

mothers engage in at least four of the following activities with their infants for at least a total of 45 minutes each day:

1. Sensory activities;
2. Language activities;
3. Manipulative activities;
4. Building activities;
5. Large muscle activities; or
6. Music activities.

(f) Homes that provide services to adolescent mothers and infants older than 18 months of age shall ensure that adolescent mothers engage in at least three of the following activities with their child for at least a total of 45 minutes each day:

1. Language activities;
2. Science and math activities;
3. Manipulative activities;
4. Large muscle activities;
5. Building activities;
6. Art activities; or
7. Music activities.

(g) (No change.)

3A:56-10.15 Comprehensive health plan for pregnant adolescents

(a) The home shall ensure that, in addition to the provision of routine health care as specified at N.J.A.C. 3A:56-7.2, all pregnant adolescents receive comprehensive prenatal care including, but not limited to:

- 1.-5. (No change.)
- (b)-(d) (No change.)

(e) The home shall ensure that a staff member or volunteer accompanies the adolescent to the hospital or birthing center when she is ready to deliver and that the staff member or volunteer remains with the adolescent until health care personnel are assigned to her or longer as needed.

3A:56-10.16 Comprehensive health plan for infants

(a) (No change.)

(b) Unless contraindicated by the physician, the home shall ensure that the adolescent mothers adhere to the following for infants:

1. Routine health care and testing, including vision and hearing screening, according to the American Academy of Pediatrics' current recommended schedule at www.aap.org;

2. A developmental assessment conducted between five and six months of age, between 11 and 12 months of age, at 24 months of age, and annually thereafter until age five; and

3. A dental examination by 12 months of age and semi-annually thereafter.

(c) Unless contraindicated by the physician, the home shall ensure that all infants, toddlers, and children receive childhood immunizations and boosters within the established age ranges as currently recommended by the Center for Disease Control's (CDC) Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP) and established by the New Jersey Department of Health for enrollment in child care or school at www.state.nj.us/health.

(d) The home shall ensure that each infant has a designated primary care physician.

3A:56-10.17 Comprehensive health care for adolescent mothers who are not pregnant

The home shall ensure that all adolescent mothers who are not pregnant are provided routine health care as specified at N.J.A.C. 3A:56-7.2, as well as annual gynecological examinations.

3A:56-10.18 Care of sick infants

(a) When an infant at the home has any illness or symptom of illness including, but not limited to, those specified below, the home shall ensure that the adolescent mother or staff contacts a licensed physician:

1. Severe pain or discomfort or unusual fussiness;
- 2.-4. (No change.)
5. Lethargy that is more than expected tiredness or unusual drowsiness;
6. (No change.)
7. Red eyes with or without discharge;

8.-9. (No change.)

10. Skin rashes in conjunction with fever or behavior changes or rashes of unknown origin;

11. Skin lesions that have not been treated by a health care provider;

12. Mouth sores;

13. Stiff neck with fever and no muscular explanation; or

14. Seizure.

(b) (No change.)

3A:56-10.20 Medication

(a) The home shall ensure that adolescents use only prescription and non-prescription medication that is authorized by a physician and then only as prescribed or directed.

1.-3. (No change.)

(b)-(d) (No change.)

3A:56-10.25 Life skills development

(a) The home or agency shall ensure that the adolescent mothers receive instruction and experience in the following:

1.-5. (No change.)

6. Home safety guidelines including:

i.-iv. (No change.)

v. Fire prevention;

vi. Contacting the appropriate community agency when an emergency occurs; and

vii. Baby-proofing the home;

7.-8. (No change.)

(b) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Tax Collection Administration; Electronic Municipal Tax Lien Sales

Adopted New Rule: N.J.A.C. 5:33-1.1

Proposed: June 19, 2017, at 49 N.J.R. 1591(a).

Adopted: November 29, 2017, by Timothy J. Cunningham, Director, Division of Local Government Services.

Filed: November 30, 2017, as R.2018 d.012, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 54:5-19.1.a.

Effective Date: January 2, 2018.

Expiration Date: September 13, 2020.

Summary of Public Comments and Agency Responses:

Keith A. Bonchi, Esq., of Goldenberg, Mackler, Savegh, Mintz, Pfeiffer, Bonchi & Gill, P.C., on behalf of the Tax Collectors and Treasurers Association of New Jersey (TCTA)

1. COMMENT: The Division of Local Government Services (Division) should prequalify the universe of vendors offering nationally recognized online tax sale systems by reviewing their history and qualifications, presenting an annual list of companies approved by the State. It is extremely difficult for a tax collector and most municipal employees to evaluate a new vendor. Subsection (c) states that if the proposed costs exceed the contracting bid threshold, the contract for an electronic tax sale vendor shall not be construed to fall under the exceptions for public advertising. This means that the larger municipalities will have to go out to bid which is fully supported; however, many municipalities are small and do not possess the in-house expertise to assist the tax collector in evaluating new proposed vendors. A State-approved list of vendors would help assist the municipalities in evaluating which companies are qualified and which companies are not. TCTA would certainly offer voluntary members who have participated

in electronic tax sales to assist the Division in such a prequalification process.

RESPONSE: The Director of the Division (Director) finds that annual prequalification of online tax sale vendors by the Division is unnecessary. In light of the outcome of the Electronic Tax Lien Sale Pilot Program, the Division's proper role is to establish a regulatory framework for electronic tax sale platforms rather than pick winners and losers in the marketplace. Further, the Director has confidence that certified tax collectors and purchasing agents have sufficient training and expertise to evaluate and procure an electronic municipal tax lien sale system. Municipal tax collectors are licensed by the Division of Local Government Services and trained to administer the tax sale process. Purchasing officials in many municipalities throughout the State are certified by the Division as qualified purchasing agents, having gone through a number of courses on local government purchasing laws. The volunteers TCTA is willing to offer for the Division's benefit could be employed in assisting municipalities who are considering utilizing online tax sales.

2. COMMENT: Paragraph (d)1 states that if the municipality has a website, a copy of the tax lien notice shall be posted and "continuously maintained thereon" until the tax sale. The TCTA would request clarification on what is defined as "continuously maintained." It is assumed that this means that if someone redeems the lien, the list will be amended to reflect the above. However, the term continuously will be interpreted to mean contemporaneously. The TCTA would request language that would allow the notice be on the website with a link to the vendor site, which would be continuously updated as the sale date approaches. The process of maintaining the list is something that has to be done very carefully because any mistake would have the effect of negating that line item in the tax sale. The tax collectors have learned historically that revisions to the published list in the newspaper have resulted in numerous newspaper errors, and, therefore, tax collectors have been very careful about revising publications once done. The regulations should use the word periodically as opposed to continuously.

RESPONSE: The Director finds that the phrase "and continuously maintained thereon" should not be included in the adopted rule, so as to avoid the inference that municipalities must update their websites daily to remove line items as they are redeemed by delinquent taxpayers. Eliminating this inference would avoid municipalities undertaking substantial costs related to continuous website updates, as well as reduce the risk of errors appearing on a tax sale notice. In light of this change, the Director also finds that the first sentence of paragraph (d)1 should be clarified. The first sentence pertains to the ability to view line items for sale on the vendor website without first having to register, pay, or become a member; these line items are updated at least daily as they are redeemed by delinquent taxpayers. The text of the first sentence as proposed can be confused with the requirements for viewing the tax sale notice on the municipality's website. The language as proposed is confusing and contradictory because, if the municipality does not have a website, no online posting of the tax sale notice prepared pursuant to N.J.S.A. 54:5-25 is required. For purposes of clarity, the phrase "notice prepared pursuant to this subsection" will be replaced with "line items" after the phrase "tax lien sale" in the first sentence. In addition, the phrase "on the vendor's website" will be inserted in between the words "online" and "without" in the first sentence, so as to avoid confusion between the vendor website and the municipal website. For the same reasons, the phrase "notice of" in proposed paragraph (f)5 (recodified paragraph (e)5) will be deleted in the adopted rule, with the phrase "line items" added after the word "sale."

3. COMMENT: Subsection (e) places a burden of providing an additional notice to a property owner in addition to that which is required by the Tax Sale Law. There is some confusion in that it makes reference to N.J.S.A. 54:5-104.8, but that does not appear to be the proper cite. TCTA is opposed to the Division of Local Government Services placing additional mailing notice requirements and does not understand the purpose of the above. The proposed regulation makes reference to not only regular mail but certified mail. Any reference to certified mail should be deleted since no municipality will choose certified mail, so there is no sense in putting it into the regulation. Furthermore, the proposed regulation requires an additional mailing but

does not allow recovery of the cost. Municipalities should be able to satisfy this by the four publications that exist under the current law set forth in N.J.S.A. 54:5-26. A municipality should not be required to do an additional mailing because it elects to do a tax sale electronically and nowhere in the statute does it require an additional mailing. The most recent amendments to N.J.S.A. 54:5-26 allow a municipality to recover up to \$25.00 for each notice for a particular property. Any regulation attempting to place additional notice provisions but not allowing for the recovery of same violates the above stated statute and the clear legislative intent to allow municipalities to recover from a delinquent taxpayer the costs of the tax sale.

RESPONSE: The Electronic Tax Sale Pilot Program guidelines have required tax collectors to mail three notices to a delinquent taxpayer in addition to the notice required to be mailed pursuant to N.J.S.A. 54:5-27. This requirement has been interpreted to permit the municipality to charge \$25.00 for each of the aforementioned three mailings, adding an additional \$75.00 to what the delinquent taxpayer must pay. The intent behind this provision was to relieve delinquent taxpayers of an additional mandatory charge while requiring the municipality to provide at least one additional mailed notice regardless of the number of publications of the display ad required under N.J.A.C. 5:33-1.1(f); the cost of mailing such additional notice would be far outweighed by the savings associated with not having to advertise the full tax sale notice in the newspaper. Nevertheless, upon further consideration the Director finds that requiring the mailing of at least one additional tax sale notice to a delinquent taxpayer without additional charge would be a matter better suited for consideration by the Legislature, rather than by promulgation of rule for electronic tax sales. As such, subsection (e) will be deleted upon adoption.

4. COMMENT: N.J.A.C. 5:33-1.1(f) apparently requires the municipality not to publish in one newspaper but two newspapers. Hence, instead of publishing in one paper for four weeks, the municipality is now required to publish in two papers for eight weeks. This is contrary to N.J.S.A. 54:5-26, which only requires publication in "a newspaper circulating in the municipality" for four consecutive weeks. There is no statute that requires the above. The TCTA is opposed to the Division imposing additional costs of publishing in an additional newspaper. First, it is contrary to the above stated statute. Secondly, it is not likely to lead to any additional knowledge. Finally, the cost of newspaper publication is very expensive and the additional burden should not be placed upon the municipality. Any additional publication should be limited to the municipal website.

RESPONSE: N.J.S.A. 54:5-26 requires that a notice of tax sale be published in the municipality's official newspaper, which by definition would be a newspaper circulating in the municipality in which notices regarding ordinances are published. In the electronic tax sale context, subsection (f) specifies the format and content of a display ad, which may appear in the newspaper in lieu of the full tax sale notice. Upon further consideration, the Director concludes that the wording of subsection (f) as proposed lacks clarity and that the subsection should not require municipalities to advertise tax sales in a newspaper other than the official newspaper.

5. COMMENT: N.J.A.C. 5:33-1.1(l)1 would limit the posting of bidder deposits to until the final business day of the final calendar week prior to the date of the tax lien sale. We would request the right to post deposits up until the date of the tax sale. We want to encourage as many bidders as possible and there is no reason why this cannot be done up until the day prior to the tax sale.

RESPONSE: As proposed, N.J.A.C. 5:33-1.1(l)1 would require a tax collector to accept deposits at least up until the final business day of the final calendar week prior to the tax sale. In addition to the concern raised by the commenter, other commenters have expressed concerns that the proposed language does not take into account the number of days a deposit transmitted by the Automated Clearing House (ACH) system can take to clear, preventing a municipality from holding a tax sale until the end of the week. Upon further consideration, the Director finds that the rules governing electronic tax sales should grant tax collectors flexibility on setting a deadline by which deposits shall be received. As such, the first sentence of paragraph (l)1 will be deleted upon adoption (recodified as paragraph (k)1).

6. COMMENT: Paragraph (r)2 indicates that if payment is not made, the tax collector will resell the lien on the “seventh calendar day after the date on which the bidding is closed . . .” The TCTA is confused as to why the Division is putting in a regulation contrary to the statute. N.J.S.A. 54:5-28 allows adjournments to be made for not more than eight weeks before new publication is required. It is respectfully submitted that the regulation should be modified to conform to the above stated statute and allow the tax collector the timeframe that was mandated by the Legislature. Furthermore, the regulation creates a technical defect as it relates to accelerated sales, since seven days could be beyond the end of the year depending upon when the accelerated sale is held.

RESPONSE: The proposed language had been taken from the Electronic Tax Sale Pilot Program guidelines. Upon further consideration, the Director has determined that the first sentence of recodified paragraph (q)2 should be deleted, in order to avoid potential conflict with accelerated tax sales.

7. COMMENT: Subsection (t) requires that the vendors provide annual evidence to a chief financial officer of an auditor’s report. The regulation should require the financial information to be no older than 12 months.

RESPONSE: Subsection (t) is primarily focused on the design and operational effectiveness of the vendor’s controls relating to the vendor’s system. The Director is confident that the language conveys with sufficient clarity the requirement that the annual evidence proffered be current. Therefore, no change will be made as a result of this comment.

8. COMMENT: The TCTA would request that the Division waive any requirement that the vendor be required to post a bond. This will eliminate many vendors for large municipalities. Since all money is being paid directly to the municipality by way of deposit and all payments are being made directly to the municipality, we do not believe a bond is required.

RESPONSE: The rules do not require the vendor to post a bond, as such there is no need to change the rules to obviate posting of a bond.

9. COMMENT: The TCTA would request that municipalities have the right to enter into a two-year contract with an electronic tax sale vendor in order to lower the internal expense of securing and awarding a contract.

RESPONSE: The Director finds that the one-year maximum contract duration set forth in recodified subsection (v) is warranted at this time in order to promote competition amongst multiple online tax sale system vendors, particularly since only one vendor participated in the Electronic Tax Sale Pilot Program. The Director reserves the right to revisit this provision as the market develops.

Michael J. Darcy, Executive Director of the New Jersey League of Municipalities, proffered the following comments

10. COMMENT: N.J.A.C. 5:33-1.1(d)1 requires that the tax lien sale notice be posted on the municipal website, if one exists, and be “continuously maintained thereon until the tax lien sale concludes.” We believe that the term “continuously maintained” is too broad and vague. Does this new requirement mean that the tax collector must update the website notice every time there is a change to the list, which could be often in the course of one business day, or will an update once a day be sufficient to fulfill this requirement? If the intent of the rule is to have a current list we suggest the language be changed to, “and continuously maintained but in any case is not required to be updated more than once daily, thereon until the tax lien sale concludes.”

RESPONSE: The concerns raised by the commenter are similar to those communicated by TCTA. For purposes of clarity, the phrase “notice prepared pursuant to this subsection” in paragraph (d)1 will be replaced with “line items” after the phrase “tax lien sale” in the first sentence. In addition, the phrase “on the vendor’s website” will be inserted in between the words “online” and “without” in the first sentence, so as to avoid confusion between the vendor website and the municipal website.

11. COMMENT: Subsection (e) prohibits the costs of mailings to be added to the cost of the sale. However, the enabling statute for electronic tax lien sales (N.J.S.A. 54:5-19.1) requires that any tax sale notice

required to be sent to a property owner or lienholder must continue to be made by mail. Tax collectors are permitted by N.J.S.A. 54:5-26 to add the cost of regular or certified mailings to the cost of the sale. We question why the municipalities will lose their ability to recoup the cost of mailing because the municipality used electronic tax lien sales. We strongly recommend that the following language be removed from N.J.A.C. 5:33-1.1(e): “The costs of mailing said notice(s) shall not be added to the cost of the sale in addition to those costs provided in N.J.S.A. 54:5-38.”

RESPONSE: The concerns raised by the commenter are similar to those communicated by TCTA. As stated in the Response to Comment 3, subsection (e) will be deleted upon adoption.

12. COMMENT: Subsection (f) requires the display advertisement to be published in both a newspaper circulating in the municipality and any other newspaper designated by the municipality for publishing public hearing notices regarding ordinances being considered for adoption. We suggest that the language be changed to require that the display advertisement be published in the municipality’s official newspaper designated at the annual governing body reorganization meeting.

RESPONSE: The concerns raised by the commenter are similar to those communicated by TCTA. As stated in the Response to Comment 4, the second sentence of recodified subsection (e) will be changed upon adoption to not require municipalities to advertise tax sales in a newspaper other than the official newspaper.

13. COMMENT: Paragraph (r)2 mandates that if payment is not received within a time period required that the lien will be resold on the seventh calendar day after the date on which the bidding is closed, or, if the seventh day falls on a holiday, the first business day following the holiday. This provision of the proposed rules does not take into consideration the use of accelerated tax sales, which typically occur at the end of the fiscal year. We suggest that the rule mirror the statute on day-to-day adjournment.

RESPONSE: The concerns raised by the commenter are similar to those communicated by TCTA. As stated in the Response to Comment 6, the Director has determined that the first sentence of recodified paragraph (q)2 will be deleted upon adoption, in order to avoid potential conflict with accelerated tax sales.

Paul P. Josephson, Esq., of Duane Morris LLP proffered the following comments on behalf of ROK Industries, Inc., d/b/a NJtaxlieninvestor.com (ROK) and RealAuction.com

14. COMMENT: N.J.A.C. 5:33-1.1(e) would create two different notice requirements, one for live sales and a more onerous one for electronic tax sales. Under live sales, tax collectors can simply comply with N.J.S.A. 54:5-26, but under electronic sales, tax collectors providing notice under N.J.S.A. 54:5-26 also have to provide additional notice to the property owner and to any persons/entities entitled to notice of foreclosure. There is no rationale for requiring additional notice of electronic sales but not live sales. It is beyond the Division’s authority to impose additional notice obligations beyond those required by statute. If the Division believes additional notices should be required, it is required to seek legislative authorization to impose those requirements on all tax sales. Further proposed subsection (e) conflicts with N.J.S.A. 54:5-26 and expressly prohibits the costs of the additional notices from being added to the cost of sale. This increases the burden on tax collectors to send these additional notices, and requires them to do so at the sole cost and expense of the municipality, notwithstanding that N.J.S.A. 54:5-26 provides that the costs of mailed notices “shall be added to the cost of sale.” Respectfully, it is beyond the Division’s authority to disregard the statutory mandate that the costs of all mailed notices be borne by the delinquent taxpayer rather than the municipality and taxpayers who pay their taxes on a timely basis. The Pilot Program rules followed N.J.S.A. 54:5-26 and permitted recovery of all notice costs allowed by statute.

RESPONSE: The Electronic Tax Sale Pilot Program guidelines have required tax collectors to mail three notices to a delinquent taxpayer in addition to the notice required to be mailed pursuant to N.J.S.A. 54:5-27. As the commenter notes, this requirement has been interpreted to permit the municipality to charge \$25.00 for each of the aforementioned three mailings, adding an additional \$75.00 to what the delinquent taxpayer must pay. The intent behind this provision was to relieve delinquent

taxpayers of an additional mandatory charge while requiring the municipality to provide at least one additional mailed notice regardless of the number of publications of the display ad required under N.J.A.C. 5:33-1.1(f). The cost of mailing such additional notice would be far outweighed by the savings associated with not having to advertise the full tax sale notice in the newspaper. Nevertheless, as was stated in the Response to Comment 3, the Director finds that requiring the mailing of at least one additional tax sale notice to a delinquent taxpayer without additional charge would be a matter better suited for consideration by the Legislature, rather than by promulgation of rule for electronic tax sales. As such, subsection (e) is deleted upon adoption.

15. COMMENT: The electronic tax lien sale statute expressly allows municipalities to satisfy existing requirements for holding tax lien sales electronically, including “electronic publication of tax lien sale notices.” When the Pilot Program rules were created, one of the primary goals was to balance the need for adequate public notice with the substantial cost of newspaper publication imposed on municipalities. As a result, the Pilot Program rules allow display ad publications providing notice of where the liens to be auctioned are listed electronically in lieu of full legal newspaper ads listing each lien. The Pilot Program rules required the display ad to be “published once a week for four weeks ... in a newspaper circulating in the municipality.” Without explanation, N.J.A.C. 5:33-1.1(f), as proposed, would double the display ad publication requirement, requiring the display ad to be published in two separate newspapers four times each, resulting in eight publications and increasing costs to the municipality. We are unaware of any case or municipality where the substitution of traditional legal advertising with combined display advertising/electronic listing as set forth in the Pilot Program has deprived a taxpayer of notice of imminent adverse action relative to their property, such that doubling the publication requirement and costs to municipalities would be warranted. Indeed, the Division’s proposal is at direct odds with the Governor’s efforts to reduce the use of print legal advertisements and the substantial costs such advertising imposes on public entities and tax payers. It also bears noting that virtually every collector who has reviewed the publication requirement finds them to be very confusing. If experienced tax collectors find the text confusing, the general public surely will. This will lead to unnecessary disputes and potentially litigation over the validity of liens sold thereunder.

RESPONSE: As stated in the Response to Comment 4, upon further consideration the Director concludes that the wording of recodified subsection (e) lacks clarity and that the section should not require municipalities to advertise tax sales in a newspaper other than the official newspaper.

16. COMMENT: N.J.A.C. 5:33-1.1(d)1, which as proposed would require municipalities with websites to post and continuously maintain thereon a copy of the tax lien sale notice until the tax sale concludes, raises three issues: (1) this requirement only applies to electronic tax sales and not to live sales. There is no justification for this disparate treatment. A tax sale notice is a tax sale notice regardless of how the sale is conducted (live or electronic). Electronic tax sales should not be required to do this if live sales are not; (2) while it is easy to say that the sale list will be posted on the municipal website, doing so requires that a municipality have a webmaster available and capable of doing this in a timely fashion, and our discussions with collectors indicate that few municipalities employ a webmaster, imposing an additional burden and cost on most, if not all; and (3) failure to comply may invalidate the sale. The proposed rules do not contain language protecting municipalities and tax lien purchasers from having sales challenged and invalidated for failing to post and maintain the tax lien sale notice on their websites. One benefit of the electronic sale is that the vendor maintains the sale list on its website as part of the service and convenience it provides to collectors. This proposal discourages municipalities that do not employ a webmaster from using electronic sales and creates the opportunity for mistakes that will undermine the validity of the liens being sold.

RESPONSE: N.J.S.A. 54:5-19.1 (the law permitting electronic tax lien sales) authorizes the Director of the Division of Local Government Services to promulgate rules for electronic tax lien sales with respect to items such as electronic publication of tax lien sale notices. The Director finds that requiring municipalities with websites to post a copy of the tax

sale notice on their website is clearly warranted by virtue of the tax sale auction being online. Just as internet-based tax sale auctions expand public participation in tax lien sales, requiring publication of tax sale notices on municipal websites is consistent with the objective of the electronic tax lien sale law by ensuring that tax sale notices are visible to a wider public.

Nevertheless, as stated in the Response to Comment 2, the Director finds that the phrase “and continuously maintained thereon” should be deleted from the rule, so as to avoid the inference that municipalities must update their websites daily to remove line items as they are redeemed by delinquent taxpayers. Eliminating this inference would avoid municipalities undertaking substantial costs related to continuous website updates, as well as reduce the risk of errors appearing on a tax sale notice. In light of this change, the Director also finds that the first sentence of paragraph (d)1 should be clarified. The first sentence pertains to the ability to view line items for sale on the vendor website without first having to register, pay, or become a member; these line items are updated at least daily as they are redeemed by delinquent taxpayers. The text of the first sentence as proposed can be confused with the requirements for viewing the tax sale notice on the municipality’s website, if any. For purposes of clarity, the phrase “notice prepared pursuant to this subsection” will be replaced with “line items” after the phrase “tax lien sale” in the first sentence. In addition, the phrase “on the vendor’s website” will be inserted in between the words “online” and “without” in the first sentence, so as to avoid confusion between the vendor website and the municipal website. For the same reasons, the phrase “notice of” in paragraph (f)5 will be deleted, with the phrase “line items” added after the word “sale” in recodified paragraph (e)5.

17. COMMENT: As proposed, N.J.A.C. 5:33-1.1(q) would only permit proxy bidding for electronic tax lien sales. We note initially that the proposal does not define direct and proxy bidding, sowing the seeds for confusion and misunderstanding. At minimum, if the Division proceeds with such restrictions, definitions should be proposed and offered for comment by stakeholders. Proxy bidding is defined in industry parlance as a method of auction in which the winning bid is determined by comparing all bids to determine the highest bidder, using only as much of a bid as is necessary to win. In direct bidding, the best bid wins at the bid amount. The Pilot Program allowed municipalities to determine for themselves which process to use; however the proposed rules eliminate this choice, requiring all municipalities to use proxy bidding. It is unclear why the Division proposes to limit the discretion of tax collectors to employ the auction method most suitable for their circumstances. Under direct bid systems, delinquent taxpayers generally pay lower interest rates and premiums to municipalities are higher than in proxy bidding systems. This is because bidders bid and win liens at the lowest rate or highest premium they are willing to accept. In a proxy bidding system, the bid is awarded to the lowest bid needed to win the auction. Thus, if a bidder is willing to accept 0 percent interest and pay a premium for a particular lien, but no other bid is submitted, the lien will be awarded at the 18 percent interest and no premium because that is all that is needed to win. If another bidder does bid on the lien at 10 percent, then the bidder who was willing to accept 0 percent interest and pay a premium will secure the lien at nine percent interest, the amount needed to win. In either case, the delinquent taxpayer pays interest he or she would not otherwise need to pay and the municipality loses the premium it would have otherwise received had the auction been conducted by direct bidding. The only drawback to direct sales is that investors may be less interested in such sales because it may be more costly as compared to a proxy bid sale. It should be left to the discretion of tax collectors and municipalities to decide based on the desirability of its properties, the size and competitiveness of its sales, and other local factors, which process is most suitable for its circumstances.

RESPONSE: Upon further consideration, the Director finds that barring tax collectors from exercising the option to require direct bidding in electronic tax sales does not take into account the varying conditions that either increase or decrease the marketability of a municipality’s liens, which could result in a delinquent taxpayer paying more and a municipality potentially losing a premium. As such, the last sentence of recodified subsection (p) will be deleted upon adoption.

18. COMMENT: The proposed rules require each municipality to conduct its own procurement for electronic tax lien auction services, which will require time for municipalities to implement. As well, the proposal requires ROK to modify its current practices and software to comply with new cybersecurity requirements. The effective date of the rules needs to take this into account so that municipalities currently conducting electronic tax sales can continue to do so without interruption. Municipalities should be able to continue to participate under the Pilot Program until the end of this fiscal year, that is, the proposed rules should not be effective until July 1, 2018, during which time municipalities can conduct appropriate procurements and vendors can ensure fully compliant systems are in place. Although the Division has indicated since publishing this notice of proposal that it intends to employ the new rules for all sales occurring after December 31, 2017, we note that several ROK customers in New Jersey historically conduct sales in January. The notice of proposal, as drafted, will make it difficult, if not impossible, for those towns to conduct a procurement and modify its rules and practices to conduct a timely electronic tax lien sale. ROK will have very limited time to modify its processes and software to comply. And other vendors, already discouraged from entering the New Jersey market by its decentralized nature and the need to develop high specialized software for this market, will be further disincentivised to submit proposals if they must develop New Jersey-complaint software with less than 90 days notice of the final rule's contents.

RESPONSE: The Division of Local Government Services is committed to ensuring a smooth transition from the Electronic Tax Lien Sale Pilot Program to the adopted rules; however, the rules would not require changing in the manner contemplated by the commenter. For purposes of helping ensure the uninterrupted administration of electronic tax lien sales during this transition period, the Director has announced that the Division will accept from existing participants only applications under the Pilot Program to conduct an electronic tax lien sale on a date no later than March 30, 2018.

19. COMMENT: As proposed, N.J.A.C. 5:33-1.1(l)1 would require that bidder deposits be allowed to be posted at least up until the final business day of the final calendar week prior to the date of the tax lien sale. This requirement is completely unnecessary, complicating the automated clearing house (ACH) deposit process used by all municipalities and limiting the days and dates municipalities can select for their electronic tax sales. ACH payments need time to clear and settle after posting to ensure municipalities have good funds and although National Automated Clearing House Association (NACHA) rules allow for settlement of funds the next banking day, ACH rejections can occur up to three banking days following the posting of payment. To ensure that good funds have actually settled in the municipality's account, it is prudent financial practice to impose a deposit deadline that is at least seven calendar days (or four business days) before the tax sale. Given this financial fact and reality that affects all ACH transactions, the proposed rules effectively mandate that electronic tax lien sales only be held on Fridays. In addition to impinging on collector's discretion, it will force all tax sales to be conducted on one day of the week. The competition for bidders' attention means that smaller sales or those with less desirable properties will likely receive fewer bids than they would otherwise. The rules should ensure that good deposits have been settled and are in hand, and allow the municipality and vendor to determine the deposit deadlines that will accommodate that. Hundreds of sales have already been conducted in New Jersey and not a single issue has arisen in terms of the deposits. Collectors should retain the discretion to hold auctions on the day of the week most suitable to their needs.

RESPONSE: Recodified paragraph (k)1 would require a tax collector to accept deposits at least up until the final business day of the final calendar week prior to the tax sale. In light of the commenter's concern, and as stated in the Response to Comment 5, the Director finds that the regulations governing electronic tax sales should grant tax collectors flexibility on setting a deadline by which deposits shall be received. As such, the first sentence of recodified paragraph (k)1 will not be adopted.

20. COMMENT: Recodified subsection (k) would require that a 10 percent deposit be made on any lien and does not permit a minimum deposit amount to be set by the municipality. Minimum deposits are important elements of an electronic tax sale and tax collectors should

have the flexibility to impose them as they see fit. Minimum deposit amounts keep anonymous bidders honest and safeguard against municipalities having to reauction tax lien certificates. A \$10.00 deposit will not prevent a bidder from walking away from a \$100.00 lien certificate, forcing the municipality to spend time, money, and resources to reauction that lien. Instead, minimum bid deposits should be set in the discretion of the tax collector and the municipality.

RESPONSE: The objective of the deposit requirement set forth in recodified subsection (k) is a necessary measure to ensuring good-faith participation in, and preventing manipulation of, an internet-based auction; commenter's argument that a tax collector should have flexibility to seek a larger deposit for low-dollar-value liens has merit because it furthers that objective. As such, the phrase "equal to 10 percent of the total lien amount to be bid upon" is deleted upon adoption.

21. COMMENT: Recodified paragraph (k)3 states that, if a winning bidder on a lien fails to make payment on said lien, the deposit amount representing 10 percent of the lien certificate not paid shall be forfeited to the municipality. Although the language here is similar to that of the Pilot Program, experience demonstrates that requiring that only 10 percent of the lien certificate amount be forfeited does not adequately prevent bidders from winning many liens, cherry picking the best ones, and forfeiting 10 percent on the liens not desired. In addition to this potential for gaming the system, tax collectors incur significant costs, effort, and resources to reauction unpurchased liens. This is the case regardless of the lien amount, that is, the same effort is required to reauction a \$100.00 lien as a \$100,000 lien. Therefore, if a bidder defaults, the bidder's entire bid deposit should be forfeited.

RESPONSE: Commenter's concerns regarding recodified subsection (k) and paragraph (k)3 are similar in nature. In order to maintain consistency with the deletion of the phrase "equal to 10 percent of the total lien amount to be bid upon" in recodified subsection (k) as discussed in the Response to Comment 20, "representing 10 percent of the lien certificate not paid" will be deleted upon adoption from paragraph (k)3.

22. COMMENT: For municipalities with electronic tax lien sales, N.J.A.C. 5:33-1.1(d) would require the tax sale notice to state that all or any portion of the tax lien sale may be adjourned by the tax collector pursuant to N.J.S.A. 54:5-28. This rule, again, creates different notice requirements for live sales and electronic sales. Under live sales, there is no requirement that the notice contain information about an adjournment, while electronic sales do have such a requirement even though N.J.S.A. 54:5-28 applies equally to both sale types. Including this provision in the notice may encourage delinquent taxpayers to contact tax collectors to request an adjournment. N.J.S.A. 54:5-28 applies to all sales. There is no justification for requiring electronic tax sales to reference this statute when the electronic tax sale law does not require it.

RESPONSE: The purpose of referencing the tax collector's ability to adjourn all or any portion of the tax lien sale was meant for the benefit of prospective bidders in the online tax sale. Upon further consideration, prospective bidders are much more likely to benefit from this information on the vendor's website rather than on the tax sale notice prepared pursuant to N.J.S.A. 54:5-25. As such, the phrase "and that all or any portion of this tax lien sale may be adjourned by the tax collector pursuant to N.J.S.A. 54:5-28" will not be included in the adopted rule.

23. COMMENT: While we agree that the bid amount should not be made visible to anyone, we do believe that it is important to clarify in N.J.A.C. 5:33-1.1(p) that the number of bids placed on a lien may be made visible. Allowing other bidders to know how many bids have been placed on a particular lien will provide important feedback to the investor as to the interest in that particular lien and help them adjust their bid amounts accordingly.

RESPONSE: The word "bid" is meant to reference the amount that is being bid. Recodified subsection (o) will be changed upon adoption to change "bids" to "bid amounts," for clarification.

23. COMMENT: As proposed, recodified paragraph (q)2 requires that any lien for which payment has not been made by a winning bidder be resold on the seventh calendar day after the date on which bidding is closed. While this rule is consistent with the Pilot Program, tax collectors have expressed concern that this rule may affect tax sales that

occur close to the end of the fiscal year particularly in municipalities that have accelerated sales. If a resale must take place on the 7th day, then this may require the resale to occur in the new fiscal year affecting end of year accounting. The rule should be clarified to say that the resale must occur within seven days.

RESPONSE: As stated in the Response to Comment 6, the Director has determined that the first sentence of recodified paragraph (q)2 will be deleted, in order to avoid potential conflict with accelerated tax sales.

24. COMMENT: The rule proposal provides no framework to assure the integrity of vendors' systems and imposes extraordinary restrictions on municipalities' contracting authority to protect the public interest. Unlike the Pilot Program, the proposed rule does not require that a vendor be able to demonstrate that it has a compliant system in place to conduct the electronic sale. Recodified subsection (w) should be amended to require that a vendor certify in its proposal and be able to demonstrate at the time proposals are received that it operates an electronic tax lien sale program in conformance with the Division's rules.

RESPONSE: The Director respectfully disagrees with commenter's characterization of the rule proposal, finding that it opens the marketplace to additional competition while providing sufficient protection for municipalities. Moreover, it is not clear what "extraordinary restrictions" the commenter is referencing. Under competitive contracting (N.J.S.A. 40A:11-4.1 et seq.), a municipality can include a requirement that prospective vendors demonstrate the platform to the tax collector and other relevant municipal officials. The municipality can evaluate each vendor proposal based on an evaluating methodology using a weighting of technical, management, and cost-related criteria, which can include an objective evaluation of the results of an in-person vendor demonstration. If the contract is below the municipality's bid threshold but 15 percent or more of that amount, N.J.S.A. 40A:11-6.1 requires the solicitation of at least two competitive quotations, if practicable, but permits an award to be made to a vendor whose response is most advantageous, price and other factors considered. Recodified paragraph (t)1 requires that a tax collector review and approve the proposed contract prior to execution. In addition, recodified subsection (s) requires that a vendor provide annual evidence of satisfactory internal controls to the municipality in the form of an unqualified SOC2 auditor's report. It should also be noted that the Division of Local Government Services will also be issuing a Local Finance Notice accompanying the rule adoption, which will provide additional guidance on the procurement process as it relates to electronic tax sale systems.

25. COMMENT: Taken as a whole, the rule proposal contains several flaws that require significant modification. We believe these modifications require additional consultation with tax collectors and the interested community to avoid unintended consequences. As well, we take note of the Department of Community Affairs' approach to e-procurement and in particular the method of selecting reverse auction providers. We have closely reviewed A-2220/S-1729, which passed the Assembly and was amended by the Senate, for guidance. As we have advised the Division previously, there is no reason electronic tax lien sale providers should be treated any differently than other e-procurement vendors. While these bills now clearly authorize e-procurement by contracting units and school boards, Section 6(a)(3) of both bills leaves the details of how municipalities are to select providers of online auction and bidding systems to further Department regulation and guidance. Under those provisions, the Director of Local Government Services, consulting with the State Comptroller, is to develop rules that "establish minimum standards that must be met by systems and services providing and administering electronic procurement activities." In addition, the Director is to consult with the Attorney General as to measures to protect against collusion and bid rigging and with the Office of Information Technology (OIT) as to privacy and security provisions. Assuming the e-procurement bills are passed, it appears the Department will soon be engaging with the Attorney General and the OIT on protocols for vetting and selecting e-procurement system vendors. We respectfully submit the Department should withdraw the rule proposal to ensure consistency with its larger e-procurement protocols. A parallel, but inconsistent, system of regulation for tax lien sales is at odds with the Governor's

commitment to reducing red tape and unnecessary regulation across all State agencies.

RESPONSE: The Director respectfully disagrees with Commenter's position that the rule proposal be withdrawn and further consultation solicited on a modified proposal, with said modified proposal being delayed in the interest of a bill that as of commenter's writing has yet to pass the Legislature. Even if A-2220 or its companion S-1729 become law, the rules will in substantial part be adapting myriad provisions of the Local Public Contracts Law and Public School Contracts Law to online procurement, a markedly different endeavor than the current rulemaking's adaption of the Tax Sale Law. The Electronic Tax Sale Pilot Program has been active since 2011, with much success, and the law authorizing online tax sales has been in effect since 2001. Further, many of the comments submitted by stakeholders on the rule proposal have prompted changes by the Division, which will improve the adopted rule's functionality and practical application. Electronic tax lien sales are a proven benefit that should be placed on solid ground by establishing a final regulatory framework; municipalities, the general public, and other potential vendors will not benefit from further delay.

Additional Commenters

A substantial number of individuals, mainly municipal tax collectors, have also submitted comments on the rule proposal. The individual commenters are: Alice Anne Pareti (Bethlehem Township), Patricia Capasso (Medford Township), Lauren Schoonmaker (Pennsville Township), Michael J. Bascom (Neptune Township), Stacy L. Carron (City of Linden), Sharon Riley (Egg Harbor Township), LaMar Arnold (Willingboro Township), Joyce Pinto (Runnemede Borough), Desiree Durkin (Union Beach Borough), Aderonke Zaccheus (South Orange Village), Elizabeth Ruhl (Franklin Township), Constance Ludden (Highland Park Borough), Kammie Verdolina (Wall Township), Lola Bachok (Rockaway Township), Jennifer Dukelow (Laurel Springs Borough), Sandra Ferguson (Gloucester Township), Valerie Forester (Assistant Tax Collector, Irvington Township), Lisa Gerickont (Manville Borough and Oxford Township), Cynthia A. McBride (City of Lambertville), Effie Pressley (Lakewood Township), Christine Swiderski (Florence Township), Pam Wilder (Assistant Tax Collector, City of Newark), David P. Deegan (Deputy Mayor, Franklin Township), Alison Varrelmann (Pemberton Township), Marie Taylor (Aberdeen Township), Elaine Erlewein (City of Clifton), Laura Giovone (Seaside Heights Borough), Elizabeth C. Wallender (Hopewell Township), and Jessica Snyder (City of Absecon).

Many of the above-referenced individuals submitted comments both similar to one another and to the comments specifically addressed above. The comments set forth below are those that substantively differ from the comments submitted by the Tax Collectors and Treasurers Association of New Jersey, New Jersey League of Municipalities, and RealAuction:

26. COMMENT: The requirement that a tax sale notice be posted and maintained on the municipality's website is burdensome as many municipalities do not have the resources, technical capability, or staff to meet the requirement. The commenters recommended that a requirement that the website contain a link to the third-party site, which would have up-to-date statuses would be sufficient.

RESPONSE: The Director finds that requiring municipalities with websites to post a copy of the tax sale notice on their website is clearly warranted by virtue of the tax sale auction being online. Just as internet-based tax sale auctions expand public participation in tax lien sales, requiring publication of tax sale notices on municipal websites is consistent with the objective of the electronic tax lien sale law by ensuring that tax sale notices are visible to a wider array of public.

However, as stated in the Response to Comment 2, the Director finds that the phrase "and continuously maintained thereon" should not be included in the adopted rule, so as to avoid the inference that municipalities must update their websites daily to remove line items as they are redeemed by delinquent taxpayers. Eliminating this inference would avoid municipalities undertaking substantial costs related to continuous website updates, as well as reduce the risk of errors appearing on a tax sale notice. In light of this change, the Director also finds that the first sentence of paragraph (d)1 should be clarified. The

first sentence pertains to the ability to view line items for sale on the vendor website without first having to register, pay, or become a member; these line items are updated at least daily as they are redeemed by delinquent taxpayers. The text of the first sentence as proposed can be confused with the requirements for viewing the tax sale notice on the municipality's website, if any. For purposes of clarity, the phrase "notice prepared pursuant to this subsection" should be replaced with "line items" after the phrase "tax lien sale" in the first sentence. In addition, the phrase "on the vendor's website" should be inserted in between the words "online" and "without" in the first sentence so as to avoid confusion between the vendor website and the municipal website. For the same reasons, the phrase "notice of" in recodified paragraph (e)5 will be deleted, with the phrase "line items" added after the word "sale."

27. COMMENT: N.J.A.C. 5:33-1.1(g), as proposed, generally bars municipalities utilizing online tax sales from collecting up to \$25.00 for each notice mailed to delinquent taxpayers in lieu of publishing the display ad permitted pursuant to subsection (f). Unlike with a live sale, the only way the municipality can collect up to \$25.00 for each "in lieu" mailing for an electronic tax sale would be if said mailings were made because the newspaper either failed to publish or made an error in publishing the tax sale notice or the display ad. The electronic tax lien sale regulations should not disallow charges that are permitted in the live sale context. Further, the use of the word "may" in subsection (f) creates confusion regarding the requirements for publication of notice, suggesting that a tax collector could utilize the provisions of N.J.S.A. 54:26-1 et seq., in lieu of the display ad and require additional notice for which the municipality may not recoup its costs. It is unclear whether or not the collector can advertise the entire notice as a legal ad twice and send two direct mailings and be permitted up to \$25.00 for each mailing.

RESPONSE: Upon further consideration, the Director finds that the question of whether it is justifiable to allow municipalities to add costs of up to \$25.00 for each "in lieu" mailing, regardless of whether the tax sale is held electronically or in-person, is better addressed by the Legislature. As such, the phrase in recodified subsection (f) "Where the newspaper fails to print a notice published pursuant to section (e) above, or where a notice published pursuant to (e) above contains one or more errors" will be deleted from the subsection upon adoption. This, therefore, obviates the concern raised above with respect to the word "may" in recodified subsection (e).

28. COMMENT: ACH deposits are used by the majority of tax collectors in New Jersey for the receipt of deposits, and because ACH deposits take four to five business days to clear, the requirement in recodified paragraph (k)1 would pose many problems unless all tax lien sales were held on Fridays. The rule should specify that bids must be completed not later than five business days prior to the date of the sale.

RESPONSE: As stated in the Response to Comment 5, the Director finds that the rules governing electronic tax sales should grant tax collectors flexibility on setting a deadline by which deposits may be received. As such, the first sentence of recodified paragraph (k)1 will be deleted upon adoption.

29. COMMENT: A winning bidder who defaults on the payment should lose his or her entire deposit and all certifications. Otherwise, the likelihood of defaults will increase, creating administrative hardships for tax collectors and imposing added costs on municipalities.

RESPONSE: As stated in the Response to Comment 21, recodified paragraph (k)3 will not place a 10 percent maximum on deposits placed by prospective bidders. However, the Director does not agree that a winning bidder who defaults on one lien should forfeit all others that they have won and have made full payment. The loss of the successful bidder's deposit is a sufficient deterrent to default; requiring forfeiture of all other certifications would be excessive. In addition, requiring the loss of all other certifications would cause municipalities to incur additional cost and administrative burden by having to auction said liens again.

30. COMMENT: The rule should have a phase-in period, so as to avoid disruption for those municipalities that are conducting an electronic tax sale this year under the Electronic Tax Lien Sale Pilot Program.

RESPONSE: As stated in Response to Commenter 18, the Division of Local Government Services is committed to ensuring a smooth transition from the Electronic Tax Lien Sale Pilot Program to the adopted rules;

however, the rules would not require amending in the manner contemplated by the proffered comment. For purposes of helping ensure the uninterrupted administration of electronic tax lien sales during this transition period, the Director has announced that the Division will accept from existing participants only applications under the Pilot Program to conduct an electronic tax lien sale on a date no later than March 30, 2018.

31. COMMENT: The Jobs Impact statement in the notice of proposal states that an online tax lien sale may reduce the need for support staff that would otherwise be utilized in conducting an in-person sale. Although the administrative burden associated with an in-person tax lien sale is obviated by an electronic sale, this does not mean that a tax collector will not respond to inquiries or go above and beyond trying to notify property owners and mortgage companies of an impending sale. Many tax collectors offices have faced staffing reductions. The statement sounds as though the State does not support tax collectors by threatening layoffs.

RESPONSE: The Jobs Impact statement is meant to address the potential impact of a rule with respect to employment. In no way is the statement intended to express contempt for the work done by municipal tax collectors. Municipalities throughout New Jersey are faced with the challenges of having to do more with less, and electronic tax lien sales will help municipalities to more efficiently allocate staff resources.

Federal Standards Statement

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

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

SUBCHAPTER 1. TAX COLLECTION PROCEDURES

5:33-1.1 Electronic municipal tax lien sales

(a) No municipality may contract with a third-party vendor to conduct tax lien sales that is not a nationally recognized electronic municipal tax lien service. In order to qualify as a "nationally recognized electronic municipal tax lien service," the vendor must presently conduct internet-based electronic municipal tax lien sales in at least two states, or have conducted internet-based electronic municipal tax lien sales in the past two years that have included bidders from more than one state, or affirmatively market a system for performing internet-based electronic municipal tax lien sales in more than one state.

(b) An electronic municipal tax lien sale shall be authorized by a resolution of the governing body.

(c) For any contract for an electronic municipal tax lien service that exceeds the contracting unit's bid threshold, an electronic municipal tax lien service shall not be construed to fall under one of the exceptions to public advertising for bids set forth in N.J.S.A. 40A:11-5, except as set forth under 40A:11-5(3) and 40A:11-5(4).

1. An electronic municipal tax lien service may be procured through competitive contracting pursuant to N.J.S.A. 40A:11-4.1 et seq., without seeking prior approval of the Director of the Division of Local Government Services.

(d) When a municipality conducts an electronic tax lien sale, the tax collector shall continue to prepare the tax lien sale notice required pursuant to N.J.S.A. 54:5-25. In addition to the content required by N.J.S.A. 54:5-25, the notice shall state that the sale is being held through an online auction*[,] *and* that bidders should submit their bids no later than the date and time of the sale set forth in the notice*[, and that all or any portion of this tax lien sale may be adjourned by the tax collector pursuant to N.J.S.A. 54:5-28]*. A full link to the website for tax lien sale bidder instructions and registration shall also be included.

1. The tax lien sale *[notice prepared pursuant to this subsection]* *line items* shall be available to the public online *on the vendor's website* without requiring registration, membership, or payment prior to viewing. If the municipality has a website, a copy of the tax lien sale

notice shall be posted *[and continuously maintained thereon]* until the tax lien sale concludes.

2. Pursuant to N.J.S.A. 54:5-26, the municipality shall physically post copies of the tax lien sale notice prepared pursuant to this subsection in five of the most public places in the municipality.

3. Pursuant to N.J.S.A. 54:5-27, when the property owner's name appears in the tax lien sale list and their post office address is known, the municipality shall mail to the property owner at that address, postage prepaid, a copy of the tax lien sale notice prepared pursuant to this subsection. Failure to mail the notice shall not invalidate any proceeding under this section.

[(e)] In addition to the notice required to be mailed pursuant to (d)3 above, at least one additional notice shall be mailed by regular or certified mail to the property owner and to any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L. 1948, c. 96 (N.J.S.A. 54:5-104.8) once during the four-week period prior to the week of the tax lien sale. The costs of mailing said notice(s) shall not be added to the cost of sale in addition to those costs provided in N.J.S.A. 54:5-38. The additional notification to the property owner shall contain the information required pursuant to (d) above. Failure to mail the notice shall not invalidate any proceeding under this section.*

[(f)] *(e)* The newspaper publication requirement set forth in N.J.S.A. 54:5-26 may be satisfied by publishing, in lieu of a copy of the tax lien sale notice prepared pursuant to (d) above, a notice published in the format of a display advertisement, rather than a legal advertisement. The display advertisement, which must be no less than two inches by three inches with a bold black border, shall be published once a week for four weeks, prior to the week of the sale in *[both]* a newspaper circulating in the municipality *[and any other newspaper designated by the municipality for publishing public hearing notices regarding ordinances being considered for adoption]* ***which is its official newspaper***. The notice contained in the display advertisement shall set forth the following information:

1. A statement that the municipality is announcing the sale of delinquent taxes and delinquent municipal charges;

2. A statement that the sale shall be conducted through an online auction;

3. A statement that the listing of all parcels and delinquencies and costs, along with bidding instructions, are available online for viewing at no cost;

4. The date and time of sale; and

5. The full website link where the *[notice of]* tax lien sale ***line items*** may be viewed.

[(g)] *(f)* *[Where the newspaper fails to print a notice published pursuant to (f) above, or where a notice published pursuant to (f) above contains one or more errors, notice]* ***Notice*** to the property owner and to any person or entity entitled to notice of foreclosure pursuant to section 20 of P.L. 1948, c. 96 (N.J.S.A. 54:5-104.8) may be given by regular or certified mail in lieu of any two publications required pursuant to *[(f)]* *(e)* above. In addition to costs of sale provided in N.J.S.A. 54:5-38, the costs of such notice or notices shall be added to the cost of sale pursuant to N.J.S.A. 54:5-26, not to exceed \$25.00 for each notice for a particular property. The notice or notices to the property owner shall contain the information required pursuant to (d) above. Failure of the property owner to receive a notice properly mailed by the tax collector shall not constitute grounds to void the subsequent tax lien sale.

[(h)] *(g)* The vendor's fee for conducting the electronic tax lien sale shall not exceed the fee collected by the tax collector under N.J.S.A. 54:5-38. The vendor shall only charge fees to the municipality and not to bidders or lien purchasers.

[(i)] *(h)* The tax collector shall not collect any additional fees for the cost of sale, except as otherwise permitted pursuant to law.

[(j)] *(i)* Bidding shall open no earlier than upon publication of the tax lien sale notice prepared pursuant to (d) above or the display advertisement prepared pursuant to *[(f)]* *(e)* above.

[(k)] *(j)* Bidder registration shall be online and completed prior to submitting a bid, although the municipality shall have the discretion to permit in-person registration with the tax collector's office.

[(l)] *(k)* Before any bidder can place a bid, the bidder will be required to post a forfeitable deposit *[equal to 10 percent of the total lien amount to be bid upon]*.

1. *[Bidder deposits shall be allowed to be posted at least up until the final business day of the final calendar week prior to the date of the tax lien sale.]* At the tax collector's discretion, deposits may be given in person at the municipality's office.

2. Deposits shall be held by the municipality and not the vendor.

3. If a bidder shall fail to make a payment on a lien certificate that such bidder has won upon conclusion of the sale, the deposit amount *[representing 10 percent of the lien certificate not paid]* shall be forfeited to the municipality.

4. The tax collector shall ensure that any unused portion of the deposit will be promptly returned to the bidder after the conclusion of the sale.

[(m)] *(l)* An electronic municipal tax lien sale system shall provide:

1. Online bidder registration, including the ability to obtain and electronically submit forms, such as bidder information sheets and W-9s.

2. Detailed online instructions on how to use the system's website.

3. Help desk support for tax collectors and bidders through the internet, e-mail, and at least one toll-free telephone number. A dedicated telephone hotline shall be made available to tax collectors for use until the sale has been completed.

4. Web-based training, including online tutorials, for both bidders and those municipal officers and employees responsible for administering the tax lien sale. The vendor shall supply a method for bidders to practice bidding.

5. Available in-person training, including a working demonstration of the website and overall system, for tax collectors and other municipal employees involved in the tax lien sale process.

6. Online display of winning bids immediately upon completion of the auction.

7. Notification to winning bidders by e-mail at the bidder's registered e-mail address.

8. Access for the tax collector to remove and update the tax lien sale list in real time.

9. Access for the tax collector to review a detailed history of all funds transferred, as well as a transaction log of all bid submissions and results.

10. Provision for the electronic transfer of information and data from and to the municipality.

11. A standard complaint procedure for both the municipality and bidders. The complaint procedure shall require that a complaint log be maintained, which shall be available to the municipality for inspection.

[(n)] *(m)* All bid information and participant financial data is deemed property of the municipality.

[(o)] *(n)* No officer, employee, or independent contractor of the vendor may participate in the auction.

[(p)] *(o)* Bid*[s]* ***amounts*** shall not be visible to the public or to the municipality while the auction is in process.

[(q)] *(p)* All liens shall be auctioned individually, such that a bid will be placed on each lien with a winning bidder determined for each lien. The bulk sale of liens is prohibited. *[Only proxy bidding shall be permitted for electronic tax lien sales.]*

[(r)] *(q)* The electronic municipal tax lien service shall give the tax collector the ability to accept and process payments by ACH transfer, bank wire transfer, certified check, or cash. Cash payments may be accepted in person by the tax collector; however, the tax collector must immediately input data into the electronic tax lien sale system to reflect any such payment. Payment must be made within 24 hours after the bidding is closed.

1. For ACH transfers, the transfer must be initiated within 24 hours after the bidding is closed and settled within 72 hours of the close of sale, unless a longer period of time has been agreed upon in writing between the municipality and the vendor.

2. *[Failure to receive payment within the time period required will result in the lien being resold on the seventh calendar day after the date on which bidding is closed or, if the seventh calendar day falls on a holiday, the first business day following the holiday.]* The vendor shall

notify all registered bidders of any properties that are available for bidding due to non-payment. If a parcel is resold, interest shall be recalculated to the date of the new sale date.

(s) *(r)* The following cybersecurity best practice framework shall be followed:

1. The vendor’s website and system shall:
 - i. Be hosted on dedicated servers or in a FedRAMP Moderate Impact Level Authorized Cloud. When using cloud services, the vendor shall check provider credentials and contracts;
 - ii. Encrypt stored and transmitted financial information and personal identification information;
 - iii. Maintain only critical personal identification information. Social Security numbers shall not be utilized as identification numbers for system purposes;
 - iv. Employ a resilient password policy;
 - v. Undergo regular security updates and stress testing;
 - vi. Have back up, information disposal, and disaster recovery plans and procedures created and tested;
 - vii. Undergo regular security risk assessments for detecting compromises; and
 - viii. Maintain awareness of vulnerabilities, implement necessary patches and updates, and develop a cybersecurity incident response plan.

2. The vendor shall notify the municipality of any cybersecurity incidents they experience, even if the incident did not lead to an actual compromise of data.

3. The vendor’s staff shall be educated in good security measures. The vendor shall perform employee background checks on employees with access to financial information and personal identification information stored on the system.

4. The vendor shall have a computer security incident response team (CSIRT) in place.

(t) *(s)* Vendors shall provide annual evidence of satisfactory internal controls to the municipality’s chief financial officer and the tax collector. Such evidence must be in the form of an unqualified auditor’s report issued pursuant to the performance of a Service Organization Control (SOC) 2 engagement based upon the existing Trust Services Principles (WebTrust™ and SysTrust™) carried out in accordance with AT 101 Standard 1, with the ability to test and report on the design effectiveness (Type I) and operating effectiveness (Type II) of the vendor’s controls.

(u) *(t)* All contracts between a municipality and a vendor shall:

1. Be reviewed and approved by the tax collector prior to the execution of the contract as to the terms, including satisfaction of the requirements of this section;
2. Be awarded by the governing body, notwithstanding the value of the contract;
3. Contain adequate provisions to indemnify the municipality against any losses incurred as a result of the actions or inactions of the vendor;
4. Require the vendor to be responsible for the errors and omissions of its employees or agents; and
5. Upon reasonable notice, require the vendor to allow an independent auditor to examine its internal controls applying SSAE No. 16 and AT 101 standards, or WebTrust™ and SysTrust™ standards. The municipality shall have the discretion to agree to compensate the independent auditor. Upon completion, the independent auditor’s report shall be provided to the tax collector, chief financial officer, and governing body and shall be for internal use only.

(v) *(u)* All disputes between the parties and disputes concerning the contract or its operation shall be in writing and forwarded to the other party via registered or certified mail. New Jersey law shall govern the contract and the relationship between the municipality and the vendor. All contracts shall have appropriate provisions for:

1. Dispute resolution between the parties;
2. Service of process to the vendor; and
3. Application of New Jersey law.

(w) *(v)* The duration of any contract between a municipality and a vendor shall not exceed one year, notwithstanding any provisions of the Local Public Contracts Law to the contrary. Contracts for electronic tax lien sale systems shall not be considered data processing service contracts under N.J.S.A. 40A:11-15(5).

(x) *(w)* All contracts entered into between the municipality and a vendor shall be in writing, executed by all parties, and have appropriate provisions for termination of the contract, including, but not limited to, termination for failure to perform on the part of the vendor.

(y) *(x)* The tax collector shall allow the Director of the Division of Local Government Services access to online reports of any electronic municipal tax lien sale. The Director of the Division of Local Government Services may require any tax collector and vendor conducting an electronic tax lien sale to provide a report with information on the sale including, but not limited to:

1. The date and time of sale;
2. Number of line items;
3. Agreed upon fee to the vendor, subject to the limitations set forth in *(h)* *(g)* above;
4. A weblink to the auction site; and
5. Auction results.

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Rules for Housing Preference for Veterans and Surviving Spouses

Adopted New Rules: N.J.A.C. 5:40

Proposed: August 7, 2017, at 49 N.J.R. 2347(a).
 Adopted: November 3, 2017, by Charles A. Richman,
 Commissioner, Department of Community Affairs.
 Filed: November 29, 2017, as R.2018 d.006, **without change**.
 Authority: P.L. 2016, c. 19, and P.L. 2017, c. 19.
 Effective Date: January 2, 2018.
 Expiration Date: January 2, 2025.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

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

Full text of the adopted new rules follows:

CHAPTER 40
 HOUSING PREFERENCE FOR VETERANS AND SURVIVING SPOUSES

SUBCHAPTER 1. GENERAL PROVISIONS

5:40-1.1 Title; purpose

(a) The rules in this chapter shall be known and may be cited as the “Housing Preference for Veterans and Surviving Spouses.”

(b) The rules in this chapter are established to implement the provisions of P.L. 2016, c. 19, and P.L. 2017, c. 19. These statutory enactments amended the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55-14K-1 et seq., the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., and the County Improvement Authorities Law, N.J.S.A. 40:37A-44 et seq. They direct the Department of Community Affairs to adopt rules that establish a housing preference for veterans and surviving spouses.

5:40-1.2 Definitions

The following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise.

“Active service in time of war” means active service at some time during one of the following periods:

1. Operation “Iraqi Freedom,” on or after the date the President of the United States or the United States Secretary of Defense designates as the