through the Department's Local Government Greenhouse Gas Reduction Program. Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed new rules and amendments to determine their impact, if any, on the affordability of housing. Because the proposed rules neither impose requirements nor confer direct benefit upon homeowners, builders or other providers of housing, the Department has determined that the proposed rules will evoke no change in the overall average cost associated with housing in the State.

Although, depending on how the funding is distributed by the EDU, BPU and the Department, the rules may have some indirect impact on the energy-efficiency of

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housing, the impact will not be such that it will affect the overall cost of housing in the State.

### **Smart Growth Development Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed rules to determine their impact, if any, on smart growth development. The proposed rules establish a priority ranking system by which the EDA, BPU, and the Department will allocate funds from the Global Warming Solutions Fund; the process for determining whether new electric generation facilities are state of the art; and the procedure by which the Department will allocate funds from the Global Warming Solutions Fund through the Department's Local Government Greenhouse Gas Reduction Program. They 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.

**Full text** of the proposal follows:

## **N.J.A.C. 7:27D Global Warming Solutions Fund Guidelines and Priority Ranking System**

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

#### **N.J.A.C. 7:27D-1.1 Purpose**

(a) This chapter establishes:

1. A priority ranking system for the EDA, BPU, and the Department to use when allocating funds from the Global Warming Solutions Fund;
2. The process for determining whether new electric generation facilities are state of the art; and



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3. The procedure by which the Department will allocate funds from the Global Warming Solutions Fund through the Department's Local Government Greenhouse Gas Reduction Program.

#### **N.J.A.C. 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.

“Act” means the Global Warming Solutions Fund law, N.J.S.A. 26:2C-50 et seq.

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

“Carbon dioxide equivalent” means the quantity of a given greenhouse gas multiplied by its global warming potential.

“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 the contribution to regional initiatives to reduce greenhouse gas emissions.

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

“EDA” means the New Jersey Economic Development Authority.

“Global warming potential” or “GWP” means a measure of the radiative efficiency (heat absorbing ability) of a particular gas relative to that of carbon dioxide

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(CO<sub>2</sub>) after taking into account the decay rate of each gas (the amount removed from the atmosphere over a given number of years) relative to that of CO<sub>2</sub>.

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

“Global Warming Solutions Fund” or “Fund” means the fund established under N.J.S.A. 26:2C-50 administered by the Treasurer, State of New Jersey, that contains monies received as a result of any sale, exchange or other conveyance of allowances through a greenhouse gas emissions allowance trading program; monies appropriated by the Legislature; and any return on investment of monies deposited in the fund.

“Greenhouse gas” means CO<sub>2</sub>, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and ethers and halogenated ethers that are listed in Table 1B of N.J.A.C. 7:27-21.2(a).

“Local government agency” is one or a cooperating combination of the entities set forth at N.J.A.C. 7:27D-4.1(b)1 through 3.

“Measurable” means that a quantitative value can be assigned based on a method that is sufficiently well described to be repeatable and for which the quantitative value determined by any application of that method will not differ significantly from the value determined by any other application of that method. Generally, a significant difference in this context is a meaningful difference in a practical sense, as opposed to a statistical sense, and should be considered to be a difference of greater than five percent from one measurement to another. However, a difference greater or less than five percent may be appropriate or acceptable depending on the degree of precision and/or accuracy of available methods of measurement, as determined by the EDA, BPU or the Department. The measurement method need not be an actual physical measurement method requiring sampling or analytical equipment, but may be based on quantities that can themselves be

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reliably measured or estimated and are typically reported or recorded such as kilowatt hours of electricity; volume, mass, or energy content of identified fuels.

“Measurable reduction” means a reduction of a measurable quantity of greenhouse gas emissions or energy use such that there is 95 percent confidence that the quantity of the greenhouse gas emissions or energy use under the direct influence of a project or program area is less by a meaningful or practical amount as a result of the completion of the project or program area than it was prior to the inception of the project or program area. If a 95 percent or higher level of confidence is not achievable due to a lack of precision and/or accuracy of available and appropriate methods of measurement, a level of confidence acceptable to the EDA, BPU or the Department, as applicable, shall be used.

“Net reduction” means a measurable reduction that includes in its evaluation all preliminary steps, accessory supplies, materials, equipment, and other inputs any of which is estimated to the satisfaction of the EDA, BPU, or the Department to contribute at least five percent of the total quantity of emissions, energy use or other parameter associated with the actions that take place because of the project or program area and are not likely to take place without the implementation of the project or program area associated with the reduction.

“Net sequestration” means a sequestration of carbon that includes in its evaluation all preliminary steps, accessory supplies, materials, equipment, and other inputs any of which is estimated to the satisfaction of the EDA, BPU, or the Department to contribute at least five percent of the total quantity of carbon flows associated with the actions that take place because of the project or program area and are not likely to take place without the implementation of the project or program area associated with the sequestration.

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“Project” means a discrete undertaking or series of undertakings that have a tangible result designed to implement or further all or a portion of a program area.

“Program area” means a policy or category of projects identified by the EDA, BPU or the Department, in accordance with this chapter, as eligible for funding from the Global Warming Solutions Fund, and which reflects each agency’s initial policy determination as to how to allocate the resources of the Fund to effectuate the purposes of the Act as outlined for each agency in N.J.S.A. 26:2C-51(b). A program area may consist of one or more projects, or may include no project. For example, a program area that provides direct financial assistance to electricity customers in the low-income or moderate income residential sector is a policy, and may not involve a project per se.

“Sequestration” means the measurable transfer of carbon 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 that carbon for a period not less than 20 years.

“Significant contribution to the achievement of the State’s 2020 Global Warming Response Act limit” means a measurable reduction of greenhouse gas emissions of more than 1000 metric tons per year carbon dioxide equivalents, as established pursuant to the Global Warming Response Act.

“Significant contribution to the achievement of the State’s 2050 Global Warming Response Act limit” means a measurable reduction of greenhouse gas emissions of more than 1000 metric tons per year carbon dioxide equivalents, as established pursuant to the Global Warming Response Act.

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“Thermal efficiency” means the useful electricity output of a facility, plus the useful thermal energy output of the facility, expressed as a percentage of the total heat input to the facility, based on the high heating value of the fuel.

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

“Useful electricity” means the net electric energy produced for market or for use by an entity or entities other than the electric production facility itself.

“Useful thermal energy” means the net thermal energy produced for market or for use by an entity or entities other than the electric production facility itself.

### **N.J.A.C. 7:27D-1.3 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. Program Area Determination, Priority Ranking, Award, and Reporting System**

### **7:27D-2.1 Determination of eligible program area**

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(a) EDA, BPU and the Department shall each separately identify, in accordance with (b) through (d) below, eligible program areas which that agency intends to fund using its portion of the Global Warming Solution Fund.

(b) For EDA, a program area is eligible for funding from the Global Warming Solutions Fund if it provides a grant or other financial assistance to support commercial, institutional or industrial entities to develop, stimulate or reward investment in:

1. An end-use energy efficiency project;
2. A new, efficient electricity generation facility that is state of the art in accordance with N.J.A.C. 7:27D-3, State of the Art Electric Generating Facility; including but not limited to energy efficiency and renewable energy applications;
3. A combined heat and power production facility; or
4. An innovative carbon emissions abatement technology with significant carbon emissions reduction or avoidance potential.

(c) For BPU, a program area is eligible for funding from the Global Warming Solutions Fund if it is designed to reduce electricity demand or costs to electricity customers in the low and moderate income residential sectors with a focus on urban areas, including efforts to address heat island effects and reduce impacts on ratepayers attributable to the implementation of the Act, N.J.S.A. 26:2C-50 et seq.

(d) For the Department, a program area is eligible for funding from the Global Warming Solutions Fund if it is designed to promote local government efforts to plan, develop and implement measures to reduce greenhouse gas emissions, or enhance the stewardship and restoration of the State's forests and tidal marshes that provide important opportunities to sequester or reduce greenhouse gases.

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(e) Each agency shall make a program area determination for a purpose authorized for that agency in (b) through (d) above, after consideration, as applicable, of the predicted ability of the program area(s) to:

1. Result in a net reduction in greenhouse gas emissions in the State or in greenhouse gas emissions from electricity produced out of the State but consumed in the State or result in a net sequestration of carbon;

2. Result in significant reductions in greenhouse gas emissions relative to the cost of the program area(s) and the reduction of impacts on ratepayers attributable to the implementation of Global Warming Response Act, and the ability of the program area(s) to make a significant contribution to the achievement of the State's 2020 Global Warming Response Act limit and a significant contribution to the achievement of the State's 2050 Global Warming Response Act limit, relative to the cost of the program area(s);

3. Reduce energy use;

4. Provide co-benefits to the State;

5. Be directly responsive to the recommendations submitted by the Department to the Legislature pursuant to the Global Warming Response Act; and

6. Otherwise advance the environmental, economic and public health and welfare needs of the State.

(f) In addition to the criteria in (e) above, the BPU may determine to provide funding to one or more program areas that provide direct financial assistance to electricity customers in the low-income or moderate income residential sector, based on consideration of the

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potential hardship to individual customers within that sector and the extent to which direct financial assistance could reduce or eliminate that hardship for customers receiving such assistance. Any such financial assistance shall be accompanied by efforts by the BPU to encourage reduction in energy demand and greenhouse gas emissions that may include, but are not limited to, performance of energy efficiency audits, targeted assistance for implementation of energy efficiency measures, and/or direct outreach and education regarding financial benefits of energy efficiency.

#### **7:27D-2.2 Project award criteria**

(a) For each project within a program area that the EDA, BPU, or the Department has determined to be eligible for funding from that agency's percentage of the Global Warming Solutions Fund in accordance with N.J.A.C. 7:27D-2.1, the agency funding the project shall assign priority points based on the factors listed in (b) below. The assignment of priority points shall reflect the degree to which a proposed project furthers the goals of the New Jersey Energy Master Plan, the Global Warming Response Act, the Act and, as applicable, the policy objectives of the State Development and Redevelopment Plan. A program area that provides direct financial assistance to electricity customers in the low-income or moderate income residential sector, or that enhances the stewardship and restoration of the State's forests and tidal marshes, does not involve a project and is not subject to the requirements of this section.

(b) EDA, BPU and the Department shall assign priority points as follows:

1. Each agency may assign a maximum of 50 points based on the extent to which the agency predicts a project will:



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i. Produce a net reduction in greenhouse gas emissions in the State or produce a net reduction in greenhouse gas emissions from electricity produced out of the State, but consumed in the State;

ii. Result in a significant, measurable reduction in greenhouse gas emissions relative to the cost of the project and the reduction of impacts on ratepayers;

iii. Significantly contribute to the achievement of the State's 2020 greenhouse gas emissions limit established by the Global Warming Response Act, relative to the cost of the project; and/or

iv. Significantly contribute to the achievement of the State's 2050 greenhouse gas emissions limits established by Global Warming Response Act, relative to the cost of the project.

2. Each agency may assign a maximum of 30 points based on the extent to which the agency predicts a project will result in benefits other than direct reductions of greenhouse gas emissions, as follows:

i. Except with regard to EDA's funding of a new combined heat and power production facility or an increase in the electrical and thermal output of an existing combined heat and power production facility, a measurable reduction in energy use;

ii. A net sequestration of carbon;

iii. Co-benefits to the State; and/or

iv. Responsiveness to the recommendations submitted by the Department to the Legislature pursuant to the Global Warming Response Act.

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3. Each agency may assign a maximum of 20 points based on the extent to which the agency expects the project to provide an added benefit because:

- i. The project has not been previously funded in whole or in part by the State, the Federal government, or other entity;
- ii. The project is expected to produce results that could be readily replicated by others in New Jersey and elsewhere;
- iii. The project is expected to provide measurable data or quantitative information important to future efforts to reduce greenhouse gas emissions or energy use;
- iv. The project demonstrates readiness to proceed through achievement of milestones including, but not limited to control of land, permitting, and financial commitments;
- v. The developer or owner of the project demonstrates the experience and capacity to complete the project;
- vi. The project is financially feasible and sustainable and demonstrates ability to leverage funding from the Fund with private investment; and/or
- vii. The project accomplishes or is expected to accomplish other results that are consistent with the agency's mission in accordance with its enabling statutes.

**7:27D-2.3 Ranking and evaluation.**

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(a) After each agency assigns points to eligible projects in accordance with the project award criteria at N.J.A.C. 7:27D-2.2, it shall rank the projects on a priority list, with the project assigned the most points ranking first, except as set forth in (b) below.

(b) Notwithstanding the project award criteria at N.J.A.C. 7:27B-2.2, each agency retains the discretion to fund a project if it concludes that such a project provides an exceptional opportunity to advance the science of climate change, greenhouse gas emissions control or energy use reduction, to provide some significant environmental or public benefit, or to address extraordinary circumstances, provided that the project otherwise meets the purposes and goals of each agency as set forth in the Act.

#### **N.J.A.C. 7:27D-2.4 Measurability**

(a) Program areas and projects to be funded from the Global Warming Solutions Fund shall include in their design a method to ensure that the reductions of greenhouse gas emissions or energy use, or other benefits that are achieved or are expected to be achieved by the project or program area for its duration are measurable. The method to ensure that reductions or other benefits are measurable may be based on existing or otherwise readily available information, such as records of fuel or electricity use, and to the extent feasible as determined by the funding agency, shall:

1. Be sufficient to allow the funding agency to assess baseline quantities, quantitative reduction goals, and quantities of reductions resulting from, or expected to result from, the project or program area; and
2. Include an estimate of the uncertainty associated with measured or estimated baseline quantities, quantitative reduction goals, and quantities of reductions.

#### **N.J.A.C. 7:27D-2.5 Agency disclosure of benefits, funding and program area or project status**

(a) At least every two years the EDA, BPU and Department shall make publicly available (by posting on the respective agency's website) the following information for

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each program area or project funded during the two-year period that ends no more than six months before the date the information is made publicly available:

1. Greenhouse gas emissions reductions, or expected greenhouse gas emissions reductions, and/or energy use reductions, or expected energy use reductions;
2. Funding provided or expected to be provided; and
3. The status of the project or program area and the estimated completion date.

#### **N.J.A.C. 7:27D-2.6 Condition of funding award**

Funding shall not be disbursed for a program area or project that requires Federal, State, or local permits or other approvals pursuant to a Federal, State, or local statute until such permits and approvals are obtained.

### **Subchapter 3. State of the Art Electric Generating Facility**

#### **N.J.A.C. 7:27D-3.1 State of the art electric generating facility**

(a) An electric generation facility is state of the art for purposes of N.J.A.C. 7:27D-2.1(b)2, if it:

1. Is a facility whose primary activity is the production of useful electricity or the production of useful electricity and useful thermal energy;
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 and in accordance with N.J.A.C. 7:27-8.12 for other facilities; and
3. If the useful thermal energy produced by the facility is 16 percent or less of its total heat input, the efficiency of the electricity production process shall meet one of the following efficiency thresholds:
  - i. For a facility less than or equal to 40 megawatts of capacity, a heat rate of 7000 or less Btu consumed per kilowatt hour of useful electricity produced;

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- ii. For a facility greater than 40 megawatts of capacity and less than or equal to 120 megawatts of capacity, a heat rate of 6700 Btu or less consumed per kilowatt hour of useful electricity produced;
  - iii. For a facility greater than 120 megawatts of capacity and less than or equal to 240 megawatts of capacity, a heat rate of 6550 Btu or less consumed per kilowatt hour of useful electricity produced; or
  - iv. For a facility greater than 240 megawatts of capacity, a heat rate of 6200 Btu or less consumed per kilowatt hour of useful electricity produced.
4. If the useful thermal energy produced by the facility is greater than 16 percent of its total heat input, the overall efficiency of the facility shall meet one of the following efficiency thresholds:
- i. For a facility less than or equal to 20 megawatts of electric generating capacity, an overall thermal efficiency, considering both useful electricity and useful thermal energy, of at least 65 percent; or
  - ii. For a facility greater than 20 megawatts of electric generating capacity, an overall thermal efficiency, considering both useful electricity and useful thermal energy, of at least 70 percent.
5. The heat rate, that is, the Btu consumed per kilowatt hour of useful electricity produced as specified in (a)3 above, shall be determined at conditions representing the continuous power output rating that can be counted upon for 6000 or more hours of operation per year at 59 degrees Fahrenheit, sea level, and 60 percent relative humidity, without exceeding normal gas turbine wear and maintenance.
6. Heat input shall be determined based on the high heating value of the fuel used at the conditions set forth at (a)5 above.

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#### **Subchapter 4. Local Government Greenhouse Gas Reduction Program**

##### **N.J.A.C. 7:27D-4.1 Purpose and applicability**

(a) This subchapter establishes the policies and procedures for the distribution of grant funds that the Department disburses from the Global Warming Solutions Fund through the Local Government Greenhouse Gas Reduction Program, which promotes local government agency efforts to plan, develop and implement measures to reduce greenhouse gas emissions.

(b) Only a local government agency is eligible for funding from the Department's Local Government Greenhouse Gas Reduction Program. For purposes of this program, a local government agency must be one or a cooperating combination of the following:

1. A contracting unit under the Local Public Contracts Law, N.J.S.A. 40A:11-2(1);
2. A board of education under the Public School Contracts Law, N.J.S.A. 18A:18A-2a; or
3. A county college under the County College Contracts Law, N.J.S.A. 18A:64A-25.2b.

(c) Eligible projects are those that allow a local government agency to conduct and implement an energy efficiency program, renewable energy program, distributed energy program, 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.

(d) Allowable project costs include equipment, materials, supplies, printing and professional services. Disallowed costs include costs for acquisition of real property and charges for time spent by local government agency employees and any costs associated with or expended by volunteers in the course of volunteers' involvement on a project.

##### **N.J.A.C. 7:27D-4.2 Notice of grant availability**

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(a) The Department will publish a notice of grant availability on the Department's web page announcing the availability of grant funding under the Local Government Greenhouse Gas Reduction Program. The notice will include:

1. A request for project applications;
2. Program area priorities in accordance with N.J.A.C. 7:22-2.1 and as further defined by the Department according to measured greenhouse gas reduction progress at the time of the announcement;
3. Guidance to potentially interested local government agencies concerning the available grant funding, including the purpose of and eligibility for the available grant funding;
4. The procedure for applying for a grant and a description of the evaluation criteria and scoring process;
5. A schedule of deadlines for submittal of the preliminary application of interest and application, and an estimate of the timeframe for award of grant(s);
6. Application evaluation criteria and scoring process; and
7. The template grant agreement for the project.

**N.J.A.C. 7:27D-4.3 Amount of a grant**

(a) The amount of the grant shall be determined at the time of award. The amount of the grant shall be based upon allowable project costs as described at N.J.A.C. 7:27D-4.1(d). In a given grant cycle, the Department may set a maximum grant amount in order to ensure that a reasonable number of awards are made Statewide, and/or that funding is made available to a range of project types.

(b) The Department may determine to fund some or all of the eligible projects, or to otherwise allocate full or partial funding among eligible projects, in light of the availability of funds and the evaluations and rankings pursuant to N.J.A.C. 7:27D-2.2, 2.3 and 4.7.

**N.J.A.C. 7:27D-4.4 Preliminary application of interest**

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(a) An interested local government agency shall submit a preliminary application of interest to the Department at the address at N.J.A.C. 7:27D-4.5(e), within the time period provided in the notice of grant availability issued in accordance with N.J.A.C. 7:27D-4.2.

1. Information to be submitted in the preliminary application shall include:

- i. The name of the local government agency and contact information;
- ii. A project summary, including consistency with program priorities defined in the notice of grant availability and the benefit in terms of greenhouse gas emissions reduction and/or reduction in energy demand to be derived from the project; and
- iii. The total grant amount requested.

(b) The Department will review a project proposed in a preliminary application of interest for its consistency with the eligibility requirements of the Local Government Greenhouse Gas Reduction Program, as identified in the notice of grant availability issued pursuant to N.J.A.C. 7:27D-4.2

(c) The Department will notify in writing each local government agency whose preliminary application of interest is determined to meet the grant eligibility requirements, and invite such local government agency to submit an application in accordance with N.J.A.C. 7:27D-4.5.

(d) The Department's determination that a preliminary application of interest meets the grant eligibility requirements shall not affect or bind the Department's evaluation of a grant application or the award of any grant pursuant to N.J.A.C. 7:27D-4.7 and 4.8.

#### **N.J.A.C. 7:27D-4.5 Application procedure**

- (a) Each application for funding from the Local Government Greenhouse Gas Assistance Program shall be submitted to the Department on a form provided by the Department within the time period set forth in the notice of grant availability issued in accordance with N.J.A.C. 7:27D-4.2, and shall include full and complete documentation.



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(b) Applications that are incomplete or do not otherwise comply with this section will not be considered, and the applicant will be so advised.

(c) A complete application shall include the following:

1. Identification of the local government agency, including address and contact information;
2. The total grant amount requested;
3. A detailed description of the project for which grant funding is sought, including:
  - i. The project title;
  - ii. A statement of project objectives;
  - iii. Project, scope of work, schedule of activities, outputs and outcomes;
  - iv. Proposed contractor and qualifications, including prior experience with the proposed project or program area;
  - v. A proposed budget, including personnel, operational and contractual costs; and
  - vi. A description of how the proposed project relates to any larger or similar effort being undertaken by the local government agency and any other funding being allocated to carry out the proposed project;
4. A demonstration of measurability in accordance with N.J.A.C. 7:27D-2.4;
5. An identification of all permits and approvals required for completion of the project, and anticipated dates that the permits and approvals will be obtained;
6. Whether the proposed project will result in the creation of jobs and, if so, a description of and estimate of the number of jobs;
7. Whether the project can be replicated by another local government agency;

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8. A description of any educational value the project may offer;
9. A resolution passed by the governing body authorized by law to make expenditures and authorize the execution of contracts for the local government agency. If more than one local government agency is applying for funding through a single application, a resolution is required on behalf of each; and
10. Such other information as the local government agency would like the Department to consider in reviewing its application.

(d) A local government agency's application for funding under this section constitutes the local government agency's agreement to abide by the terms and conditions of the grant agreement.

(e) The application shall be submitted to the following address:

Department of Environmental Protection  
Office of Planning and Sustainable Communities  
PO Box 402  
401 East State Street  
Trenton, NJ 08625

#### **N.J.A.C. 7:27D-4.6 Use and disclosure of information**

Preliminary applications of interest, grant applications, and other submittals in accordance with this subchapter, when received by the Department, constitute government records of the Department. The Department shall make such records available to persons who request them, to the extent required by New Jersey law.

#### **N.J.A.C. 7:27D-4.7 Evaluation of grant application**

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(a) The Department shall notify the local government agency that the Department has received the grant application and is evaluating it pursuant to this section. Each grant application shall be subject to:

1. Administrative review to determine the completeness of the grant application. Grant applications determined to be administratively incomplete will be rejected, no further review will be conducted, and the submitting local government agency will be notified in writing of the rejection.
2. Program and technical evaluation in accordance with the criteria of N.J.A.C. 7:27D-2.2 and 2.3.
3. Budget evaluation to determine whether the proposed project or program costs are allowable.

(b) At any time during the evaluation process, except during the review for completeness of a grant application in accordance with N.J.A.C. 7:27D-4.7(a)1, the Department may request that the local government agency furnish documents or information as necessary to determine the compliance of the application with the requirements of this chapter. The Department may suspend its evaluation until such additional information or documents are received.

#### **N.J.A.C. 7:27D-4.8 Grant award**

(a) After review and evaluation of an application, the Department shall notify the local government agency in writing as to its determination regarding the application for grant funding.

(b) If a local government agency is not awarded a grant, it may resubmit its application, with or without modification, as a new application in response to a subsequent notice of grant availability issued in accordance with N.J.A.C. 7:27D-4.2.

#### **N.J.A.C. 7:27D-4.9 Execution of grant agreement**

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- (a) Upon execution of the grant agreement by the Department, the Department shall transmit the grant agreement (certified mail, return receipt requested) to the local government agency for execution.
- (b) Within 30 calendar days after it receives the grant agreement from the Department, the local government agency shall execute the grant agreement and return it to the Department at the address set forth at N.J.A.C. 7:27D-4.5(e) so that the Department receives the fully executed agreement within the 30 calendar day period.
- (c) The Department may allow an additional period of time for the local government agency to return the grant agreement, not to exceed 30 days, on the written request of the local government agency, setting forth how much additional time is required, and the reason therefor. The request must be received by the Department at the address set forth at N.J.A.C. 7:27D-4.5(e) before the expiration of the initial 30 calendar day period, set forth at (b) above.
- (d) The individual identified in N.J.A.C. 7:27D-4.5(c)9 shall execute the following certification, as part of the grant agreement, on behalf of the local government agency.

“I, (name), (title), certify that I am authorized to make this certification on behalf of (local government agency). I further certify that (local government agency):

1. Is in compliance with all requirements and conditions of the within grant agreement;
2. Is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions; and
3. Has not and will not enter into any contract with, nor has any subcontract been or will be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1D-2 for any services within the scope of the grant agreement.

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I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete.”

**N.J.A.C. 7:27D-4.10 Reporting requirements**

(a) Each local government agency that is awarded a grant shall submit to the Department in accordance with the schedule set forth in the grant agreement:

1. Progress reports describing project implementation progress;
2. A final report describing project implementation success and actual or expected greenhouse gas reductions resulting from project completion; and
3. Financial reports describing and justifying project expenditures relative to the approved project budget.

**N.J.A.C. 7:27D-4.11 Grant conditions**

(a) The following requirements are conditions of each grant payment under each grant agreement.

1. The local government agency shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
2. The local government agency shall comply with the Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22).
3. The local government agency shall comply with the Civil Rights Act of 1964 (P.L. 88-352) as well as the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), as amended.
4. The local government agency shall comply with all pertinent requirements of Federal, State and local environmental laws.

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5. The local government agency shall comply with any special conditions in the grant agreement or any amendment thereto necessary to ensure accomplishment of the project or Department objectives as set forth in the notice of grant availability.
6. No State funds shall be disbursed to a local government agency that has defaulted on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation the Department may, at its discretion, make a grant payment where the State agency responsible for administering the loan in default simultaneously receives from the local government agency an amount in repayment of the defaulted loan obligation at least equal to the grant payment. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such past loan.