

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF LOCAL GOVERNMENT SERVICES LOCAL FINANCE BOARD

#### Reporting Requirements for Long-Term Tax Exemption Projects

#### Adopted New Rule: N.J.A.C. 5:30-8.8

Proposed: August 18, 2008 as 40 N.J.R. 4656(a).

Adopted: August 17, 2009 by Local Finance Board, Susan Jacobucci, Chair.

Filed: August 18, 2009 as R.2009 d.279, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 40A:20-20 and 52:27BB-10.

Effective Date: September 21, 2009.

Expiration Date: March 23, 2014.

#### Summary of Public Comment and Agency Response:

**COMMENT:** The Local Finance Board received written comments from William G. Dressel, Jr., Executive Director of the New Jersey State League of Municipalities. Mr. Dressel observed that while the proposed reporting is a worthy concept, he posited that "the gathering of this information would take personnel away from their daily jobs, particularly during the already busy budget season. . . If the state is mandating these extra requirements, funding must be provided for the increased municipal expense created by them."

**RESPONSE:** The Board noted Mr. Dressel's concerns and observed that while there may be some extra work that goes into preparing the Annual Financial Statement, the preparer will be provided an electronic spreadsheet to assist in the disclosure of the information. There should be little work to be done to prepare the schedule as the information already exists in other forms. The work should be able to be prepared by existing staff without additional expense.

#### Federal Standards Statement

A Federal standards analysis is not required because the new rule is not subject to any Federal requirements or standards.

**Full text** of the adoption follows (addition to proposal indicated in boldface with asterisks \*thus\*; deletion from proposal indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 8. FINANCIAL ADMINISTRATION

5:30-8.8 Reporting requirements for long-term tax exemption projects

(a) The annual financial statement required for municipalities by the Director pursuant to N.J.S.A. 40A:5-12 shall include a schedule of "Long-Term Tax Exemption Projects." The schedule shall be subject to audit as part of the annual audit of the municipality performed pursuant to N.J.S.A. 40A:5-4. The Director may require the schedule to be prepared and submitted on a computerized spreadsheet or through other computerized form or structure as the Director may specify, as well as, or in lieu of, a printed form.

(b) For each long-term tax exemption project, the schedule shall include the following information:

1. The name of the project;
2. The type of project;
3. An indication of whether the project is located in an approved redevelopment area;
4. An indication if the project is pursuant to an approved redevelopment plan;

5. The taxable value of the project;
  6. The date of the financial agreement, date when the tax exemption commenced and the date when the exemption is scheduled to end;
  7. The statutory basis for the exemption;
  8. The basis for the calculation of the payment in lieu of taxation calculation;
  9. For the fiscal year payment obligation represented by the Annual Financial Statement:
    - i. The full payment due under the agreement;
    - ii. The amount paid by the entity responsible for making the payment;
    - iii. The amounts, if any, paid to entities other than the municipality (that is, county, school district);
    - iv. For projects financed through Redevelopment Area Bonds or Revenue Allocation District bonds, the amount of payments pledged for debt service, any unpledged amount received by the municipality, amounts, if any, paid to entities other than the municipality, and any amount paid by the municipality from a debt reserve fund or remitted through a guarantee;
    - v. The net amount received by the municipality; and
    - vi. If no payment was required, the payment was not made, or a reduced payment was made, an explanation of the circumstances;
  10. For such projects, indication if the required annual audit report was received from the urban renewal entity; and
  11. Any other such information as the Director may determine necessary for a given project.
- (c) The payment schedule of any project approved after \*[(the effective date of this new rule),]\* **\*September 21, 2009\*** shall be submitted to the Division of Local Government Services, pursuant to the filing requirements set forth at N.J.S.A. 40A:5-12.
- (d) For the purpose of this section, the term "project" means:
1. Any work or undertaking, as defined in the Long-Term Tax Exemption Law at N.J.S.A. 40A:20-3e, for which a tax exemption has been conveyed subject to a financial agreement between a municipality and an urban renewal entity;
  2. A housing project financed by the New Jersey Housing and Mortgage Finance Agency, pursuant to N.J.S.A. 55:14K-37;
  3. Any work or undertaking involving the remediation of a "qualified real property" and the reuse of such properties for commercial, residential or other productive purposes, pursuant to the Environmental Opportunity Zone Act, N.J.S.A. 54:3-150 et seq.; or
  4. Any work or undertaking as defined in the Redevelopment Area Bond Financing Law at N.J.S.A. 40A:12A-64, or Revenue Allocation District Financing Act at N.J.S.A. 52:27D-459 for which the municipality has entered into a financial agreement involving a payment in lieu of taxes or special assessment that is financed under those statutes.

### (b)

#### STATE PLANNING COMMISSION

#### State Planning Rules

**Adopted Amendments: N.J.A.C. 5:85-1.4, 1.7 and 7**

**Adopted Repeal and New Rule: N.J.A.C. 5:85-7.12**

**Adopted Recodification with Amendments: N.J.A.C. 5:85-7.9 as 7.6**

**Adopted Repeal: N.J.A.C. 5:85-7 Appendix**

Proposed: April 20, 2009 at 41 N.J.R. 1551(a).

Adopted: August 26, 2009 by the State Planning Commission, Donna Rendeiro.

Filed: August 27, 2009 as R.2009 d.286, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:18A-203.

Effective Date: September 21, 2009.

Expiration Date: August 21, 2013.

The State Planning Commission (Commission) is adopting amendments to the State Planning Rules on plan endorsement at N.J.A.C. 5:85-7. In addition, related amendments are being adopted on rules regarding: definitions at N.J.A.C. 5:85-1.4; public participation at N.J.A.C. 5:85-1.6; public notice at N.J.A.C. 5:85-1.7; and N.J.A.C. 5:85-7 Appendix. The notice of proposal was published on April 20, 2009. The comment period closed on June 19, 2009.

#### Summary of Public Comments and Commission Responses:

The timely submitted comments and agency responses are as follows:

1. Donald M. McCloskey, Director Environmental Strategy and Policy—PSE&G Services Corporation (PSE&G)

COMMENT: The commenter supports the language correction at N.J.A.C. 5:85-7.21(e) to remove the newly added reference to cores and nodes in the expiration provision and revert to the language of the 2004 version of the rule in which the expiration provision was applicable to designated centers only. PSE&G supports this change and agrees with the Commission that this section as currently written is incorrect as adopted on April 20, 2009.

RESPONSE: The Commission agrees that the correction to revert to original language was necessary to reflect expiration of centers but not cores and nodes. In particular, on July 24, 2002, the Commission designated the PSE&G Artificial Island Energy Facility in Lower Alloways Creek Township, Salem County, as a Heavy Industrial-Utility-Transportation Node. The relevant rules relating to expiration of designations that occurred after January 7, 2002, did not assign expiration dates to nodes or cores—only centers.

2. Joanne Harkins, PP, AICP, Vice President of Regulatory Affairs—New Jersey Builders Association

COMMENT: The commenter reiterated comments raised in connection with the original rule proposal adopted in the April 20, 2009 New Jersey Register, noting that “local government has not had the resources to go thorough the plan endorsement process” and “the State agencies, including the Office of Smart Growth, have not had the budget and staffing needed to review more than two dozen plans a year.” The commenter observes economic conditions have declined since the original publication date and repeats its prior recommendation that the Commission abandon the process, as well as the amendment in the current notice of proposal. It recommends the Commission evaluate alternatives that are not so resource dependant.

RESPONSE: The Commission respectfully requests the commenter review the original response to this comment as published in the April 20, 2009 New Jersey Register. In addition, the Commission will continue to urge State agency partners that have grant funding available for local planning efforts to provide financial support for municipalities seeking plan endorsement.

#### Summary of Agency-Initiated Changes:

##### Global Revisions Regarding Relevant Planning Entity

The Commission is conforming language to be consistent throughout the rules to add an additional generic planning entity (“relevant planning entity”) as one authorized to pursue plan endorsement. The rule as adopted includes this term at N.J.A.C. 5:85-1.4, 7.8(a)3, 7.9(d)2 and 7.15.

##### N.J.A.C. 5:85-1.7 Public Notice Requirements, Form, Content and Timing

The Commission is adding an omitted cross reference to N.J.A.C. 5:85-1.7(b). Public notice requirements for the State Planning Commission or the Executive Director pursuant to N.J.A.C. 5:85-8 is being added to the listing of events for which this requirement applies to reflect reference to it in N.J.A.C. 5:85-8.3 regarding necessary notice for map changes.

The Commission is adding an omitted cross reference to N.J.A.C. 5:85-1.7(h). Public notice requirements for the State Planning

Commission or the Executive Director pursuant to N.J.A.C. 5:85-7 is being added to the listing of sections to which this requirement applies to reflect reference to it in N.J.A.C. 5:85-7.23(a)4 regarding notice for issuing a monitoring report. In addition, the Commission is adding to the listing of events to which this requirement applies the omitted item of that section, namely for “the issuance of the Executive Director’s monitoring report pursuant to N.J.A.C. 5:85-7.23.”

The Commission is conforming language in paragraph (e)6, regarding public notice required to be given by a negotiating entity pursuant to N.J.A.C. 5:85-3 or 4 when the negotiating entity is not a county, by replacing the phrase “for which plan endorsement is being sought” with “for which the negotiating entity is conducting cross-acceptance” in order to properly reflect the notice is in regard to cross-acceptance, which is discussed in Subchapters 3 and 4 and not plan endorsement, which is covered in Subchapter 7.

##### N.J.A.C. 5:85-7.3 Applicability

The Commission is clarifying the description in N.J.A.C. 5:85-7.3(a)4 regarding the applicability of regional plans for which a petitioner intends to amend the State Plan Policy Map by adding that each affected municipality must “individually” petition for plan endorsement in this case.

##### N.J.A.C. 5:85-7.8 Advisory Committee Appointment and Membership

The Commission is correcting the description in N.J.A.C. 5:85-7.8(a)3 to remove reference to a “Class IV” member of a relevant board of chosen freeholders because there are no such members. That classification refers to municipal planning board members and is not a proper description of members of the board of chosen freeholders.

##### N.J.A.C. 5:85-7.16 Certificate of Eligibility

The Commission is correcting a cross reference in N.J.A.C. 5:85-7.16 regarding a fully executed Memorandum of Understanding (MOU) to delete reference to N.J.A.C. 5:85-7.14(b) as this section does not apply to a fully executed MOU.

##### N.J.A.C. 5:85-7.18 Recommendation Report, Review of Petition, and Direct Petition

The Commission is correcting a cross reference in N.J.A.C. 5:85-7.18(d)2 regarding a draft MOU to replace reference to N.J.A.C. 5:85-7.15, which refers to a fully executed MOU, with proper reference to N.J.A.C. 5:85-7.14, which applies to the draft MOU.

##### N.J.A.C. 5:85-7.19 Plan Endorsement by State Planning Commission

The Commission is conforming language in N.J.A.C. 5:85-7.19 by replacing the term “subcommittee report” with “recommendation report” to conform language regarding the report referenced in N.J.A.C. 5:85-7.14.

##### Federal Standards Statement

No Federal standards analysis is required because the State Planning Rules are authorized by the State Planning Act, N.J.S.A. 52:18A-203 and are not subject to any Federal requirements or standards.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 5:85-1.4 Definitions

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

... “Critical environmental site” (CES) means an area generally greater than two acres and less than a square mile depicted on the State Plan Policy Map, which includes one or more critical environmentally sensitive features located either outside of a planning area classified as environmentally sensitive by the State Development and Redevelopment Plan or within designated centers located within such planning areas.

... “Petitioner” means a municipality, county,\* \*[or]\* regional \*or other relevant\* planning entity, or any grouping thereof, seeking plan

endorsement or an amendment to an endorsed plan pursuant to N.J.A.C. 5:85-7 or an entity other than a municipality, county or regional planning entity or any group thereof seeking an amendment to the State Plan Policy Map for an area that is not subject of an endorsed plan pursuant to N.J.A.C. 5:85-8.

“Plan endorsement process” or “plan endorsement” or “endorsement” means the process undertaken by a municipality, county,\* \*or\* regional \*or other relevant\* planning entity or any grouping thereof, to petition the State Planning Commission for a determination of consistency of the submitted plan with the State Development and Redevelopment Plan and wherein upon successful completion of requirements outlined in an Action Plan and Memorandum of Understanding, the State Planning Commission shall make a determination that the submitted plan is consistent with the State Development and Redevelopment Plan, taking into account pertinent State agency statutes, rules, regulations, policies, and programs, and approve a petition for plan endorsement, wherein said plan shall then be considered endorsed.

“Urban complex” means an Urban Center and two or more municipalities within the surrounding Metropolitan Planning Area that exhibit a strong inter-municipal relationship, based on socio-economic factors and public facilities and services, that is defined, integrated and coordinated through a Strategic Revitalization Plan. Urban complexes are nominated jointly by a county or counties and the affected municipalities and are coterminous with municipal boundaries but not necessarily with county boundaries.

#### 5:85-1.7 Public notice requirements, form, content and timing

(a) (No change.)

(b) Public notice requirements for the State Planning Commission or the Executive Director pursuant to N.J.A.C. 5:85-3, 4\*, \*and\* 7 \*and\* 8\* are as follows:

1.-3. (No change.)

(c) (No change.)

(d) Public notice requirements for a municipality or county pursuant to N.J.A.C. 5:85-3 and 4 are as follows:

1.-2. (No change.)

3. In addition, all public notice of meetings or hearings shall be further provided as follows:

i.-iv. (No change.)

v. Municipalities shall provide written notice to the municipal clerk to disseminate to the municipal planning board, board of education, environmental commission, if any, and each authority, board, commission, committee and department involved in economic development, land use, infrastructure or resource protection in that municipalities; and

vi. Counties shall provide written notice to the county clerk to disseminate to the county planning board and each authority, board, commission, and department involved in economic development, land use, infrastructure or resource protection in that county and to the mayor, governing body, clerk and planning board of each municipality in that county.

(e) All public notices required to be given by a negotiating entity pursuant to N.J.A.C. 5:85-3 or 4 shall be provided as follows when the negotiating entity is not a county:

1.-5. (No change.)

6. By providing written notice to the mayor, governing body, clerk and planning board, environmental commission, if any and each authority, board, commission, committee and department involved in economic development, land use, infrastructure or resource protection in the municipality for which \*plan endorsement is being sought\* **the negotiating entity is conducting cross-acceptance\***; and

7. (No change.)

(f) Public notice requirements for a petitioner for a plan endorsement pursuant to N.J.A.C. 5:85-7 are as follows:

1. All meetings shall satisfy notice requirements of the Open Public Meeting Act, N.J.S.A. 10:4-6 et seq.;

2. All hearings shall satisfy timing and content requirements as provided for in (j) below;

3. All visioning workshops conducted pursuant to N.J.A.C. 5:85-7.11 shall be noticed at least 10 days in advance using the methods described in N.J.A.C. 5:85-7.11(a);

4. (No change in text.)

5. Additional public notice to local governmental entities and neighboring municipalities or counties shall be performed as follows:

i. (No change.)

ii. For county, regional and special resource area petitioners, by written notice to the board of chosen freeholders, county executive or administrator, if any, and county planning board and to the county clerk of any county that adjoins the county, region or special resource area for dissemination to the mayor, governing body and each authority, board, commission and department involved in economic development, land use, infrastructure or resource protection in that county; and

6. (No change in text.)

(g) (No change.)

(h) Within five days of the Office of Smart Growth being informed that notice has been provided pursuant to (d) through (g) above; receiving a completed petition pursuant to N.J.A.C. 5:85-7 or\* 8; **the issuance of the Executive Director's monitoring report pursuant to N.J.A.C. 5:85-7.23,\*** or the issuance of the Executive Director's report on a petition submitted pursuant to N.J.A.C. 5:85-8, the Office of Smart Growth shall:

1.-3. (No change.)

(i) (No change.)

(j) All public notice of hearings provided pursuant to (b) and (d) through (g) above shall be provided at least 10 days in advance of the hearings and shall provide the time, date, location, and purpose of the hearing. The public notice shall also specify that formal action may be taken and the public can comment orally at the hearing or submit written comments within a specified time period.

#### SUBCHAPTER 7. PLAN ENDORSEMENT

##### 5:85-7.2 Purpose and scope

(a) The purpose of this subchapter is to delineate procedural and substantive requirements of plan endorsement, including minimum submission requirements petitioner must meet in order to achieve plan endorsement and qualify for associated benefits; responsibilities of relevant State agencies in participating in plan endorsement; and responsibilities of the Office of Smart Growth in administering the plan endorsement process. The Office of Smart Growth shall prepare Guidelines for petitioners seeking to pursue plan endorsement. The Guidelines shall be posted on the Office of Smart Growth website at: <http://www.njsmartgrowth.com> and shall be periodically updated.

(b)-(c) (No change.)

(d) State agencies shall provide State agency benefits upon an approval of plan endorsement as described in the document entitled “Plan Endorsement Benefits” and posted on the Office of Smart Growth website at: <http://www.njsmartgrowth.com>. Additional State agency benefits, as appropriate and feasible, shall be added to said document as they become available.

(e) (No change.)

##### 5:85-7.3 Applicability

(a) Plans to which this subchapter applies and that may be considered for plan endorsement are:

1.-2. (No change.)

3. Regional plans for any \*[region]\* **\*regional\*** planning entity regarding a regional planning theme not associated with an intention to amend the State Plan Policy Map\*[\*]\*\*;

4. Regional plans for two or more municipalities sharing a common regional planning theme relating to an intention to amend the State \*[Planning]\* **\*Plan\*** Policy Map, provided that each affected municipality **\*individually\*** petition for plan endorsement. Municipalities within regions that submit regional plans shall only qualify for State agency benefits associated with plan endorsement upon receiving plan endorsement of said municipality. Regional and municipal plan endorsement may be pursued concurrently;

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Recodify existing 4.-6. as 5.-7. (No change in text.)

(b) (No change.)

5:85-7.4 Posting and New Jersey Register publication requirements for the Office of Smart Growth

(a) (No change.)

(b) Within 45 day of a State Planning Commission decision on a petition for plan endorsement pursuant to N.J.A.C. 5:85-7.19, a decision on revocation of a plan endorsement or of a previously designated center pursuant to N.J.A.C. 5:85-7.23 or a petition to amend pursuant to N.J.A.C. 5:85-7.24, the Office of Smart Growth shall publish notice of the decision in the New Jersey Register.

5:85-7.5 State agency responsibilities

(a) (No change.)

(b) Each State agency member of the State Planning Commission, and any other relevant State agency or authority, at the request of the State Planning Commission or the Executive Director, shall prepare a list of State agency benefits available for endorsed plans that shall be designed to encourage participation in plan endorsement, promote implementation of an endorsed plan and promote the policies and goals of the State Development and Redevelopment Plan. These benefits shall be made available only in an area that is the subject of a petition for plan endorsement, provided that the plan has been endorsed by the State Planning Commission. Each list of benefits, funding grants or other programs shall specify:

1. (No change.)

2. The information that must be included in the petition, the actions that must be taken by petitioner as delineated in an action plan or planning and implementation agreement in order for each such benefit to be made available; and

3. (No change.)

(c) (No change.)

(d) Each State agency member of the Commission, and any other relevant State agency or authority, at the request of the Commission or the Executive Director, shall share the following responsibilities:

1.-3. (No change.)

4. Make reasonable recommendations to the petitioner and the Commission concerning requirements for a petitioner to receive plan endorsement and how to adequately implement the plan, once endorsed, by developing reasonable and appropriate planning implementation strategies for inclusion in a planning and implementation agreement to achieve consistency with the goals, policies and strategies of the State Plan; and

5. (No change.)

(e) The Office of Smart Growth has prepared a list of available State agency benefits entitled "Plan Endorsement Benefits," which was approved by the State Planning Commission on October 17, 2007 and is presently posted on the Office of Smart Growth website at: <http://www.njsmartgrowth.com>. The Office of Smart Growth shall, on an ongoing basis, compile and maintain an updated list of all State agency benefits and requirements and make the list available to prospective petitioners and post the updated list on the Office of Smart Growth website.

5:85-7.6 Waivers

(a) Any of the requirements of plan endorsement, pursuant to N.J.A.C. 5:85-7.8, 7.9 and 7.11 may be partially or fully waived at the discretion of the Executive Director in consultation with the relevant State agencies.

(b) A waiver may be granted pursuant to (a) above, provided the Executive Director determines that a petitioner has previously satisfactorily completed the requirement, or has substantially complied with the intent of the requirement. The determination will be based on a consideration of whether standards for plan endorsement as delineated in this subchapter and, if appropriate, whether additional relevant requirements based on guidance provided by the Office of Smart Growth in plan endorsement guidelines and related guidance documents and as agreed upon between the Office of Smart Growth and petitioner, have been met.

(c) (No change.)

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(d) Within 30 days of receipt of a request for a waiver pursuant to (c) above, the Executive Director shall determine whether the waiver is justified and notify the petitioner in writing of such determination.

(e) (No change.)

(f) Any of the requirements of plan endorsement, other than N.J.A.C. 5:85-7.8, 7.9 and 7.11 may be waived at the discretion of the State Planning Commission, based on a written request by petitioner and a written recommendation by the Executive Director in consultation with any relevant State agencies. The recommendation shall be based on a determination of whether intended comprehensive planning goals have been achieved using alternative implementation mechanisms or whether a requirement of plan endorsement is determined to be inappropriate or unnecessary to achieve intended comprehensive planning goals, based on a petitioner's unique circumstances.

5:85-7.7 Pre-petition submission requirements, scheduling and meeting

(a) A prospective municipal petitioner may request a meeting with the Office of Smart Growth when considering whether to petition for plan endorsement and is required to make the request in writing in order to initiate plan endorsement. Submission requirements for the request include one electronic and one hard color copy of the following:

1. A cover letter from the mayor to the Office of Smart Growth requesting a pre-petition meeting and stating the goals and intent of the prospective petitioner in seeking plan endorsement;

2. All planning documents, as delineated in N.J.A.C. 5:85-7.13(d), to the extent that they already exist; and

3. (No change.)

(b) (No change.)

(c) The Office of Smart Growth, members of relevant State agencies, and representatives for the petitioner, including at least one elected official, shall attend a pre-petition meeting to discuss the plan endorsement process, goals and intent of a prospective petitioner in seeking plan endorsement, and the preliminary findings of State agency review of submitted planning documents.

(d) A petitioner shall submit its Self-Assessment Report within one year of a pre-petition meeting or the petition shall be considered to be withdrawn without prejudice and petitioner shall be informed in writing of the status of the petition.

5:85-7.8 Advisory committee appointment and membership

(a) Petitioner shall appoint an advisory committee to guide the plan endorsement process, serve as liaison with the State, county, regional agencies and local\*[s]\* officials throughout the process and increase public awareness of and participation in the plan endorsement process. Appointments shall be made in accord with any relevant local government ethics law and be designed to avoid any appearance of impropriety.

1. For a municipal petitioner or a neighborhood petitioner, the advisory committee shall be appointed by the mayor with the advice and consent of the governing body, at a public meeting for which adequate notice has been provided. The appointment shall take effect by approval of a resolution of the governing body. The advisory committee shall consist of between five and 10 people including at least one representative of the governing body, of which the mayor is considered a member, for this purpose, at least one Class IV member of the planning board, at least one member of another local board, commission or committee, and at least two representatives of the public who reside within the jurisdiction of the petitioner and are not elected or appointed to any public position within said jurisdiction.

2. For a county petitioner, the advisory committee shall be appointed by the board of chosen freeholders at a public meeting for which adequate notice has been provided and the appointment shall take effect by approval of a resolution of the board of chosen freeholders. The advisory committee shall consist of between five and 10 people including at least one representative of the board of chosen freeholders; at least one member of the county planning board, at least one member of another countywide board, commission or committee, and at least two representatives of the public who reside within the jurisdiction of the petitioner and are not elected or appointed to any public position within said jurisdiction.

3. For a special resource area petitioner, the advisory committee shall be appointed by the relevant planning entity or by the governing body of each affected municipality, depending on the nature of the area, at a public meeting for which adequate notice has been provided. The appointment shall take effect upon approval of a resolution of the relevant planning entity. The advisory committee shall consist of between five and 10 members, including at least one member of a relevant planning entity, at least one *\*[Class IV]\** member of a relevant board of chosen freeholders, one member of a relevant county planning board, at least two representatives of the public who reside within the area and are not elected or appointed to any public position within said area and at least one additional elected official, such that each political jurisdiction in the area is represented by an elected official at either the local, county or regional level. Membership in the advisory committee shall be subject to the approval of the Executive Director. The public members may not hold an appointed or elected position within the municipality or be employed by said *\*[regional]\* \*relevant\** planning entity.

**5:85-7.9 Self-Assessment Report, form, content, adoption and submission requirements**

(a) Petitioner shall prepare a Self-Assessment Report. Municipal petitioners may use the document entitled "Municipal Template Report," as posted on the Office of Smart Growth website as a template for the report. The municipal self-assessment report shall include, as a minimum:

1.-2. (No change.)

3. Any requests for mapping amendments to the State Plan, such as planning areas and centers, in digital GIS format;

4. (No change.)

5. Any requests for waivers pursuant to N.J.A.C. 5:85-7.6(a), including a justification for same;

6. A list of benefits petitioner seeks as a result of plan endorsement;

7. For petitioners representing a county, specific reference shall be made to identify and evaluate countywide efforts to provide for efficient use of natural and capital resources and to address planning for conditions for which a map change was requested in the latest round of cross acceptance;

8. For petitioners representing a special resource area, specific reference shall be made to identify and evaluate planning efforts made specifically to provide for protection of the special resource area; and

9. Data on square footage of commercial properties, number of households, acreage of vacant lands per municipal tax assessment, GIS parcels, and any other pertinent data mapping, to the extent that these files exist, to ensure accurate mapping of centers and other features.

(b) Petitioner shall hold a public meeting in which the advisory committee presents the findings and conclusions of the Self-Assessment Report to the relevant governing body or *\*[regional]\** planning entity.

(c) Petitioner shall consider a resolution to pursue plan endorsement and authorize submission of the Self-Assessment Report to the Office of Smart Growth at a public meeting of the relevant governing body or *\*[regional]\** planning entity.

(d) Submission of the Self-Assessment Report to the Office of Smart Growth as part of a petition for plan endorsement shall include the following:

1. Proof of public notice pursuant to N.J.A.C. 5:85-1.7(f) for all required public meetings in the form of an affidavit of publication;

2. A certified resolution from the governing body, or the *\*[regional]\* \*relevant\** planning entity for a regional plan or special resource area plan, approving the Self-Assessment Report; and

3. (No change.)

**5:85-7.10 State agency Opportunities and Constraints Assessment and Report**

(a) (No change.)

(b) Within 45 days of receipt of the complete Self-Assessment Report, the Office of Smart Growth shall include the assessments provided by the relevant State agencies in an Opportunities and Constraints Report to the petitioner, summarizing the findings and conclusions of the opportunities and constraints assessment.

(c) The Opportunities and Constraints Report shall be used to inform the visioning process, described in N.J.A.C. 5:85-7.11 of existing

conditions, and State agency assessment of planning related issues arising from these conditions.

(d) (No change.)

**5:85-7.11 Community visioning process, vision statement development and adoption, and submission requirements**

(a) Petitioner shall perform a community visioning process designed to maximize involvement of the community and structured so as to encourage consensus. Petitioner shall meet minimum requirements for conducting visioning sessions as set forth below and any additional agreed upon standards from plan endorsement guidelines and related support materials which may be called for depending on individual circumstances. Community visioning shall engage the public in many ways through a variety of tools. Each step in which the public is invited to participate shall be widely promoted using each of the following promotional efforts, if available: notice on the official municipal, county or regional entity website; notice on locally broadcast cable TV station(s); articles in local newspapers and written materials posted in municipal buildings, schools and local businesses; and by notice to the Office of Smart Growth. Findings of the visioning process shall be used to develop a vision statement for inclusion in the master plan. Minimum requirements for conducting a visioning process include:

1. At least three facilitated workshops consisting of interactive discussions with residents and other community stakeholders to identify the community's purpose, core values, and vision for a 20-year horizon. The workshops shall be noticed in a legal advertisement, which satisfies the requirements at N.J.A.C. 5:85-1.7(j). At these workshops, a variety of materials relating to the community, such as maps, photos and resource inventories, shall be made available for review and discussion. The advisory committee shall provide further notice of the workshops according to N.J.A.C. 5:85-1.7(f)3, and shall provide the following additional notice, to the extent available, at least 10 days in advance of the workshops: issuing a press release to local newspapers promoting the workshops, posting notice of the workshops on the official municipal website and posting notice of the workshops in a conspicuous public place; and

2. At least two public hearings during the course of the visioning process in which a preliminary vision statement is vetted and discussed. The advisory committee shall, at least 10 days in advance of said public hearings, issue a press release to local newspapers promoting the workshops, and post notice of the workshops on the official municipal website, if available and in a conspicuous public place. The vision statement may be adopted as a part of the master plan. In this case, the hearings for such adoption shall be consistent with N.J.S.A. 40:55D-1 et seq., regarding adoption, revision or amendment of a master plan.

(b)-(c) (No change.)

(d) Submission of the vision statement to the Office of Smart Growth as part of a petition for plan endorsement, which shall include the following:

1. Proof of public notice pursuant to N.J.A.C. 5:85-1.7(f) for all required public meetings and hearings in the form of an affidavit of publication;

2. A certified resolution from the governing body approving submission of the vision statement to the Office of Smart Growth;

3. (No change.)

4. A copy of the summary report;

5. Copies of the meeting minutes of each public meeting and hearing at which the community vision was developed, reviewed and adopted. The minutes shall include a summary of public comments and copies of written comments filed before or during the public meeting or hearing; and

6. A copy of the vision statement.

**5:85-7.12 Commencement of consistency review**

Upon receipt of all items submitted pursuant to N.J.A.C. 5:85-7.7, 7.8, 7.9 and 7.11(d) and any other plan implementation mechanisms identified by State agencies to be evaluated as requirements for consistency, pursuant to N.J.A.C. 5:85-7.5(d)3, the Executive Director shall commence the consistency review, post notice of receipt of required submissions and the commencement of review pursuant to N.J.A.C. 5:85-7.4 and send copies of the plan and supporting documents to the State

agencies represented on the State Planning Commission and any other relevant State or Federal agency.

#### 5:85-7.13 Consistency review

(a) Within 45 days of receipt of items submitted pursuant to N.J.A.C. 5:85-7.12, relevant Federal, State and regional agencies shall provide comments regarding consistency of the petition to the Executive Director.

(b) Within 90 days of receipt of items submitted pursuant to N.J.A.C. 5:85-7.12, the Office of Smart Growth, in consultation with the relevant Federal, State and regional agencies, shall conduct a review of the plan for consistency with the goals, policies and strategies of the State Plan.

(c) In conducting the consistency review, consideration will be given to the ability of the submitted plan to achieve the targets and indicators contained in the State Plan that are applicable to the petitioner; the extent to which the activities listed to be undertaken in each planning area can or will achieve consistency with the State Plan goals and implement Statewide sound planning policies, taking into account relevant State agency policies, rules and regulations, and whether the plan is based on current information and data. Consistency will be evaluated based on all the provisions of the State Plan with particular emphasis on the following provisions:

#### 1.-8. (No change.)

(d) A consistent municipal plan shall contain the following:

1. The submissions required pursuant to N.J.A.C. 5:85-7.12;
2. The following mandatory planning documents:

- i. A sustainability statement;
  - ii. A land use element;
  - iii. A land use inventory or map;
  - iv. A zoning ordinance, schedule or map;
  - v. Documents detailing recent or upcoming developments;
  - vi. A circulation element;
  - vii. A municipal stormwater management plan and ordinance;
  - viii. A wastewater management plan;
  - ix. A housing element;
  - x. A petition for substantive certification filed with COAH or compliance with court-ordered housing;
  - xi. A draft fair share plan and implementing documents/ordinances;
  - xii. A community facilities plan, inventory and map;
  - xiii. A board of education five-year facilities plan;
  - xiv. An open space and recreation plan;
  - xv. A natural resource inventory;
  - xvi. A conservation plan and implementing ordinances;
  - xvii. Recycling Statement of Consistency;
  - xviii. A municipal recycling ordinance;
  - xix. A New Jersey State Police letter approving the local emergency operating plan; and
  - xx. A capital improvement program; and
3. The following conditional items, which may be required depending on local circumstances:
- i. A utility service plan;
  - ii. A flood control plan;
  - iii. A recreation and open space inventory;
  - iv. An economic development plan;
  - v. An agricultural retention plan/farmland preservation plan, agricultural advisory committee, right-to-farm ordinance, and implementation program;
  - vi. A historic and cultural resources inventory, historic preservation plan, and implementation documents and mechanisms;
  - vii. Incorporation of hazard mitigation measures into relevant planning documents;
  - viii. A sustainability element; and
  - ix. Any additional requirements that are agreed upon between petitioner and the Executive Director, in consultation with the relevant State agencies;

(e) During the consistency review period, the Office of Smart Growth, at the discretion of the Executive Director, may hold a public hearing in an appropriate jurisdiction to receive testimony on the petition. The Office of Smart Growth shall hold a public hearing in an appropriate jurisdiction to receive public comment on the petition if the Executive Director receives a written request for such a hearing within 10 days of posting notice pursuant to N.J.A.C. 5:85-7.12 from:

#### 1.-3. (No change.)

#### 5:85-7.14 Finding of consistency and recommendation report

(a) After receipt of items submitted pursuant to N.J.A.C. 5:85-7.12, the Executive Director shall make a determination as to whether or not a plan that is the subject of a petition for plan endorsement is consistent with the State Plan as described in N.J.A.C. 5:85-7.13 and the petitioner has fulfilled all requirements for plan endorsement as described in this chapter and relevant parts of the Plan Endorsement Guidelines. In the event the Executive Director determines the plan is consistent with the State Plan, then the Executive Director shall prepare a recommendation report to the Commission for its consideration, within 60 days of the conclusion of the 90-day consistency review period, containing detailed findings and conclusions to support the determination. The Executive Director may then issue a Certificate of Eligibility to petitioner pursuant to N.J.A.C. 5:85-7.16. The Commission shall then consider the petition pursuant to N.J.A.C. 5:85-7.19.

(b) If the Executive Director determines that additional action must be taken to complete the self-assessment, visioning or other action necessary to achieve consistency, the Executive Director shall, in consultation with the relevant State agencies and petitioner, develop a draft Memorandum of Understanding and draft Action Plan pursuant to this subchapter. The Action Plan may include designation of an interim center, including a map depicting same. The Executive Director shall submit the drafts to the Commission for its consideration at a public hearing and petitioner shall continue to pursue plan endorsement as described in further detail below.

#### 1.-3. (No change.)

#### 5:85-7.15 Action Plan and Memorandum of Understanding adoption, submission and completion

(a) Within 60 days of the State Planning Commission's execution of the Memorandum of Understanding pursuant to N.J.A.C. 5:85-7.14(b), or within a reasonable period of time as agreed to by the Executive Director, the petitioner shall authorize execution of the Memorandum of Understanding by resolution at a public hearing of the governing body, or the relevant planning entity for a regional, county or special resource area plan, to commit to complete the requirements identified in the Action Plan to achieve endorsement of the petitioner's plan.

1. Petitioner shall consider adoption of the Memorandum of Understanding and Action Plan at a public hearing of the relevant governing body or \*[regional]\* planning entity.

#### 2. (No change.)

3. Petitioner shall submit the fully executed Memorandum of Understanding to the Executive Director. Submission of the executed Memorandum of Understanding shall include the following:

- i. Proof of public notice pursuant to N.J.A.C. 5:85-1.7 for all required public meetings and hearings in the form of an affidavit of publication;
- ii. A certified resolution from the governing body, or the \*[regional]\* \*relevant\* planning entity for a regional plan or special resource area plan, approving execution of the Memorandum of Understanding;
- iii. A copy of the meeting minutes of each public meeting and hearing at which the Memorandum of Understanding and Action Plan were reviewed. The minutes shall include a summary of public comments and copies of written comments filed before or during the public hearing(s); and

#### iv. (No change.)

(b) If petitioner fails to execute the Memorandum of Understanding to enter into the Action Plan with the State Planning Commission within 60 days of the Commission's execution of the Memorandum of Understanding, or within a reasonable period of time as agreed to by the Executive Director, in consultation with relevant State agencies, the petition will be considered to have been withdrawn without prejudice and the petitioner so notified. Notice of any such withdrawal shall be provided by the Office of Smart Growth to the petitioner, and the Commission pursuant to N.J.A.C. 5:85-1.7(h) and 7.4(b).

#### (c) (No change.)

(d) Interim centers shall remain designated for two years provided petitioner continues making progress in following the Action Plan. Interim centers may be revoked by the Commission in the event petitioner fails to satisfy action plan deadlines, based on a recommendation by the Executive Director, in consultation with relevant



State agencies. Boundaries of interim centers shall be used to define boundaries of designated centers and may only be amended if they are shown to be inconsistent with the State Plan as determined by the Commission.

#### 5:85-7.16 Certificate of Eligibility

(a) A Certificate of Eligibility for Plan Endorsement represents to the State the commitment of a municipality, county, or regional entity to adopt and implement a plan consistent with the State Plan and based on available resources and infrastructure. The Certificate of Eligibility qualifies a petitioner to State agency assistance in preparing and updating plans for endorsement and authorizes petitioner to pursue parallel planning efforts, including, but not limited to, seeking designation of areas in need of redevelopment that may be appropriate but are outside of smart growth areas pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). The Executive Director shall issue a Certificate of Eligibility as follows:

1. When a petitioner submits a consistent petition pursuant to N.J.A.C. 5:85-7.14(a);

2. In the event additional steps are needed to achieve consistency, within 10 days of receipt of a fully executed Memorandum of Understanding and Action Plan pursuant to N.J.A.C. 5:85-\*[7.14(b) and ]\*7.15\*[\*, respectively]\*; and

3. To a petitioner that previously received Initial Plan Endorsement from the State Planning Commission and has entered into a Memorandum of Understanding and Action Plan, pursuant to N.J.A.C. 5:85-\*[7.14 and ]\*7.15, if necessary.

(b) (No change.)

#### 5:85-7.17 Draft Planning and Implementation Agreement

Prior to receiving endorsement, the petitioner shall work with relevant State agencies to develop a draft Planning and Implementation Agreement, that outlines planning implementation mechanisms for the petitioner to undertake during the 10-year endorsement period so that the petitioner will achieve the goals and vision described in the endorsed plan, and State agency benefits needed to successfully implement the plan once endorsed. The draft Planning and Implementation Agreement shall be adopted as part of the Commission resolution granting endorsement of a petition pursuant to N.J.A.C. 5:85-7.19. Petitioner's ability to maintain endorsement over the 10-year period shall be contingent upon fulfilling the obligations of the Planning and Implementation Agreement.

#### 5:85-7.18 Recommendation report, review of petition, and direct petition

(a) Within 60 days of satisfaction of action items in an Action Plan, the Executive Director shall prepare a recommendation report to the Commission. The report shall either determine that the plan is consistent or not consistent with the State Plan.

(b) Within 45 days after receipt of the Executive Director's recommendation report, a duly authorized subcommittee of the Commission shall review the Executive Director's recommendation report and shall recommend that the petition be considered for approval, approval with revisions or denial by the Commission at its next regularly scheduled meeting.

(c) (No change.)

(d) A petitioner may directly petition the Commission for plan endorsement under the following circumstances:

1. (No change.)

2. If the Office of Smart Growth fails to prepare a draft Action Plan and Memorandum of Understanding pursuant to N.J.A.C. 5:85-\*[7.15]\*\*7.14\*.

#### 5:85-7.19 Plan endorsement by State Planning Commission

(a) Within 45 days after receipt of the \*[subcommittee's]\* recommendation \*report\* pursuant to N.J.A.C. 5:85-7.14 or a direct petition pursuant to N.J.A.C. 5:85-7.18, the Commission shall conduct a hearing to consider the petition and Executive Director's report and affirm, revise or reverse the Executive Director's recommendation on the petition or the petitioner's direct petition for endorsement. If the Commission determines that the plan is consistent with the State Plan, it shall approve the petition for plan endorsement and authorize execution of the Planning and Implementation Agreement. If the Commission

determines the plan is not consistent with the State Plan, the Commission shall either request the petitioner to make necessary changes to address requirements that must be met in order to achieve consistency with the State Plan, or deny the petition. The Commission's approval or denial of a petition is a final agency action.

1. (No change.)

#### 5:85-7.20 Extension of time requirements

(a) (No change.)

(b) The Executive Director may extend any time period in this subchapter up to an additional 90 days for the purpose of requesting additional information necessary to adequately and appropriately evaluate a petition for plan endorsement, an amendment to a previously endorsed plan or center designation. The period of review shall be extended 30 days after the receipt of the requested additional information by the Office of Smart Growth.

(c) Public notice of any extensions shall be provided pursuant to N.J.A.C. 5:85-7.4.

#### 5:85-7.21 Period of endorsement

(a) (No change.)

(b) In the Pinelands, as defined by N.J.A.C. 7:50-2.11, the Pinelands Commission's certification of a municipality's master plan and land use ordinances pursuant to N.J.A.C. 7:50-3.31 et seq., is deemed equivalent to endorsement by the Commission for the purposes of qualifying municipalities for benefits of plan endorsement, provided the municipality's master plan and land use ordinances remains certified. Pinelands Regional Growth Areas, Pinelands Towns and Pinelands Villages within the municipalities having Pinelands Commission certified plans and implementing land use ordinances are deemed equivalent to designated regional centers, town centers and village centers, respectively, as defined in the State planning rules and State Plan, for the purposes of determining eligibility for State agency benefits of plan endorsement.

(c)-(d) (No change.)

(e) Designated centers approved after January 7, 2002 and prior to July 1, 2004, other than centers designated in an endorsed plan, shall be endorsed for a period of six years from the date of designation by the Commission.

#### 5:85-7.22 Monitoring of endorsed plans and designated centers

(a) (No change.)

(b) Within one year from the date of endorsement, municipalities, counties or other relevant planning entities having endorsed plans or previously designated centers shall provide an annual report to the Executive Director on the status of their Planning and Implementation Agreement efforts, with biennial reports due thereafter, unless otherwise agreed. The annual and biennial reports shall include any Board of Adjustment Annual Report on Variances pursuant to N.J.S.A. 40:55D-70.1, planning board reports, and significant updates to other planning materials submitted as part of the petition for plan endorsement, including zoning ordinances or other implementation measures, adopted since plan endorsement, or prior center designation and submission of the last annual report. The report shall state how these items are consistent with the State Plan, the endorsed plan and the terms of the Planning and Implementation Agreement.

(c) (No change.)

(d) If a complaint is received by the Office of Smart Growth or the Commission of failure to comply with the terms of an endorsed plan or the Planning and Implementation Agreement or a Planning Implementation Agenda prepared in connection with a prior center designation, within 45 days of receipt of said complaint, the Executive Director shall investigate and report to the Commission. Public notice of any such complaint and any report by the Executive Director shall be provided in accord with N.J.A.C. 5:85-7.4.

#### 5:85-7.23 Revocation of plan endorsement or prior center designation

(a) (No change.)

(b) Within 45 days of the issuance of the monitoring report by the Executive Director, the Commission or its duly authorized subcommittee shall review the recommendation report of the Executive Director and the Commission shall affirm, revise, or reverse the recommendation based on

its determination of whether the endorsed plan or prior center designation remains consistent with the State Development and Redevelopment Plan. Except for a revision of the recommendation, the Commission determination regarding revocation shall be a final agency action.

(c) Within 45 days after Commission action, as set forth in (b) above, the Executive Director shall provide notice of the decision to the petitioner, pursuant to N.J.A.C. 5:85-1.7(i) and post notice pursuant to N.J.A.C. 5:85-7.4.

(d) (No change.)

5:85-7.24 Petitions to amend endorsed plans, previously designated centers, Planning and Implementation Agreements

(a) Petitions to amend endorsed plans, previously designated centers or Planning and Implementation Agreements may be submitted by the original petitioner, in its annual report, unless either the endorsement period will end in less than two years or it can be demonstrated that, for special reasons, the proposed amendment cannot wait until the next biennial report is due.

(b) A petition to amend shall include, at a minimum:

1. (No change.)

2. A statement updating the petitioner's latest annual report, if the petition amendment is not being proposed as part of a biennial report;

3. (No change.)

4. Proof that notice of submission of the petition to amend to the Executive Director has been provided pursuant to N.J.A.C. 5:85-1.7\*(f)\* in the form of an affidavit of publication;

5. A certified resolution from the governing body for a municipal petitioner or the relevant planning entity for a county plan, regional plan or special resource area plan, that is impacted by the petition to amend, approving the petition to amend, wherein said certified resolution authorizes the official of the municipality or the relevant planning entity to submit the petition and execute any requested or required amendment;

6.-9. (No change.)

10. A statement describing:

i.-iii. (No change.)

iv. The reason(s) why the amendment is not being proposed as part of a biennial report, if the amendment is not being proposed as part of a biennial report; and

11. (No change.)

(c)-(d) (No change.)

(e) In cases where the Executive Director finds that the petition to amend is submitted in accordance with this subchapter, or is resubmitted correctly pursuant to (a) and (b) above, the Executive Director shall provide public notice in accordance with N.J.A.C. 5:85-1.7(b) and send copies of the petition, plan and supporting documents to the State agencies represented on the Commission and any other relevant State or Federal agency.

(f) (No change.)

(g) Within the State and Federal agency 60-day review period, the Office of Smart Growth may hold a public hearing in an appropriate jurisdiction to receive public comment on the petition with public notice provided pursuant to N.J.A.C. 5:85-1.7(b).

(h)-(i) (No change.)

(j) The Executive Director shall prepare a report containing detailed findings and conclusions concerning the consistency of the subject of the petition to amend with the State Plan. The Executive Director shall provide notice of the report pursuant to N.J.A.C. 5:85-1.7(b) and forward the report to the Commission, the petitioner and post the report on the Office of Smart Growth website.

1.-3. (No change.)

(k) (No change.)

(l) Within 45 days after receipt of the recommendation, the Commission shall conduct a hearing on the petition to amend and affirm, revise or reverse the Executive Director's recommendation, based on its determination of whether the subject of the petition is consistent with the State Plan. The Commission determination on the petition to amend shall be a final agency action.

(m) The Executive Director shall, within 30 days after Commission action as set forth in (l) above, notify the petitioner in writing of the

Commission's determination, findings and recommendations regarding the petition to amend.

(n) (No change.)

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION OFFICE OF CAREER AND TECHNICAL EDUCATION Adult Education Fees

**Readoption: Amendments to N.J.A.C. 6:30-1.4  
effective July 23, 2008 (operative September 1,  
2008)**

Proposed: June 1, 2009 at 41 N.J.R. 2166(a).

Adopted: August 27, 2009 by the State Board of Education, Lucille Davy, Commissioner, Department of Education and Secretary, State Board of Education.

Filed: August 27, 2009 as R.2009 d.288, **without change**.

Authority: P.L. 2008, c. 25.

Effective Date: August 27, 2009.

Expiration Date: March 3, 2011.

**Summary of Public Comment and Agency Response:**

**No comments were received.**

#### Federal Standards Statement

The readopted amendments will not exceed Federal requirements of the Workforce Investment Act of 1998 (Pub. L. 105-220), Title II, the Adult Education and Family Literacy Act.

**Full text of the adoption follows:**

#### 6:30-1.4 Fees

(a) Persons submitting applications for a State-issued high school diploma by examination on the GED test shall pay a \$50.00 fee. Persons seeking re-examination shall pay a fee of \$10.00 per section for each section being tested. Upon application to take the GED test or retest, an applicant shall be presented with a certifying document verifying payment of the appropriate fee and designating a six-month time frame during which the applicant may take the GED test or reexaminations as may be necessary. Applicants will be required to present the payment certification document at the time of testing.

(b) Persons housed under the custody and supervision of the New Jersey State Department of Corrections may, by contractual agreement with the New Jersey State Department of Education, be administered the GED test or retest without charge to the candidate.

(c) Persons requesting a State-issued high school diploma based on the evaluation of college coursework, or a copy of a GED transcript and diploma verification, shall do so in the form of a written request signed by the person making the request. Those seeking evaluation of college coursework shall provide an official transcript from each academic institution from which coursework is to be evaluated.

## ENVIRONMENTAL PROTECTION

### (b)

#### SITE REMEDIATION PROGRAM Industrial Site Recovery Act Rules

**Readoption: N.J.A.C. 7:26B**

Proposed: April 6, 2009 at 41 N.J.R. 1348(a).

Adopted: August 13, 2009 by Mark N. Mauriello, Acting Commissioner, Department of Environmental Protection.