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NEW JERSEY REGISTER

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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 22

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(Includes adopted rules filed through October 24, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMER 16, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 21, 1991

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On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 44(1991)
Rescission of Executive Order No. 37(1991)
Termination of Limited State of Emergency in Ocean County

Issued: October 16, 1991.
Effective: October 16, 1991.
Expiration: Indefinite.

WHEREAS, Executive Order No. 37, issued on July 19, 1991, declared a limited State of Emergency in Ocean County in response to the impediment to the use of Route 9, a State highway in Lacey Township, caused by the destruction of a traffic bridge on a crucial portion of Route 9 due to severe weather conditions and substantial flooding; and

WHEREAS, the traffic bridge has been repaired and reopened with no load restrictions posted and its structural integrity has been restored;

NOW THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, announce that the limited State of Emergency is hereby terminated and that Executive Order No. 37 is rescinded.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 45(1991)
Governor's Advisory Council on AIDS

Issued: October 24, 1991.
Effective: October 24, 1991.
Expiration: June 2, 1994.

WHEREAS, the presence of Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) present a serious public health concern for the State of New Jersey; and

WHEREAS, New Jersey ranks fifth in the nation with regard to the number of its citizens infected with AIDS since 1981; and

WHEREAS, the number of AIDS cases has been steadily increasing and in November of 1990, New Jersey reported its ten-thousandth AIDS case; and

WHEREAS, as many as forty-thousand New Jerseyans may be infected with HIV; and

WHEREAS, the human suffering caused by AIDS is of continuing conccern to all New Jerseyans; and

WHEREAS, New Jersey's AIDS/HIV effort needs to be better coordinated to deliver critical services efficiently and cost effectively to its citizens.

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of this State, do hereby ORDER and DIRECT:

1. There is hereby created a Governor's Advisory Council on AIDS, hereinafter referred to as the Advisory Council.

2. The Advisory Council shall consist of the Commissioner of Health or her designee; the Commissioner of Corrections or his designee; the Commissioner of Education or his designee; the Commissioner of Human Services or his designee; the Commissioner of Community Affairs or his designee; the Commissioner of Insurance or his designee; the Attorney General or his designee; the Public Advocate or his designee; the Chancellor of Higher Education or his designee; two members of the Senate to be appointed by the President thereof, no more than one of whom shall be from the same political party; two members of the General Assembly to be appointed by the Speaker thereof, no more than one of whom shall be from the same political party; and no more than thirty-five public members to be appointed by the Governor. The public members shall consist of educators, labor representatives, health care providers, advocates and persons who have tested HIV positive. The public members shall serve at the pleasure of the Governor. All members of the Advisory Council shall serve without compensation.

3. The Governor shall designate a Chairperson and Vice Chairperson from among the public members of the Advisory Council.

4. Advisory Council vacancies shall be filled by the Governor for the remainder of the unexpired term.

5. It shall be the duty of the Governor's Advisory Council to:

a. Advise the Governor on policy relating to AIDS issues;

b. Monitor the Department of Health's implementation of its plan to fight AIDS in the 1990's;

c. Recommend legislation to the Governor;

d. Advise the Governor as to what measures need to be taken to coordinate State efforts concerning AIDS research and treatment;

e. Advise the executive branch concerning its relationship with voluntary agencies and private sector entities involved in AIDS-related activities, including funding sources for research; and

f. Prepare an annual report for the Governor on or before June 1 of each year, regarding its findings, and any recommendations it deems appropriate.

6. The Advisory Council shall receive administrative staff support from the Department of Health, but shall not obligate any funds of that Department or of any other department, office, division or agency of the State.

7. This Order shall take effect immediately and shall terminate on June 2, 1994.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Initial Decision in Contested Cases
Proposed Amendment: N.J.A.C. 1:1-18.1

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1991-561.

Submit comments by December 18, 1991 to:
Jeff Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.A.C. 1:1-18.1, initial decisions in most contested cases must be issued within 45 days of the last day of the hearing, but there is a 21-day deadline for initial decisions in conference hearings. The conference hearing format is intended to be less formal than regular plenary hearings because of limitations on discovery and post-hearing briefs. Therefore, it was expected that decisions could be issued more quickly. While conference hearings do tend to be less formal, the Office of Administrative Law (OAL) has decided that the 21-day decision deadline should be eliminated for the reasons explained below. The proposed amendment deletes the 21-day time frame, but retains language requiring that initial decisions issue in conference hearings as soon as practicable after the last day of evidentiary hearing. Conference hearings also remain subject to the overall 45-day time limit for all initial decisions.

It is noted that the proposed amendment will primarily affect Department of Personnel cases scheduled as conference hearings pursuant to N.J.A.C. 1:1-9.1(f). While Special Education hearings and Division of Economic Assistance cases are also scheduled as conference hearings, these cases are subject to special time frames mandated by Federal law. The decision deadlines are contained in N.J.A.C. 1:6A-18.1 for Special Education hearings and in N.J.A.C. 1:10-8.1 for Economic Assistance cases.

A major consideration in proposing the elimination of the conference hearing decision deadline is the fact that many of the more than 10,800 cases transmitted to the OAL each year are already subject to short decision time frames which are imposed by State and Federal law. These include high-volume areas like welfare cases, which are subject to Federal time requirements, as well as a growing number of areas, such as lemon law hearings, in which State law mandates a decision within a specified time period. Because of the increasing number of such deadlines imposed on administrative law judges, the OAL believes it must eliminate the 21-day deadline in conference hearings, which is a deadline the OAL voluntarily assumed. The large number of statutorily imposed short time frames, coupled with crowded hearing calendars subject the administrative law judges, at times, to unworkable demands for timely decision issuance. The situation is exacerbated by budget constraints and by the fact that the OAL presently has a reduced judge corps. The OAL cannot change the short time frames which are set by State and Federal law, but can adjust its own demands on judges.

The OAL can no longer support the proposition that all Personnel cases, without exception, are deserving of a decision within 21 days of the evidentiary hearing. The proposed amendment, however, expects administrative law judges to continue to manage their case loads and to decide from among the many Personnel disputes how promptly various decisions must be issued. By retaining the "as soon as practicable after the last day of the evidentiary hearing" language, the OAL signals its continued belief that many Personnel cases deserve expedition, particularly those in which public employees may be without any income. The language also indicates that the OAL continues to believe that most Personnel cases should be decided after the evidentiary hearing without subsequent briefs or proposed findings. The possibility of issuing oral decisions in Personnel cases is also unaffected by this proposal. By eliminating the 21-day decision deadline in conference hearings, the OAL hopes to give its judges more flexibility to prioritize their work.

Social Impact

The proposed amendment may cause some initial decisions in conference hearings to be issued some days later than they would have been issued under the 21-day time frame. This may also result in an overall process delay, provided the Merit System Board issues its final decisions without increasing its current time frames. However, the OAL believes that this possible delay is outweighed by the need to readjust the demands on administrative law judges in light of an increased number of short decision deadlines and increased work loads caused by a reduced judge corps. Special Education and Economic Assistance hearings will not be affected by the proposed amendment because decision deadlines for those hearings are based on Federal requirements and will not change.

Economic Impact

The proposed amendment is not expected to have significant adverse economic impact. Some Personnel cases may remain at the OAL longer after conference hearings are concluded, but this should not have a significant financial impact on the OAL, the agencies or parties, unless back pay or interest awards increase substantially. It is expected that administrative law judges will take this factor into account in deciding which Personnel cases require continuing expedition.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment eliminates the 21-day deadline for initial decisions in conference hearings.

Full text of the proposal follows (additions indicated in boldface **thus;** deletions indicated in brackets [thus]):

1:1-18.1 Initial decision in contested cases

(a)-(c) (No change.)

(d) [In plenary hearings and proceedings on the papers, the] **All** initial decisions shall be issued and received by the agency head [as soon as practicable after the hearing is concluded, but in] no [event] later than 45 days [thereafter,] **after the hearing is concluded** unless an earlier time frame is mandated by Federal or State law. **In conference hearings, the initial decision shall be issued as soon as practicable after the last day of evidentiary hearing, but not later than 45 days after the hearing is concluded.**

[(e) In conference hearings, the initial decision shall be issued and received by the agency head as soon as practicable after the last day of evidentiary hearing, but no later than 21 days thereafter, unless an earlier time frame is mandated by Federal or State law.]

Recodify (f) through (h) as **(e)** through **(g)** (No change in text.)

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Brokers
Proposed Amendments: N.J.A.C. 3:38-1.9 and 4.1
Proposed New Rules: N.J.A.C. 3:38-1.1 and 3.38-5

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8 and 17:11B-13, *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.,* 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).
Proposal Number: PRN 1991-587.

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Submit comments by December 18, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN-040
Trenton, NJ 08625

The agency proposal follows:

Summary

Over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through an affiliated lender. In return, the real estate broker or salesperson receives fees for placing the loans, or receives dividends or other returns on investment from the affiliated lender. Other real estate licensees are participating with mortgage lenders in programs for computerized mortgage loan selection and origination. Terminals for these programs are frequently located in real estate brokerage offices.

Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.*, 102 *N.J.* 176 (1986), public hearings were held to solicit public comments and testimony on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banker and broker licensees. After exhaustive hearings which included testimony from experts in the fields of mortgage banking and real estate sales, the Administrative Law Judge who conducted the hearings recommended that the Department of Banking and the Real Estate Commission promulgate regulations in this area. Most importantly, the ALJ recommended that real estate brokers or salespersons who perform mortgage origination functions be licensed and subject to the regulatory requirements of the Department. New rules arising from this proceeding proposed by the Real Estate Commisson are published elsewhere in this issue of the New Jersey Register.

Consistent with the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq. (the "Act"), the Department has defined by rule which persons must be licensed as mortgage bankers and brokers, and which persons are exempt. Through these definitions the rules clarify that real estate brokers and salespersons who are compensated for orginating or brokering mortgage loans, in addition to the real estate sales commission, must be licensed by the Department of Banking.

The definitions for mortgage banker and broker for purposes of licensing are derived directly from the Act at N.J.S.A. 17:11B-1. A person who for compensation or gain either directly or indirectly originates, acquires or negotiates mortgage loans in the primary market must be licensed as a mortgage banker. Similarly, a person who for compensation or gain either directly or indirectly negotiates, places or sells for others a mortgage loan in the primary market must be licensed as a mortgage broker. The primary market is defined to mean the market wherein mortgage loans are originated between a borrower and lender, and does not include the sale or acquisition of a mortgage loan after closing.

A corporation, partnership, association or other entity may not hold a license unless an officer of the corporation or principal of the partnership, association or other entity has a license of the same type. Further, each office of a licensee must be operated under the supervision of an individual licensee employed at the office on a full-time basis. No such individual may supervise more than one office. An individual supervising an office on a full-time basis must normally be present at the office at least 50 percent of the time that the office is open for business.

Exempted from the licensing requirements of the Act are savings and loan associations, commercial banks, savings banks, insurance companies and credit unions. Subsidiaries of these institutions are not exempt. Also exempt are persons making mortgage loans for private investment or gain and not in the regular course of business. Only a person not engaged in the financial services industry who makes one or two mortgage loans in any one year qualifies for this exemption. The financial services industry means the businesses that are engaged in the granting of credit or the making of investments.

An attorney not actively and principally engaged in the business of a mortgage banker or broker does not need to be licensed for rendering services which may be deemed to be the brokering of a mortgage loan when these services are performed in the course of the attorney's practice. However, an attorney who receives compensation specifically for originating or brokering a mortgage loan does not qualify for this exemption and must be licensed.

A person licensed as a real estate broker or salesman pursuant to Chapter 15 of Title 45, who is not engaged in the business of mortgage banking or brokering, does not need to be licensed under the Act. However, any real estate broker or salesman who receives separate or additional compensation for originating or brokering a mortgage loan, in addition to the real estate sales commission, shall not qualify for this exemption and must be licensed.

N.J.S.A. 17:11B-2(e) grants an exemption for builders who "secure" mortgages for their own construction or for sale of their own construction. It is the Department's view that this provision permits builders to act as a broker, and not a banker, in those transactions. This view is codified in these rules.

Finally, the proposed rules grant an exemption for a solicitor employed by a licensed mortgage banker who acts on behalf of the mortgage banker, and a solicitor employed by a mortgage broker who acts as a broker on behalf of the licensee. The term "solicitor" is defined as any person not licensed as a mortgage banker or broker who is employed by a licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts mortgage loan applications.

The proposed rules also require solicitors to be registered by the Department. To register, an employing licensee will send to the Department a completed registration form, which shall include the solicitor's name and residence address, and the name of the employing licensee. In addition, the licensee shall include a registration fee, which is set at $25.00. The registration certificate will be displayed at the office or work station of the solicitor. Within 30 days after a solicitor ceases employment with a licensee, the licensee must send written notice to the Department. No person may act as a solicitor for more than two licensees in any one calendar year without first obtaining prior express written approval from the Department. The Department shall grant such approval if convinced that the multiple employment does not constitute an attempt to evade the Act's licensing requirements. The proposed rules also provide that no solicitor may be employed by more than one licensee at the same time.

The Department proposes to register solicitors so that it may easily identify the employing licensee. The licensee must supervise the solicitors, and will be held responsible by the Department for the activities of its solicitors. In addition, this requirement will assist in insuring that solicitors are only working for one licensee. Licensees are examined by the Department, obtain a surety bond for the protection of consumers and are otherwise accountable to the Department. A person working independently, and not under the direct supervison of a licensee, is not subject to the same supervision. Accordingly, it has been the Department's view consistent with the Act that persons acting independently of one licensee must obtain a license as a mortgage banker or broker. The proposed rules simply memorialize that position.

In the future, the Department may consider an apprenticeship requirement for licensure under the Act. The registration requirement set forth in these rules will assist the Department to confirm compliance with such a requirement when and if it is instituted.

Current law requires a licensed mortgage banker to obtain a license for each branch office (see N.J.S.A. 17:11B-7; N.J.A.C. 3:38-1.8(b)). These proposed rules define the term "branch office" to mean any location where, in the regular course of business, mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments or lock-in agreements are issued, or any fees or charges relating to the mortgage loan are received from consumers.

A home or place of business of a consumer shall not be considered a branch office. Further, a location is not a branch office merely because any or all of the following activities are conducted at the location: (1) consumers receive information concerning available loan products from a computer terminal; (2) consumers are prequalified for a mortgage loan, so long as no fee is charged for this service; and (3) advertising materials are disbursed to consumers so long as the materials do not in any way resemble an application for a mortgage loan. A licensee must notify the Department of every location, other than a principal or branch offfice, where the licensee distributes advertising materials in person to consumers on a regular basis.

The proposed rules also codify the anti-kickback provision contained in the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 et seq. ("RESPA"). In analyzing the relationship between mortgage bankers and real estate brokers, the ALJ viewed this as a potential area for abuse.

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This provision is necessary because the Act is broader in application than RESPA and includes, for example, non-Federally related loans.

The proposed amendment to N.J.A.C. 3:38-4.1 provides that no licensee shall give or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law. A fee is deemed to be permitted if it falls within an exception to the anti-kickback provisions contained in 12 U.S.C. §2607, the implementing regulations of RESPA or any opinion regarding RESPA set forth by the Federal Department of Housing and Urban Development.

A settlement service is defined as any service provided in connection with a real estate settlement. The following are examples of a settlement service: title insurance, services rendered by an attorney, property surveys, credit reports, appraisals, termite inspections, and real estate brokerage services.

Finally, the proposed rules prohibit a licensee from receiving compensation from any person, including the lender, other than the borrower for brokering a mortgage loan. A broker is employed by a borrower to seek the most advantageous mortgage product for the borrower. If brokers are permitted to charge fees to lenders, there will be an incentive for the broker to refer the loan to the lender offering the broker the highest amount. This may work to the disadvantage of the borrower seeking the loan. By prohibiting this practice, it is hoped that this incentive will be removed.

Social Impact

The licensing requirements set forth in these proposed rules and amendments, in general, merely codify existing licensing requirements consistent with the Act. In addition, the rules and amendments require the registration of solicitors, and require solicitors to act for only one licensee at a time. Finally, the rules and amendments, consistent with the Act, require the licensing of branch offices and require supervision of these offices by licensed individuals. These provisions will have the beneficial social impact of allowing the Department to regulate mortgage bankers and brokers in a more effective manner. In particular, by codifying these licensing requirements of the Act in the rules, the requirements will be further publicized to the industry, which should increase compliance. Requiring the registration of solicitors and prohibiting them from working with more than one licensee at a time, will help ensure that persons working independently as mortgage bankers or brokers will be adequately supervised and will have a surety bond. This supervision and insurance will provide further protection to consumers seeking mortgage loans.

In addition, the rules and amendments prohibit a broker from receiving fees from persons other than the borrower for referring a mortgage loan. This will have a beneficial social impact of removing any incentive a broker may have to refer the loan to the lender offering the highest amount. Instead, the broker will refer the loan to the lender offering the product most advantageous to the consumer. The consumer may therefore benefit by receiving a mortgage loan with a lower rate and/or lower fees and charges.

Economic Impact

The rules require a prospective employing licensee to send the Department a $25.00 registration fee for each solicitor. This fee is intended to reimburse the Department for the administrative cost of reviewing the registration form and maintaining files on solicitors. The imposition of this fee will have a negative economic impact on licensees.

In addition, the proposed rules prohibit a broker from receiving fees from third parties incident to a mortgage loan. This will have a negative economic impact on licensees which are currently receiving this compensation.

To the extent that the licensing provisions alert persons such as real estate brokers and salesmen that they must obtain a license from the Department of Banking to engage in mortgage banking and brokering, and such persons become licensed for the first time, the proposed rules will impose on such persons for the first time the cost of licensing. Mortgage bankers and brokers are required to pay the Department a biennial license fee of $1,000. N.J.A.C. 3:38-1.1(c). In addition, licensees must reimburse the Department for the cost of examinations at the cost of $325.00 per diem per person. N.J.A.C. 3:1-6.6(b).

Regulatory Flexibility Analysis

Virtually all mortgage lenders and brokers are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules and amendments do impose reporting rquirements on these licensees. In particular, the rules and amendments require licensees to register solicitors with the Department. The registration form will include the solicitor's name and residence address and the name of the employing licensee. No differentiation based on business size is made regarding this requirement, because it is essential that the Department maintain a record of all solicitors including those employed with small businesses. Otherwise, the Department would not be able to monitor compliance with these rules, including the requirement that solicitors be employed by only one licensee.

The mortgage banker and broker definitions clarify who must meet the Act's licensing requirements. Due to this clarification, persons not previously clearly subject to licensure are now put on notice that they must be licensed. Nearly all of these persons are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These persons, to become licensed, will need to file mortgage banker or broker applications every other year, and will be subject to examination by the Department. The fees imposed for these services are set forth in the Economic Impact statement.

No differentiation is made in these licensing requirements based on business size because the Legislature has directed the Department in the Act to license all mortgage bankers and brokers regardless of the size. Small licensees need the same supervision as larger licensees. Although the application fee and the per diem examination charge are the same for all licensees, small businesses typically require fewer days of examination, so they are charged a proportionately lower examination charge. To this extent, differentiation in the fees is made based on business size.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:38-1.1 Definitions

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

"Act" means the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

"Branch office" means any location where, in the regular course of business, mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments or lock-in agreements are issued, or any fees or charges relating to the mortgage loan are received from consumers. A home or place of business of a consumer shall not be considered a branch office. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

1. Consumers receive information concerning available loan products from a computer terminal;

2. Consumers are prequalified for a mortgage loan, so long as no fee is charged for this service; and

3. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a mortgage loan.

"Broker" means to place for others a mortgage loan in the primary market.

"Financial services industry" means the businesses that are engaged in the granting of credit or the making of investments.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker or any other person who originates mortgage loans in this State.

"Licensee" means a mortgage banker or mortgage broker licensed with the Department of Banking.

"Mortgage banker" means any person other than those exempted, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates mortgage loans in the primary market.

"Mortgage broker" means any person, other than those exempted, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others, or offers to negotiate, place or sell for others, a mortgage loan in the primary market.

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"Mortgage loan" means any loan secured by a first mortgage on real property on a one- to six-family dwelling, a portion of which may be used for nonresidential purposes.

"Originate" means to commit to make a mortgage loan, or to close a mortgage loan in the name of the licensee.

"Prequalification" is the process whereby a licensee prior to application advises a person whether he or she qualifies for a mortgage loan product, subject to satisfactory appraisal and other contingencies.

"Primary market" means the market wherein mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after closing of the mortgage loan.

"Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.

"Solicitor" means any person not licensed as a mortgage banker or mortgage broker who is employed by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts mortgage loan applications, or assists borrowers in completing mortgage loan applications.

Recodify existing N.J.A.C. 3:38-1.1 through 1.7 as **3:38-1.2 through 1.8** (No change in text.)

3:38-[1.8]**1.9** Office requirements

(a)-(e) (No change.)

(f) A licensee shall notify the Department of every location, other than a principal or branch office, where the licensee distributes advertising materials in person to consumers on a regular basis.

3:38-4.1 [Application] **Permitted charges**

(a) (No change.)

(b) No licensee shall give or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law. Without limiting the above, a fee shall be deemed to be permitted if it falls within an exception to the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA") contained in 12 U.S.C. §2607, the implementing regulations of RESPA or any opinion regarding RESPA set forth by the Federal Department of Housing and Urban Development.

(c) No licensee shall accept any consideration from any person, including the lender, except the borrower for brokering a mortgage loan.

SUBCHAPTER 5. PERSONS LICENSED

3:38-5.1 Necessity for license

(a) No person shall act as a mortgage banker or a mortgage broker without first obtaining a license therefor, but a person licensed as a mortgage banker may act as a mortgage broker.

(b) No corporation, partnership, association or any other entity shall be issued or hold a license unless one officer of the corporation, or one principal of the partnership, association or other entity, has a license of the same type sought or held.

(c) Each branch office and principal office shall be operated under the full control and supervision of an individual licensee employed at the office on a regular and full-time basis to supervise and perform mortgage banking and mortgage brokerage services. No such individual may supervise more than one office. An individual supervising an office on a regular and full-time basis must normally be present at the office at least 50 percent of the time that the office is open for business. Nothing in this rule shall be deemed to require an office to be open for a specified period of time.

3:38-5.2 Exemptions

(a) The following persons are exempt from the licensing requirements of the Act:

1. Savings and loan associations, commercial banks, savings banks, insurance companies and credit unions. Subsidiaries of these institutions are not exempt from the licensing requirements;

2. A person making mortgage loans for private investment or gain and not in the regular course of business. Only a person not engaged in the financial services industry who makes one or two mortgage loans in a calendar year shall qualify for this exemption;

3. An attorney at law of this State, not actively and principally engaged in the business of a mortgage banker or mortgage broker, when the attorney renders services in the course of his practice. An attorney who receives compensation specifically for originating or brokering a mortgage loan shall not qualify for this exemption and must be licensed;

4. A person licensed as a real estate broker or salesman pursuant to Chapter 15 of Title 45 of the Revised Statutes, and not engaged in the business of a mortgage banker or broker. A person receiving separate or additional compensation in any amount for originating or brokering a mortgage loan, in addition to the real estate sales commission, is considered to be engaged in the business of a mortgage banker or broker and must be licensed;

5. A builder acting as a mortgage broker incident to the builder's own construction or for the sale of the builder's construction; and

6. A registered solicitor employed by a licensed mortgage banker who acts on behalf of the mortgage banker, and a registered solicitor employed by a licensed mortgage broker who acts as a broker on behalf of the mortgage broker. A solicitor who is simultaneously employed by more than one licensee shall not qualify for this exemption and must be licensed.

3:38-5.3 Registration of solicitors

(a) Before acting as a solicitor for a licensee, an individual must be registered with the Department for that licensee.

(b) To register a solicitor, the prospective employing licensee shall send the following to the Department of Banking:

1. A completed registration form, which shall include the solicitor's name and residence address and the name of the employing licensee; and

2. A $25.00 registration fee.

(c) The Department shall provide all licensees with a solicitor registration certificate.

(d) The employing licensee shall display the registration certificate at the office or work station of the solicitor.

(e) Within 30 calendar days after a solicitor ceases his or her affiliation with a licensee, the licensee shall provide written notice to the Department.

(f) No person shall be employed as a solicitor for more than two licensees in any one calendar year without prior express written approval from the Department. The Department shall grant such approval upon receipt of proof, satisfactory to the Department, that the multiple employment does not constitute an attempt to evade the licensing requirement of the Act. No solicitor shall be employed by more than one licensee at a time.

MILITARY AND VETERANS' AFFAIRS

(a)

THE ADJUTANT GENERAL

Notice of Reopening of Public Comment Period Military Service Medals

Proposed New Rules: N.J.A.C. 5A:3-1 and 2

Take notice that Department of Military and Veterans' Affairs is reopening the period for the submission of written comments on proposed new rules N.J.A.C. 5A:3-1 and 2 published in the May 20, 1991 New Jersey Register at 23 N.J.R. 1490(a).

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The Department plans to repropose rules at N.J.A.C. 5A:3-3 and will at that time accept comments about that proposal.

Submit written comments by December 8, 1991 to:

Harold R. Smith
Chief, Records and Archives Bureau
New Jersey Department of Military and Veterans' Affairs
CN 340
Trenton, NJ 08625-0340

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION ELEMENT

Exclusions From Hazardous Waste; Household Waste

Proposed Amendment: N.J.A.C. 7:26-8.2

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
DEP Docket Number: 042-91-10.
Proposal Number: PRN 1991-575.

Submit written comments, identified by the Docket Number given above, by January 17, 1992 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing to amend N.J.A.C. 7:26-8.2(a)6, which excludes household waste from being regulated as hazardous waste.

The amendment clarifies the term "household waste" to include waste generated by single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, picnic grounds and day use recreation areas. This amendment is equivalent to the Federal regulation regarding the term "household waste" promulgated by the United States Environmental Protection Agency (EPA) on November 13, 1984 at 49 Fed. Reg. 44978.

In 1985, the EPA promulgated additional amendments regarding the applicability of the household waste exclusion to resource recovery facilities. See 40 C.F.R. 261.4(b), 50 Fed. Reg. 28,702 (July 15, 1985). These particular amendments have been the source of litigation regarding the applicability of the household waste exclusion to residue generated by the thermal processing of household waste at resource recovery facilities. The Department's proposed amendment does not include the Federal language which has been the source of that controversy. This amendment deals only with the term "household waste" and the category of originating facilities which may claim this exclusion.

This proposed amendment is not intended to address the issues of residual ash management and the applicability of the household exclusion to resource recovery facilities. The current requirements for management of residual ash set forth at N.J.A.C. 7:26-2B will continue in effect and be unaffected by this proposed amendment. The issue of residual ash management is also currently before the Legislature in various bills.

Social Impact

The proposed amendment clarifies the definition of household waste by specifying various types of living environments that qualify for the household waste exclusion. The amendment is not anticipated to have a significant social impact, although it will clarify whether some classes of persons are required to dispose of their wastes as hazardous.

Economic Impact

Any economic impact resulting from the proposed amendment is expected to be minimal. In fact, anyone currently disposing of materials as hazardous waste due to the ambiguity of the current term of household waste and the applicability of the exclusion to a particular situation will be relieved of the requirement to do so. The amendment is not anticipated to have a significant economic impact.

Environmental Impact

The proposed amendment clarifies the term "household waste" so that the limits of the household hazardous waste exclusion are better understood. The Department does not anticipate any adverse impacts on human health and the environment as a result of this amendment, since there is no substantive change to the definition. The Department recognizes and encourages the efforts by county and local governments to collect household hazardous waste. The Department does not expect that the proposed amendment will affect those efforts.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment would not impose additional reporting, recordkeeping, or other compliance requirements on small businesses because the rule is clarifying the living environments which qualify for the household waste exclusion. The Department does not anticipate any impact to be felt by small businesses as a result of this amendment.

Full text of the proposal follows (additions indicated in boldface **thus**):

7:26-8.2 Exclusions

(a) The following materials are not hazardous for the purpose of this subchapter:

1.-5. (No change.)

6. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households**, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.**

7.-26. (No change.)

(b) (No change.)

(b)

NEW JERSEY LOW LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Assessment of Generators for the Cost of Siting and Developing a Low Level Radioactive Waste Disposal Facility

Proposed New Rules: N.J.A.C. 7:60

Authorized By: New Jersey Low Level Radioactive Waste Disposal Facility Siting Board, Paul E. Wyszkowski, Chairman.
Authority: N.J.S.A. 13:1E-177 et seq., specifically 13:1E-181(o)-181.1; N.J.S.A. 32:31-1 et seq.
Proposal Number: PRN 1991-572.

Public hearings concerning this proposal will be held on:

Monday, December 9, 1991, at 10:00 A.M.
Human Resource Development Institute
Theater/79
600 College Road East
Princeton, New Jersey 08540

Thursday, December 12, 1991, at 7:30 P.M.
Stockton State College
A-Wing Lecture Hall
Pomona, New Jersey 08240

Submit written comments by January 3, 1992, to:

Samuel F. Penza, Executive Director
New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board
CN 410
Trenton, New Jersey 08625-0410

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The agency proposal follows:

Summary

The New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board) is proposing rules for the assessment of fees and reporting requirements for generators. The proposed fees will enable the State to implement the requirements of the Federal Low-Level Radioactive Waste Policy Act of 1980 (P.L.96-573) (Policy Act) and the Federal Low-Level Radioactive Waste Policy Amendments Act of 1985 (P.L.99-240) (Amendments Act), 42 U.S.C. §§2021b et seq., the Northeast Interstate Low-Level Radioactive Waste Management Compact Act, N.J.S.A. 32:31-1 et seq. (Compact Act), and the Regional Low-Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq. (Siting Act).

The Policy Act makes each state responsible for providing disposal capacity for low level radioactive wastes generated within its borders. The Amendments Act provides milestones with deadlines and penalties for measuring progress in developing new disposal capacity. The Siting Act was enacted in response to Federal law by creating the Low Level Radioactive Waste Disposal Facility Siting Board with responsibility to site and develop a low level radioactive waste disposal facility in New Jersey.

The Siting Act created an 11 member Board and a 13 member Advisory Committee to site, develop and oversee the operation of a low-level radioactive waste disposal facility in New Jersey. In general, the Board is responsible for establishing siting criteria, developing a disposal plan, establishing a siting process, siting and ensuring the construction, operation and closure of the low-level radioactive waste disposal facility, and developing a public information program. The Advisory Committee is generally responsible for advising the Board and the Department of Environmental Protection and Energy on matters related to low level radioactive waste, advising on disposal facility site designation, and making recommendations for action on application for the construction of the disposal facility.

The Board and Advisory Committee were constituted in 1988 and since then have operated with General State Fund appropriations and Federally rebated funds. The Federal Amendments Act allowed for the charging of a surcharge for use of the existing commercial low-level radioactive waste disposal facilities. One-fourth of the surcharges collected is rebated to the state in which the waste originated if the state met the provisions of the Amendments Act. In 1989 and 1990, with the use of General State Funds and Federal rebate money, the Board established a public information program, the disposal plan, the siting criteria, and the methodology to screen the state for suitable candidate sites for further consideration.

In recent years, New Jersey's low-level radioactive waste disposal volume has consisted of approximately 55 percent generated by nuclear power plants, 25 percent generated by medical and academic institutions and industrial facilities performing research and development, and the remaining 20 percent generated by hospitals, government and industries. Approximately 90 percent of the radioactivity of low-level radioactive waste is from nuclear power plants. Annually, New Jersey generates approximately 50,000 cubic feet of low-level radioactive waste. Currently these wastes are disposed of in the nation's three commercial low-level radioactive waste disposal sites, which are located in the states of Nevada, South Carolina and Washington.

In the late 1970's, the states of Nevada, South Carolina and Washington informed Congress that they would not continue the practice of disposing of low-level radioactive waste indefinitely. In response, Congress enacted the Policy Act and Amendments Act which made each state responsible for providing disposal capacity for low-level radioactive wastes generated within its borders requiring disposal. Subsequently, New Jersey enacted the Compact Act and the Siting Act to enable it to fulfill its responsibilities under the Policy Act and Amendments Act.

In October 1990, amendments to the Siting Act were introduced which authorized the Board to require New Jersey generators to report low-level radioactive waste information; to oversee construction, operation and closure of a disposal facility; and to assess the generators for the cost of developing a low-level radioactive waste disposal facility, and implementing State and Federal laws concerning low-level radioactive waste. This legislation (P.L.1991, c.166) was signed into law on June 19, 1991. The proposed new rules are intended to implement the amendments to the Siting Act.

The proposed new rules provide a mechanism to obtain funds which are essential for the siting, development, licensing and construction of a low level radioactive waste disposal facility in accordance with Federal and State law. The rules provide the mechanism to fund the costs of the siting process including the cost of consultant services to perform the technical siting, development, licensing and construction work, and staff to oversee the process. In addition, the fees will fund the activities of the Board, the Advisory Committee, the Northeast Compact Commission, and the Department of Environmental Protection and Energy in carrying out their responsibilities under the Policy Act, the Amendments Act, the Compact Act and the Siting Act.

The proposed fee assessment process is expected to provide sufficient fees from the generators to cover all the costs for the State to site and develop the waste disposal facility, and to implement the Policy Act, the Amendments Act, the Compact Act and the Siting Act. The Board will utilize the services of qualified contractors, pursuant to established State of New Jersey bid procedures, to perform the work of siting, designing, developing, constructing, operating and closing the low-level radioactive waste disposal facility. The Board staff will, among other things, provide support to the Board and Advisory Committee members; oversee progress of the contractors; coordinate with the Department of Environmental Protection and Energy, the U.S. Nuclear Regulatory Commission, the Northeast Compact Commission and other appropriate agencies in the matter of siting, developing, constructing, operating and closing the facility.

Activities to be funded by the proposed fees include precharacterization and site characterization activities necessary to further narrow and identify the site for development of a low level radioactive waste disposal facility; public information and participation; assistance grants to municipalities with candidate sites; site suitability study for the designated site; the statutory adjudicatory hearing and decision process; legal representation; disposal facility design; preparation and submission of documentation for license and permit applications for operation of a disposal facility; and construction of the disposal facility. The fees will also fund support and assistance as requested by the Board from the New Jersey Department of Environmental Protection and Energy, and the Northeast Interstate Low-Level Radioactive Waste Management Compact Commission.

The Board proposes to base the establishment of fees on the concept of recent use of the three existing disposal sites by each generator, and the potential disposal capacity needs with respect to the decontamination and decommissioning of nuclear power plant units.

The cost to generators for the first assessment is approximately $13.2 million. The first assessment will generate fees to cover the costs for activities in State fiscal years 1992 and 1993. The assessment for each subsequent fiscal year will depend on the activities which are expected to be accomplished in that fiscal year (July 1-June 30). If the siting and development work will require less money, less money will be collected for that year. If funds are received from other sources, the amount of fees to be collected from the generators for the particular fiscal year will be reduced accordingly.

The proposed fee will be calculated principally on the volume and radioactivity of the low-level radioactive wastes produced. A generator who produced greater volume and/or greater radioactivity of waste requiring disposal will be assessed a larger fee than a generator who produced less. The information base for determining volume and radioactivity of waste disposed in a low-level radioactive waste disposal facility will be obtained from the disposal manifests accompanying waste shipments to the three existing disposal sites as maintained on the National Information Management System operated by the U.S. Department of Energy's National Low-Level Waste Management Program. For purposes of calculating a generator's fee, the Board will utilize the generator's annual proportionate volume and annual proportionate radioactivity for the last three years for which verified information is available. In developing the formula to calculate fees, the Board has chosen to use three consecutive years of data rather than one year of data because utilizing the data from a number of years will reduce the year-to-year variability in the fee as a result of the year-to-year variability in the individual generator's volume and radioactivity. The use of three years' data will reduce extreme variability in the annual fee calculated for each generator, thus assisting generators' fiscal planning.

For the first assessment, which will generate fees to cover fiscal years 1992 and 1993 costs, the Board will utilize the disposal volume and radioactivity data compiled by the National Information Management System for the years 1988, 1989 and 1990. For the second assessment, which covers the fees for fiscal year 1994, the Board will utilize 1989,

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1990 and 1991 data. For the third assessment, which covers fiscal year 1995, the Board will utilize 1990, 1991 and 1992 data.

Many facilities which utilize radioactive materials will rquire some decontamination and decommissioning which will lead to the production of waste requiring disposal as low-level radioactive waste. With the exception of the nuclear power plant units, it is not known at this time which other facilities will undergo decontamination and decommissioning. Even with respect to nuclear power plant units, the volume and radioactivity of wastes produced by decontamination and decommissioning activities will vary greatly depend on the decommissioning options chosen and when the options are implemented. Minimum decommissioning capacity will be needed if, as allowed by law, the nuclear power plant units perform limited decontamination then close the units for long periods of time, possibly decades, in order to allow short-lived radionuclides to decay in place. Maximum decommissioning capacity will be needed if the nuclear power plant units are decommissioned as soon as each ceases to produce electrical power. The estimated overall incremental increase in the nuclear power plant sector share of the fee assessment as a result of decommissioning ranges from 1.4 percent (minimum capacity) to 15.5 percent (maximum capacity) of the annual fee assessment. Supporting data for the impact of decontamination and decommissioning on developing a disposal facility are found in the "New Jersey Low-Level Radioactive Waste Disposal Plan" prepared in accordance with the Siting Act and approved by the Board on May 3, 1990.

Because the Board has determined to take into account the impact of potential decontamination and decommissioning, as set forth in the Disposal Plan, on the development of the disposal facility, the Board will assess the nuclear power plant units an additional fee for the potential decontamination and decommissioning wastes. Since there are various legal decontamination and decommissioning options available to the nuclear power plant units and because the determination of when decommissioning will occur and which scenario will be undertaken will be made at some unknown future date, the Board has chosen to use a figure in the mid-range of decontamination and decommissioning impacts for this portion of the assessment. Accordingly, the Board has selected seven percent, as the incremental increase in the nuclear power plant sector share of the fee assessment, to quantify the future decontamination and decommissioning impact on the overall cost of developing the disposal facility. Therefore, in addition to the nuclear power plant sector share of the annual fee based on the volume and radioactivity of wastes disposed at a low-level radioactive waste disposal facility, seven percent of the annual budget will be recovered from the nuclear power plant sector. The incremental increase of seven percent will be assessed within the nuclear power plant sector in proportion to the estimated volume of decontamination and decommissioning wastes as contained in the Disposal Plan. Based upon these proportions, GPU Nuclear Corporation (GPU) which operates the Oyster Creek Nuclear Generating Station will be assessed 2.549 percent, and Public Service Electric & Gas (PSE&G) which operates Salem Unit I Nuclear Generating Station, Salem Unit II Nuclear Generating Station and Hope Creek Nuclear Generating Station will be assessed 4.451 percent.

Concurrently, 93 percent of the annual budget will be from the fees assessed to all generators, including the nuclear power plant generators, based on waste volume and radioactivity. For the first assessment, the net effect of factoring in decontamination and decommissioning impacts will be that approximately 80 percent of the first assessment will be paid by the nuclear power plant sector and approximately 20 percent of the first assessment will be paid by the non-nuclear power plant sectors. For the first assessment, the nuclear power plant sector share of the fee is comprised of two components, the portion based on volume and radioactivity disposed at the three existing disposal sites is approximately 73 percent and the portion based on potential decontamination and decommissioning disposal capacity needs is seven percent.

Ninety-three percent of the first assessment, which will generate fees to cover costs for fiscal years 1992 and 1993, will therefore be based on the volumes and radioactivities of low-level radioactive waste disposed by each generator in 1988, 1989 and 1990, with an additional seven percent increment to the nuclear power plant share based on the potential decontamination and decommissioning disposal capacity needs. For subsequent fiscal year assessments, 93 percent of the assessment will be based on volumes and radioactivities, with an additional seven percent increment to the nuclear power plant sector share.

As previously stated, the Board intends to use the available disposal manifest information as compiled on the National Information Management System maintained by the U.S. Department of Energy's National Low-Level Waste Management Program for determining volume and radioactivity of wastes produced requiring disposal at a low-level radioactive waste disposal facility. Because of the tripling of the disposal surcharges for use of disposal sites during 1992 and because the three existing disposal facilities may exclude New Jersey low-level radioactive waste, beginning with the fiscal year 1995 assessment, the manifest information beginning with 1992 information may not be reflective of the volumes and radioactivities of wastes produced requiring disposal. Accordingly, before assessing the fiscal year 1995 fees, the Board intends to evaluate whether and how to account for the low-level radioactive wastes that are stored instead of disposed.

The Board meetings are held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4.7 et seq. The actual budget for a specific year will be developed annually. Notice will be provided in the "New Jersey Register" and several newspapers with general circulation, at least 30 days prior to the date of the meeting, informing the public that the Board will be considering and taking action on adopting an annual budget. The Board will ask for public comment on the budget at this meeting. Once the Board has approved the annual budget, it will be forwarded to the New Jersey Department of Treasury for review and approval pursuant to N.J.S.A. 13:1E-181.3(a). Once the budget is approved by the Department of Treasury, the Board will calculate the fee for each generator, using the methodology described above and set forth in the proposed rule (N.J.A.C. 7:60-1.6), and will issue the fee assessment notices to the individual generators. The Board will prepare a list of the individual fee assessments for each fiscal year. In addition, an annual audit of expenditures, and of fees collected, will be conducted pursuant to N.J.S.A. 13:1E-181.3(b). The annual budget, the list of fee assessments, and the results of the most recent annual audit will be available to the public upon request, and notice of their availability from the Board will be published in the "New Jersey Register" and several newspapers with general circulation prior to billing the generators.

In addition, the proposed rules require reporting of information on the low-level radioactive waste managed by each generator. The information provided will enable the Board to have accurate information on the types and quantitites of low-level radioactive waste requiring disposal in a low-level radioactive waste disposal facility. The information will assist the Board as it proceeds to design the disposal facility. The information will also assist the Board in developing the basis for fee assessments when limited or no disposal information is available such as during the interim storage period beginning January 1, 1993.

Background

Nationwide, more than 20,000 companies, industries, facilities and institutions utilize radioactive materials. About 20 percent of the electricity utilized in the U.S. is generated by nuclear power plants. In highly developed areas, the percentage of nuclear contribution to the electrical needs is higher. Nuclear power provided about 30 percent of the electricity utilized in New Jersey. Academic, industrial and medical institutions performing research and development work utilize radioactive materials or radiation in their scientific work. About 120 million medical procedures involving radioactive materials are conducted every year in U.S. medical facilities. Product quality in manufacturing facilities is monitored on the production line by instruments that use radioactive materials.

Low-level radioactive waste is not spent fuel, high level radioactive waste, transuranic waste nor mill tailings from the processing of uranium or thorium. Low-level radioactive waste generally consists of items that come into contact with radioactive materials, such as used test tubes; solidified liquids; animal tissue; vials and other medical equipment; mechanical equipment and tools; gloves, booties, other clothing and paper used to prevent contamination; resins and filters used to remove radioactive materials from water; etc.

In New Jersey, there are approximately 700 companies, institutions and facilities licensed by the U.S. Nuclear Regulatory Commission to use or possess radioactive materials. Many do not generate waste yearly, but their radiation sources will need to be disposed of as low-level radioactive waste when the radiation sources are at the end of their useful lives. Approximately one-fifth of these companies, institutions and facilities do routinely generate low-level radioactive waste. In recent years, New Jersey's low-level radioactive waste volume has consisted of approximately 55 percent generated by nuclear power plants, 25 percent by medical and academic institutions and industrial facilities performing research and development, and the remaining 20 percent by hospitals, government and industries. Approximately 90 percent of the radioactivity of low-level radioactive waste is from nuclear power plants. Annually,

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New Jersey generates approximately 50,000 cubic feet of low-level radioactive waste. Currently these wastes are disposed of in the nation's three commercial low-level radioactive waste disposal sites, which are located in Nevada, South Carolina and Washington.

In the late 1970's, the states of Nevada, South Carolina and Washington informed Congress that they would not continue accepting waste for disposal indefinitely. In response, Congress enacted the Low-Level Radioactive Waste Policy Act of 1980, giving all states until 1986 to, individually or through regional compacts, provide for the appropriate disposal of low-level radioactive wastes generated within their borders. Due to the fact that the goals of the Policy Act were not met, in 1985 Congress enacted the Amendments Act. The Amendments Act established a series of milestones and penalties for non-compliance through escalating surcharges on generators who utilize the existing disposal facilities; gave Nevada, South Carolina and Washington the authority to monitor other states' progress and to deny states access to their facilities for failure to comply with the Amendments Act; permitted Nevada, South Carolina and Washington to refuse to dispose of other states' wastes beginning January 1, 1993; and required states to take ownership of low-level radioactive wastes generated within their borders beginning January 1, 1996, if requested by the generators.

In an effort to facilitate creation of new disposal sites, Congress provided states which joined a compact with the ability to restrict use of their disposal sites by other non-compact member states. In 1983, both Connecticut and New Jersey passed legislation to create the Northeast Interstate Low Level Radioactive Waste Management Compact (Northeast Compact) (see N.J.S.A. 32:31-1 et seq.). Upon ratification by the U.S. Congress in 1986, the Governors of Connecticut and New Jersey appointed commissioners to serve on the Northeast Compact Commission. The Northeast Compact Commission keeps both states informed on development of disposal capacity nationwide and monitors progress in developing compact disposal capacity. The Compact protects both states from having to dispose of low-level radioactive wastes from outside of the compact region.

In order to measure and monitor progress toward establishing new sites, the Amendments Act provides several milestones and penalties for non-compliance. Failure to comply with Federal milestones means doubling and tripling penalties, and possibly denial of access to existing disposal sites until the milestone is complied with.

New Jersey has successfully met the first three Federal milestones. New Jersey met the 1986 milestone by joining Connecticut to form the Northeast Interstate Low Level Radioactive Waste Management Compact. New Jersey met the 1988 milestone when the Northeast Compact Commission designated New Jersey and Connecticut as "host" states, and the New Jersey Legislature enacted the Siting Act. New Jersey met the 1990 milestone with the submission of a certification by the Governor that New Jersey would be able to manage its waste by 1993.

The proposed fees are necessary in order to continue to make progress in siting and developing the New Jersey low-level radioactive waste disposal facility. Due to present circumstances, it is likely that New Jersey (like many other states) will not be able to meet the 1992 milestone which is the submission to the U.S. Nuclear Regulatory Commission of a complete license application to operate a low-level radioactive waste disposal facility. Beginning in 1993, Nevada, South Carolina and Washington will be able to deny access to their existing disposal sites to New Jersey's industries, facilities and institutions. Should they do so, generators in New Jersey as well as in other states will be storing or otherwise managing their low-level radioactive wastes during the interim period beginning January 1, 1993, until new disposal capacity is available. In addition, if New Jersey cannot develop a disposal facility by January 1, 1996, if requested by the generators, the State must take title to the low-level radioactive wastes generated in New Jersey requiring disposal.

The Board recognizes there is the issue of generators who will use the new disposal facility, but have not participated in paying for the development of the facility. The Board intends to evaluate this issue in the future and will consider the feasibility of imposing surcharges on such generators as well as providing credits for those generators who have participated in paying for the development of the disposal facility.

Social Impact

A positive social impact will result from the proposed fee assessment schedule. The proposed fee rules will provide sufficient funds to carry out responsibilities for low-level radioactive waste under applicable Federal and State laws, including development of a low-level radioactive waste disposal facility.

By continuing to make progress in siting a low-level radioactive waste disposal facility, denial of access to the existing disposal facilities in Nevada, South Carolina and Washington through 1992 will be prevented. Beginning January 1, 1993, facilities will be required to store low-level radioactive wastes for long periods of time, until there is a disposal facility available to New Jersey generators. Quality of life will be improved by the State siting and developing a disposal facility as expeditiously as possible in order to provide a facility to consolidate and permanently manage the low-level radioactive wastes generated throughout the State requiring disposal. Siting and developing a disposal facility will also assure the uninterrupted delivery of critical health care services; research, educational and training activities at colleges and universities; and electrical power.

The proposed new rules will also have a positive social impact because they place the financial burden of supporting the siting and development of a low-level radioactive waste disposal facility on those who generate the wastes rather than on the general public via General State Funds. A positive social impact is derived because the rules are designed to proportionately assess the cost to those who generate greater volume or radioactivity of waste, thereby encouraging each generator to reduce the amount of low-level radioactive waste it generates.

Economic Impact

The Board expects that the proposed fees will increase the cost of management of low level radioactive waste to those who use or possess radioactive materials. In some cases, these costs may ultimately be passed on to consumers under the provisions of N.J.S.A. 13:1E-181.2.

The first assessment will generate fees to cover the costs for fiscal years 1992 and 1993. The estimated cost is $13.2 million for activities which are anticipated to include precharacterization, selection of sites for evaluation (characterization), site characterization, determination of disposal facility technology, municipal assistance during precharacterization and characterization of sites, selection of a preferred site for facility development, development of environmental and safety analysis reports, and financial auditing. It is anticipated that municipal assistance may be in the form of grants to affected municipalities.

The second assessment will generate fees to cover the costs for fiscal year 1994. The estimated cost is $18.8 million for activities which are anticipated to include continuation of site characterization at the preferred site, completion of facility design, municipal site suitability studies, the required adjudicatory hearing process for the preferred site, completion of the environmental and safety analysis reports, and financial auditing.

The third assessment will generate fees to cover the costs for fiscal year 1995. The estimated cost is $4.8 million for activities which are anticipated to include submission of license and permit applications, providing requested input to the regulatory processes for licensing, and financial auditing.

The fourth assessment will generate fees to cover the costs for fiscal year 1996. The estimated cost is $33.9 million for activities which are anticipated to include land procurement, development of final disposal facility design and construction specifications, preparation of the site, construction of disposal units and associated structures, and financial auditing. It may be that certain costs of site preparation and construction of the disposal facility may be borne by the facility operator and these costs recovered through user fees when the facility is operational. Should that be the case, the Board's annual budget will be adjusted accordingly.

The fifth assessment will generate fees to cover the costs for fiscal year 1997. The estimated cost is $9.2 million for activities which are anticipated to include completion of Phase I construction, opening of the facility to receive waste and financial auditing. Again, if the costs are to be recovered through user fees when the facility is operational, this will be reflected in the Board's annual budget.

The sixth assessment will generate fees to cover the costs for fiscal year 1998. The estimated cost is $1.2 million for activities which are anticipated to include oversight of the operating disposal facility and financial auditing. After this assessment, it is anticipated that the cost of the Board's oversight of the operation, closure and post-closure of the disposal facility, of the Northeast Compact Commission activities, and of the Department of Environmental Protection and Energy responsibilities will be funded through fees assessed on the users of the facility, once the facility is available to receive waste. In addition, the cost to operate and provide for closure, post-closure and institutional care of the disposal facility will be recovered through fees assessed on the users of the disposal facility once the facility is available to recieve waste.

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The following are examples of the calculated fees for the first assessment to cover costs for fiscal years 1992 and 1993. The fee for a generator who produced 1000 cubic feet and five curies annually is approximately $150,500, the fee for a generator who produced 100 cubic feet and 0.1 curie annually is approximately $14,725, and the fee for a generator who produced 10 cubic feet and 0.001 curie annually is approximately $1,465.

The projected costs for activities and services which will be funded by the fees are estimated as follows for fiscal years 1992 through 1998. These budgets are illustrative, and the actual budget will include any and all items needed to be completed in order to implement the Policy Act, the Amendments Act, the Compact Act and the Siting Act. A fiscal year covers the period July 1 through June 30.

	First Assessment for FY-92	First Assessment for FY-93
Salaries/Fringe (28.65 percent)	$438,697	$461,000
Operating Expenses	$316,303	$316,000
Professional Services (for example, site characterization, facility licensing, quality assurance, financial audit)	$2,385,000	$8,136,000
Municipal Assistance Grants	$300,000	$400,000
State's Share for the Northeast LLRW Management Compact Commission as per N.J.S.A. 32:31-1 et seq.	$90,000	$95,000
Support from NJDEPE as per N.J.S.A. 13:1E-177 et seq.	$110,000	$110,000
TOTAL	$3,640,000	$9,518,000

	Second Assessment for FY-94	Third Assessment for FY-95
Salaries/Fringe	$484,000	$508,000
Operating Expenses	$346,000	$390,000
Professional Services (for example, site characterization, facility licensing, quality assurance, financial audit)	$16,728,000	$3,159,000
Municipal Assistance Grants	$1,050,000	$500,000
State's Share for the Northeast LLRW Management Compact Commission as per N.J.S.A. 32:31-1 et seq.	$100,000	$105,000
Support from NJDEPE as per N.J.S.A. 13:1E-177 et seq.	$120,000	$130,000
TOTAL	$18,828,000	$4,792,000

	Fourth Assessment for FY-96	Fifth Assessment for FY-97
Salaries/Fringe	$533,000	$560,000
Operating Expenses	$340,000	$314,000
Professional Services (for example, site characterization, facility licensing, quality assurance, financial audit)	$1,551,000	$535,000
Municipal Assistance Grants	$500,000	
Site Acquisition, Preparation and Construction	$30,700,000	$7,500,000
State's Share for the Northeast LLRW Management Compact Commission as per N.J.S.A. 32:31-1 et seq.	$110,000	$115,000
Support from NJDEPE as per N.J.S.A. 13:1E-177 et seq.	$140,000	$150,000
TOTAL	$33,874,000	$9,174,000

	Sixth Assessment for FY-98
Salaries/Fringe	$585,000
Operating Expenses	$316,000
Professional Services (for example, financial auditing)	$40,000
State's Share for the Northeast LLRW Management Compact Commission as per N.J.S.A. 32:31-1 et seq.	$120,000
Support from NJDEPE as per N.J.S.A. 13:1E-177 et seq.	$160,000
TOTAL	$1,221,000

Environmental Impact

The Board is committed to establishing and implementing a siting process that will site and develop an environmentally sound facility consistent with the values of the citizens of New Jersey. The proposed rules will provide a positive environmental impact by developing adequate disposal capacity for low-level radioactive waste generated in New Jersey. The siting process includes screening the entire State to identify several sites for precharacterization and at least one site for site characterization. New Jersey's disposal facility is planned to be approximately 250 acres in size and is designed to be operated for 50 years. Details of the facility can be found in the "New Jersey Low-Level Radioactive Waste Disposal Plan" prepared in accordance with the Siting Act and approved by the Board on May 3, 1990. The actual disposal area will be about 50 acres surrounded by approximately 200 acres of buffer area. Although the actual disposal technology has not yet been determined, all those under consideration utilize engineered structures.

The fees will provide for a detailed and careful process to site and develop a disposal facility which will meet applicable stringent regulatory requirements, and protect public health and safety. When the disposal facility is developed, approximately 700 generators, including users of radioactive materials for research and development, electrical power generation, industrial processes and medical care, will be able to dispose of the wastes they generate. This disposal capacity is necessary when the three states with the existing disposal facilities deny New Jersey generators access to disposal facilities located in their states. Beginning January 1, 1993, the states of Nevada, South Carolina and Washington will be able to deny other states access to their disposal facilities. The development of a disposal facility will make unnecessary the prolonged storage by the generators of low-level radioactive waste, in various locations throughout the State. Prolonged storage by individual generators is not in the best interest of the citizens of New Jersey.

The proposed rules will provide another positive environmental impact by providing an incentive for generators to reduce the volume and radioactivity of wastes they produce requiring disposal at a low-level radioactive waste disposal facility due to assessing fees proportionately to the amount of waste produced.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board has determined that the proposed rules will impose additional reporting, recordkeeping or other compliance requirements on small businesses (as defined in the Regulatory Flexibility Act). The proposed rules would apply to all generators. Of the approximately 150 generators who currently produce low-level radioactive waste in New Jersey, it is estimated that less than 20 percent are small businesses. These small businesses will be impacted to some degree by the proposed rules.

In order to comply with the proposed rules, the small businesses will have to prepare a report on the low-level radioactive wastes they manage. In doing so, it is unlikely they will need to hire additional assistance. It is expected that the annual cost for reporting compliance for each small business could range from $25.00 to $500.00.

The fees take into consideration the safe handling of the low-level radioactive wastes produced by each generator. Generally, small businesses generate smaller quantities of low-level radioactive wastes. Those generators who produce more waste requiring disposal at a low-level radioactive waste disposal facility should bear the greater share of the costs for siting and developing the low-level radioactive waste disposal facility. The fees are based on the quantity of low-level radioactive wastes disposed by generators, and the potential decontamination and decommissioning disposal capacity needs. Based upon recent data, most of the

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fees will be paid by facilities which are not small businesses and which generate the majority of the low-level radioactive wastes. As an example, for a small generator, the fee will be less than $1,500 based on the first assessment (which covers the costs for fiscal years 1992 and 1993 of $13.2 million) for those who generate small quantities of wastes (less than 10 cubic feet and less than 0.001 curie, annually).

In developing these rules, the Board has balanced the need to protect the environment against the economic impact of the proposed rules and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and public safety, and therefore, no exemption from coverage is provided. The Board has determination that the amount of low-level radioactive waste produced by each generator, rather than the size of the business, will provide a sound basis for the fee determination.

Full text of the proposal follows:

CHAPTER 60
ASSESSMENT OF GENERATORS FOR THE COST OF SITING AND DEVELOPING A LOW LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY

SUBCHAPTER 1. FEES AND REPORTING REQUIREMENTS

7:60-1.1 Scope

This subchapter establishes low-level radioactive waste reporting requirements and a process to annually assess generators for all the costs of siting, developing, licensing and constructing a low-level radioactive waste disposal facility, as well as the costs of implementing the Northeast Interstate Low-Level Radioactive Waste Management Compact, N.J.S.A. 32:31-1 et seq., and the Regional Low-Level Radioactive Waste Disposal Facility Siting Act, N.J.S.A. 13:1E-177 et seq.

7:60-1.2 Definitions

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

"Activity" means the rate of disintegration (transformation) or decay of radioactive material. It is expressed in curies or becquerels, or their multiples.

"A(Y,G)" means the individual generator's (G) annual activity (A) of low-level radioactive waste produced in New Jersey and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy's National Information Management System.

"A(Y,NJ)" means the sum of all the individual generator's (G) annual activity (A) of low-level radioactive waste produced in New Jersey (NJ) and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy's National Information Management System.

"Assessment Budget" means that portion of the Board's budget which shall be collected as fees from the generators.

"Becquerel" means the amount of a specific radionuclide or combination of radionuclides which disintegrates at the rate of one atom per second.

"Board" means the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board established pursuant to N.J.S.A. 13:1E-180.

"Curie" means the amount of a specific radionuclide or combination of radionuclides which disintegrates at the rate of 37 billion atoms per second. One curie equals 37 billion becquerels.

"Fiscal Year" means July 1 through the following June 30.

"Generator" means any person, association, public utility, hospital, clinic, research laboratory, corporation, society, radiopharmaceutical facility, academic facility, or nuclear medical research facility that produces low-level radioactive waste, or any other entity identified by the Board that produces low-level radioactive waste, or that is licensed by the United States Nuclear Regulatory Commission to use, possess, handle or dispose of radioactive materials.

"Low-level Radioactive Waste" means radioactive waste that is neither high-level waste, nor spent fuel, nor by-product material as defined in paragraph (2) of subsection (e) of 42 U.S.C. §2014; and is classified by the Federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal government, as defined in the "Low-Level Radioactive Waste Policy Act", Pub.L.96-573 (42 U.S.C. §§2021b et seq.) and the "Low-Level Radioactive Waste Policy Amendments Act of 1985", Pub.L.99-240 (42 U.S.C. §§2021b et seq.) or Federal research and development activities.

"Low-Level Radioactive Waste Disposal Facility Fund" means the fund established pursuant to N.J.S.A. 13:1E-181.2.

"Manifest" means the document accompanying each shipment of waste intended for disposal or treatment as low-level radioactive waste.

"Radioactive waste" means radioactive material which is discarded or intended to be discarded; or is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of being discarded; or is applied to the land or placed on the land or contained in product that is applied to or placed on the land in a manner constituting disposal; or has served their intended purpose; or has an expired shelf line.

"Storage" means the holding of waste for a temporary period of time, at the end of which the waste is either treated or disposed as low-level radioactive waste.

"Volume" means the volume of radioactive waste as measured by the outermost package or container in which the low-level radioactive waste is contained ready for storage or disposal. Volume shall be expressed in cubic feet or cubic meters.

"V(Y,G)" means the individual generator's (G) annual volume (V) of low-level radioactive waste produced in New Jersey and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy's National Information Management System.

"V(Y,NJ)" means the sum of all the individual generator's (G) annual volume (V) of low-level radioactive waste produced in New Jersey (NJ) and disposed in a low-level radioactive waste disposal facility in a calendar year (Y), as compiled from the manifests and maintained in the U.S. Department of Energy's National Information Management System.

7:60-1.3 Reporting requirements for generators

(a) By March 1 of each year, each generator shall provide to the Board information on the radioactive wastes managed by the generator in the preceding calendar year.

(b) The Board will provide to the generators the form on which the information shall be recorded or notify the generators as to the form in which the information shall be provided.

(c) Each generator shall completely fill out the form and submit it to the Board. The report shall include, at a minimum, the following:

1. A copy of all permits, licenses and generator identification numbers to use, possess, handle or dispose of radioactive materials;

2. A description of each low-level radioactive waste stream, including volume, activity, radionuclides, waste characteristics and waste form, generated, disposed of, treated and/or stored on-site or sent for storage off-site during the previous calendar year;

3. The manner and conditions of disposal, treatment and/or storage of radioactive waste; the disposal/storage site name, location and the identity of the owner/operator thereof, including the date of disposal/storage;

4. Information on radioactive waste in storage, at the end of the reporting year, including type of waste, volume, activity, waste form, waste characteristics, container type, storage location, date waste was placed into storage, storage capacity used and unused storage capacity remaining;

5. Information on radioactive waste treated or processed, including treatment/processing methods, processor identity, volume, activity, waste form, waste characteristics, packaging and shipment destination;

6. Information on radioactive waste disposed, including disposal methods, processor/broker identity, volume, activity, waste form,

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waste characteristics, packaging and shipping information, and disposal destination;

7. Information on radioactive wastes for which there is written approval from the appropriate regulatory agency to dispose, or to store for decay then dispose, without regard to its radioactivy. The information shall include a description of the treatment/processing/storage/disposal procedure, waste stream, type of waste, volume, activity, waste form, waste characteristics, container type, treatment/processing/storage disposal site name, location and the identity of the owner/operator thereof, and date at which time the radioactive waste may be disposed without regard to its radioactivity;

8. A description of each low-level radioactive waste stream, including volume, activity, radionuclides, waste characteristics and waste form, expected to be generated annually in next five calendar years; and

9. Steps taken to reduce the volume and activity of radioactive waste generated at the facility.

(d) The report required by this section shall be submitted by the generator to:

NJ Low-Level Radioactive Waste
Disposal Facility Siting Board
CN 410
Trenton, New Jersey 08625-0410.

7:60-1.4 Establishment of annual budget

(a) The Board shall assess and collect from each generator an annual fee for the fiscal year (July 1 through June 30), starting with fiscal year 1992.

(b) At a public meeting to be held annually, the Board shall approve a budget for the next fiscal year. The Board shall provide public notice of the public meeting and the availability from the Board of the proposed budget for review, in the New Jersey Register and several newspapers with general circulation, at least 30 days prior to the date of the public meeting. At the public meeting, the Board will take comments on the proposed budget.

(c) In determining the portion of the annual budget which comprises the assessment budget, the Board shall take into consideration any surpluses which can be credited or deficits to be assessed and other available sources of funds.

(d) The Board's approved budget shall be reviewed and approved by the New Jersey Department of Treasury.

(e) The Board shall cause an annual audit pursuant to N.J.S.A. 13:1E-181.3(b).

(f) The Board shall provide public notice of the availability from the Board of the approved budget, the list of fees calculated in accordance with N.J.A.C. 7:60-1.6, and the results of the most recent annual audit, in the New Jersey Register and several newspapers with general circulation before sending out the bills.

7:60-1.5 Process for paying fees

(a) The Board shall notify each generator by April 15 of each year of its fee.

(b) Payment of all fees shall be made only by check or money order, payable to "Treasurer, State of New Jersey," and submitted to:

NJ Low-Level Radioactive Waste Disposal Facility Fund
c/o Department of Environmental Protection and Energy
Bureau of Revenue
CN 402
Trenton, New Jersey 08625-0402.

(c) The fee shall be paid by May 15 of each year. Interest shall accrue on any unpaid portion of the annual fee beginning on May 16. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments as set forth in the rules governing the Courts of the State of New Jersey. If the fee remains unpaid, the Board may preclude the generator from utilizing the low-level radioactive waste disposal facility.

(d) Fees shall not be pro-rated nor shall any refunds be made. However, for annual fees of greater than $100,000, the payment of the fee may be made in four equal payments due May 15, July 15, October 15 and January 15 in addition to interest due on that payment.

(e) The Board shall take any other appropriate legal actions to collect all fees due to it.

(f) If the generator objects to the assessment, the Board shall recalculate the fee upon receipt of a request from the generator setting forth the basis for the recalculation in writing within 15 days of assessment of the fee. The Board or its designee will not recalculate a fee where the generator has failed to submit information required.

7:60-1.6 Fees for generators

(a) The annual fee for each generator shall be calculated according to this section.

(b) For the first assessment covering fiscal years 1992 and 1993 assessment budget, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{V(1988,G)}{V(1988,NJ)}+\frac{V(1989,G)}{V(1989,NJ)}+\frac{V(1990,G)}{V(1990,NJ)}+\frac{A(1988,G)}{A(1988,NJ)}+\frac{A(1989,G)}{A(1989,NJ)}+\frac{A(1990,G)}{A(1990,NJ)}\right]$$

$$\text{multiplied by}\quad\left[93\%\text{ of the Assessment Budget}\right]$$

(c) For the second assessment covering fiscal year 1994 assessment budget, each generator's base fee shall be calculated using the following forumla:

$$\left[\frac{1}{6}\right]\left[\frac{V(1989,G)}{V(1989,NJ)}+\frac{V(1990,G)}{V(1990,NJ)}+\frac{V(1991,G)}{V(1991,NJ)}+\frac{A(1989,G)}{A(1989,NJ)}+\frac{A(1990,G)}{A(1990,NJ)}+\frac{A(1991,G)}{A(1991,NJ)}\right]$$

$$\text{multiplied by}\quad\left[93\%\text{ of the Assessment Budget}\right]$$

(d) For the third assessment covering fiscal year 1995 assessment budget, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{V(1990,G)}{V(1990,NJ)}+\frac{V(1991,G)}{V(1991,NJ)}+\frac{V(1992,G)}{V(1992,NJ)}+\frac{A(1990,G)}{A(1990,NJ)}+\frac{A(1991,G)}{A(1991,NJ)}+\frac{A(1992,G)}{A(1992,NJ)}\right]$$

$$\text{multipled by}\quad\left[93\%\text{ of the Assessment Budget}\right]$$

(e) For each assessment, each nuclear power plant unit will be assessed an additional fee, in addition to its base fee, calculated using the following formula:

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Hope Creek Nuclear Generating Station:	2.544% of the Assessment Budget
Oyster Creek Nuclear Generating Station:	2.549% of the Assessment Budget
Salem I Nuclear Generating Station:	0.943% of the Assessment Budget
Salem II Nuclear Generating Station:	0.964% of the Assessment Budget

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Department of Human Services Child Death and Critical Incident Review Board

Proposed New Rules: N.J.A.C. 10:16

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6-8.10a and b, 9:6-8.21, 30:4C-4(h).

Proposal Number: PRN 1991-564.

Submit comments by December 18, 1991 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

These proposed new rules establish the Department of Human Services Child Death and Critical Incident Review Board, in the New Jersey State Department of Human Services, and describe the organization, functions and activities of the Board.

The Department recognizes the value of an objective review of the circumstances of all deaths and critical incidents involving children currently or formerly (within the past 12 months) under DYFS supervision, who are alleged to have died due to child abuse or neglect, or who were the subject of a critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect. Accordingly, the Department has created the Department of Human Services Child Death and Critical Incident Review Board, as a public-private body to review such cases and to develop recommendations for systems or operational changes, proposed or amended rules or legislation, and/or community remedies.

This Board is already operational in the Department, under Administrative Order 1:82, which describes the purpose, scope, organization, function and procedures of the Board, and has been meeting on a regular basis since the Administrative Order was adopted in 1990.

These rules will incorporate Administrative Order 1:82 into the New Jersey Administrative Code and will provide a legal basis for the Board's review of child abuse and neglect records, which are otherwise confidential under the provisions of N.J.S.A. 9:6-8.10a and b. Through these rules, the Board is duly constituted and established as a public child protective agency authorized to investigate child abuse and neglect, pursuant to the above-cited statute.

The Office of the Attorney General has suggested that Administrative Order 1:82 be put into rules so as to give the Board the authorization it needs to review DYFS child abuse and neglect records, under the provisions of N.J.S.A. 9:6-8.10b(1).

Proposed N.J.A.C. 10:16-1.1 states the purpose of these rules.

Proposed N.J.A.C. 10:16-1.2 states the scope of these rules.

Proposed N.J.A.C. 10:16-1.3 gives the definitions used in this chapter.

Proposed N.J.A.C. 10:16-2.1 defines the authority of the Board and states that the Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

Proposed N.J.A.C. 10:16-2.2 describes the functions of the Board.

Proposed N.J.A.C. 10:16-2.3 states the responsibilities of the Board and provides that the Board shall not participate in any determination regarding employee disciplinary action.

Proposed N.J.A.C. 10:16-2.4 describes the scope of review of the Board.

Proposed N.J.A.C. 10:16-2.5 describes the membership of the Board.

Proposed N.J.A.C. 10:16-2.6 gives the standards regarding conflict of interest.

Proposed N.J.A.C. 10:16-2.7 states the quorum requirements for the Board.

Proposed N.J.A.C. 10:16-3.1 provides the mechanism for reporting of child death and critical incidents to the chairperson of the Board and to the Deputy Commissioner.

Proposed N.J.A.C. 10:16-3.2 provides the standards for the internal DYFS review of cases of child death and critical incidents.

Proposed N.J.A.C. 10:16-3.3 describes the case materials that are to be reviewed by the Board.

Proposed N.J.A.C. 10:16-3.4 discusses the procedures regarding recommendations of the Board.

Proposed N.J.A.C. 10:16-3.5 describes the procedures regarding the Director's response to the Board's recommendations.

Proposed N.J.A.C. 10:16-3.6 states the requirement for an annual review by the Board of its work, the status of its recommendations and aggregate statistical data regarding the cases examined.

Proposed N.J.A.C. 10:16-3.7 describes the confidentiality requirements for the Board and for the consultants and staff assigned to work with the Board.

Proposed N.J.A.C. 10:16-3.8 describes the procedures and restrictions regarding the public release by either the DYFS Director or the Deputy Commissioner of the recommendations of the Board or of the annual review.

Social Impact

A positive social impact is anticipated from these rules, since the public may be assured that all deaths and critical incidents occurring to children currently or formerly (within the past 12 months) under DYFS supervision who are alleged to have died due to child abuse or neglect or who were the subject of a critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect, regardless of where the child is residing or of which State government agency, Division of this Department or non-government provider is or was responsible for caring for the child, will be thoroughly reviewed by a Departmental public-private body with the power to see all pertinent information and make recommendations for changes in the operations of the Division, in the Division's rules, in legislation, or in the community.

Additionally, the Board's recommendations to the Director of the Division of Youth and Family Services regarding suggested changes in the operations, rules or laws of the Division or of the Department of Human Services, or recommendations to the Director regarding systemic case management issues, may be released to the public by either the DYFS Director or the Deputy Commissioner. And, the status of the Board's systemic recommendations and aggregate statistical data regarding the cases examined also may be released to the public by either the DYFS Director or the Deputy Commissioner.

These avenues for release to the public of informative materials regarding the Board's work on cases of child deaths or critical incidents will provide the public with as much information as the Division is able to release regarding these highly confidential and sensitive matters.

Economic Impact

The economic impact of these proposed new rules will be negligible. Board members and consultants are not to be compensated, and no additional staff will be required to provide staff support for the Board. Some of the time of a few staff members currently employed by the Division will be devoted, on an as-needed basis, to the support of the Board, but it is not possible to provide an estimate of the cost of such staff support.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The proposed rules are intended to establish the Department of Human Services Child Death and Critical Incident Review Board as a public child protective agency authorized to investigate reports of child abuse and neglect, under the provisions of N.J.S.A. 9:6-8.10b(1), and to describe the purpose, scope, organization, function and procedures of the Board.

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Full text of the proposal follows:

CHAPTER 16
DEPARTMENT OF HUMAN SERVICES CHILD DEATH AND CRITICAL INCIDENT REVIEW BOARD

SUBCHAPTER 1. GENERAL PROVISIONS

10:16-1.1 Purpose

(a) This chapter establishes the Department of Human Services Child Death and Critical Incident Review Board and the process by which the Board will review situations involving children currently or formerly (within the past 12 months) under Division of Youth and Family Services (DYFS) supervision:

1. Who are alleged to have died due to child abuse or neglect; or

2. Who were the subject of a critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect.

10:16-1.2 Scope

The scope of this chapter applies to deaths and critical incidents occurring to children currently or formerly (within the past 12 months) under DYFS supervision who are alleged to have died due to child abuse or neglect or who were the subject of a critical incident (not resulting in death) that was alleged to have been due to child abuse or neglect, regardless of where the child is residing or of which State government agency, Division of the Department or non-government provider is or was responsible for caring for the child.

10:16-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings:

"Abused or neglected child" means a child:

1. Less than 18 years of age:

i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or continuing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for this reason alone be considered to be abused or neglected.

"Board" means the Department of Human Services Child Death and Critical Incident Review Board.

"Child" means any child less than 18 years of age who has been alleged to have been abused or neglected.

"Child abuse death" or "death due to child abuse or neglect" means the death of a child as a result of acts or omissions by a parent or guardian that constitute child abuse or neglect, as these terms are defined in N.J.S.A. 9:6-8.21a, b and c.

"Critical incident" means a serious injury, a life-threatening condition, or a newsworthy event occurring to a child currently or formerly (within the past 12 months) under DYFS supervision and alleged to have been due to abuse or neglect.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Deputy Commissioner" means the Deputy Commissioner of the Department of Human Services.

"Director" means the Director of the Division of Youth and Family Services in the Department of Human Services.

"DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Formerly under DYFS supervision" means that the child's case was closed and was not actively receiving DYFS services on the day the injury or death occurred, but had been actively receiving services within the past 12 months.

"Life-threatening condition" means any condition caused by exceptional or extraordinary occurrences which creates a high probability of death within the reasonably foreseeable future.

"Newsworthy event" means any incident which has attracted media (television, newspaper or radio) interest.

"Parent" or "guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Serious injury" includes, but is not limited to, any fracture of the skull or long bones, ribs, spine or pelvis; head injury, such as concussion; human bites puncturing the skin or wounds requiring extensive suturing; extensive burns; bodily injury resulting in gastrointestinal symptoms or genital-urinary symptoms; teeth knocked out; injury to the eyeball; injury causing large hematomas; choking injury leaving marks; and any injury requiring hospitalization.

"Unders DYFS supervision" means that the child is registered on the DYFS Service Information System as being actively under investigation or receiving DYFS services on the day the injuries or death occurred.

SUBCHAPTER 2. ORGANIZATION OF THE BOARD

10:16-2.1 Authority of the Board

The Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

10:16-2.2 Functions of the Board

(a) The Board shall be multidisciplinary in nature and shall serve to give an objective review of the case circumstances and to develop recommendations for systems or operational changes, proposed or amended rules or legislation, or community remedies.

(b) The Board shall examine ways to achieve better coordination of effort on child welfare and child protective services cases to

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promote prevention of serious incidents or deaths of vulnerable children and shall seek the involvement of many different professionals and agencies that provide services to children.

10:16-2.3 Responsibilities of the Board

(a) The Board shall conduct reviews of critical incidents and deaths of children currently or formerly (within the past 12 months) under supervision of the Division of Youth and Family Services that were alleged to be due to abuse and neglect.

(b) All deaths of children currently or formerly under DYFS supervision (within the past 12 months) that are alleged to have been due to abuse or neglect shall be reviewed by the Board.

(c) The Board shall not participate in any determination regarding employee disciplinary action.

10:16-2.4 Review by the Board

(a) Board members shall have the authority to review all case materials pertinent to the situation and to interview DYFS and other Department of Human Services staff, as appropriate.

(b) Deaths or incidents involving children currently or formerly (within the past 12 months) under DYFS supervision that did not result from abuse of neglect may be referred to the Board by the Deputy Commissioner or the Director, if systemic Division or Departmental operations issues have been identified in the case and it is felt that Board review could result in recommendations for systems changes or other broad-based revisions in operations, rules or legislation.

10:16-2.5 Composition of the Board

(a) The Board shall consist of five members, as follows:

1. The Deputy Commissioner, who shall act as chairperson of the Board;

2. The Director of the Division of Youth and Family Services;

3. A State government-employed person from within or outside the Department of Human Services, as chosen by the Deputy Commissioner; and

4. Two non-State government-employed persons, who shall participate on a case-by-case basis. These persons shall be chosen by the Deputy Commissioner from the fields of medicine, child welfare, law enforcement, judiciary, courts, social work or other related fields, including voluntary or child advocacy agencies. The Deputy Commissioner is authorized to choose different persons to serve as Board members in this category on a rotational basis, as necessary and appropriate.

(b) No designee may attend in a member's stead.

(c) The Board may seek the advice of the following persons within or outside State government in a consulting capacity in specific cases: persons skilled in the disciplines of pediatric medicine, forensic medicine, nursing, psychiatry, psychology, social work, child welfare practice or education, law enforcement, judiciary, child or human care advocacy or other related fields, when facts or circumstances of a particular case warrant such additional expertise. The chairperson may also invite representatives of other public agencies authorized to investigate child abuse and neglect within the provisions of the law (N.J.S.A. 9:6-8.10a) to join the Board in its review of a case.

10:16-2.6 Conflicts of interest

(a) If, in reviewing a child death or critical incident case, a Board member becomes aware of a potential conflict involving a personal or family involvement in the case or of any other issue that would or could jeopardize the objectivity of the review, the member shall discuss his or her concerns with the Deputy Commissioner regarding his or her participation in the review of that case.

(b) If the Deputy Commissioner concludes that there is a conflict that would impede the review's objectivity, the Deputy Commissioner shall require the affected Board member to withdraw from participation in the case under review and select an alternate to serve in his or her place.

10:16-2.7 Quorum

A quorum of the Board shall be three members of the Board, of whom at least two must be public members, see N.J.A.C. 10:16-2.5(a)4 above.

SUBCHAPTER 3. PROCEDURES OF THE BOARD

10:16-3.1 Reporting of child death and critical incidents

(a) The Director shall ensure that the chairperson of the Board is kept advised of each occurrence of child death or critical incident alleged to have been due to abuse or neglect.

(b) The Director shall cause an immediate verbal communication to be transmitted to the Deputy Commissioner, followed by a brief written report within no more than 10 working days.

10:16-3.2 Internal review

(a) The appropriate local, regional and central offices of DYFS shall complete an internal review of the case no later than 30 working days after the incident or death, or sooner if requested by the chairperson. The internal review may take longer than 30 working days if the delay is caused by circumstances beyond the control of the Division.

(b) After DYFS has completed the internal review of the case, the Director shall inform the Board chairperson of the status of the case and shall forward to the Board chairperson and to each Board member a copy of the case materials and the internal review summary.

(c) The Board chairperson shall schedule a meeting of the Board to discuss the case within 30 working days of receiving the case materials and internal review summary, such meeting to be held within 30 working days after the notice of the meeting is received by the Board members.

10:16-3.3 Case materials

(a) Case materials shall include, if appropriate, the following documents:

1. The child's case record;

2. Copies of DYFS Service Information System data;

3. Police, prosecutor, fire, physician, psychologist, psychiatric and hospital records, where appropriate and permissible; and

4. Autopsy results and death certificate, when available.

(b) Case materials shall also include information about:

1. The child and his or her family and household;

2. The nature and circumstances of the incident;

3. The nature of DYFS or Department of Human Services involvement with the child, family, or household;

4. A summary of Department of Human Services or other agency responses to the death or incident;

5. A summary of the circumstances leading to the child's death or the incident; and

6. Recommendations regarding the family, the alleged perpetrator, and DYFS or Department of Human Services operations.

10:16-3.4 Recommendations of the Board

(a) The Board may make recommendations to the Director regarding any suggested changes in operations, rules or laws of the Division of Youth and Family Services or of the Department of Human Services.

(b) The recommendations of the Board shall reflect a consensus of the Board's opinions and suggestions.

(c) When necessary, the Board may also make recommendations to the Director regarding case management issues.

(d) The Board members shall return all copies of DYFS case materials to the Director when transmitting the Board's recommendations.

(e) The Board shall transmit its recommendations to the Director in writing within 30 working days following the meeting to discuss the case.

(f) The Board shall send a copy of the recommendations to the Commissioner.

10:16-3.5 Director's response

(a) The Director of the Division of Youth and Family Services shall give consideration to the recommendations of the Board and shall take whatever corrective and related follow-up action that she or he considers necessary and appropriate.

(b) The Director shall send a written response to the Board conveying any comments or corrective or follow-up actions that have been or will be taken by DYFS in response to the findings and recommendations of the Board.

(c) The Director's written response shall be sent to the Board members and to the Commissioner no later than 90 working days after receipt of the Board's written recommendations.

10:16-3.6 Annual review

(a) The Board shall prepare for the Commissioner and the Director an annual review, including:

1. An annual review of the calendar year's cases;

2. The status of its systemic recommendations; and

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3. Aggregate statistical data regarding the cases examined.

(b) The Board shall submit the annual review to the Commissioner and the Director within 60 working days after the completion of the last case to be reviewed or by the end of the actual calendar year, whichever occurs later.

10:16-3.7 Confidentiality

(a) All proceedings and records, including reports of the Board's discussions and recommendations, of the Board are confidential, except as herein provided under N.J.A.C. 10:16-3.8, Release of recommendations of the Board and annual review, and are subject to applicable Federal and State laws and regulations governing access to and confidentiality of records. Also, information and materials obtained by Board members and consulting persons are confidential and shall be treated as confidential by Board members and consulting persons.

(b) Upon joining the Board, each member shall complete and sign a sworn statement agreeing to abide by all applicable State confidentiality laws and rules concerning child abuse and neglect. Consulting persons shall complete and sign a similar sworn confidentiality statement when they participate in a Board review. Any persons supplying clerical support to the Board shall also complete and sign a sworn confidentiality statement.

(c) The report of the Board's discussions shall be limited to internal use by the Department and the Division and are not to be released outside of the Department or the Division.

(d) The recommendations of the Board shall omit any direct or indirect client identifying information.

10:16-3.8 Release of recommendations of the Board and annual review

(a) The DYFS Director or the Deputy Commissioner may release to the public portions of the recommendations of the Board, subject to the provisions of (c) below, and of the Board's annual review, subject to the provisions of (d) below.

(b) Any such information released shall in no way contain any direct or indirect personally identifying information about the child or children or their families whose deaths or critical incidents are the basis of the recommendations or review.

(c) Regarding release of information contained in any of the recommendations of the Board (N.J.A.C. 10:16-3.4), only recommendations to the Director regarding suggested changes in the operations, rules or laws of the Division of Youth and Family Services or of the Department of Human Services (N.J.A.C. 10:16-3.4(a)), or recommendations to the Director regarding systemic case management issues (N.J.A.C. 10:16-3.4(c)) may be released to the public by either the DYFS Director or the Deputy Commissioner.

(d) Regarding release of information contained in the annual review (N.J.A.C. 10:16-3.6), the annual review of the calendar year's cases itself (N.J.A.C. 10:16-3.6(a)1) may not be released to the public. The status of the Board's systemic recommendations and aggregate statistical data regarding the cases examined (N.J.A.C. 10:16-3.6(a)2 and (a)3) may be released to the public by either the DYFS Director or the Deputy Commissioner.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook
Division of Youth and Family Services (DYFS)
Monthly Foster Care Rates

Reproposed Amendment: N.J.A.C. 10:82-4.9

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1991-567.

Submit comments by December 18, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This reproposed amendment updates the monthly foster child care rates at N.J.A.C. 10:82-4.9(c), as established by this Department's Division of Youth and Family Services (DYFS). In the August 5, 1991 issue of the New Jersey Register, at 23 N.J.R. 2220(a), the Department's Division of Economic Assistance published, as a proposal, changes to the child care rates which had become effective January 1, 1991. Subsequent to publication, it was learned that, effective July 1, 1991, the child care rates had changed from those proposed. The attached amendment supersedes the August 5, 1991 proposal. The rates are stated in the Assistance Standards Handbook for general informational purposes, and the reproposed amendment indicates that the base rates to be paid by DYFS for monthly foster child care have been increased; as well, the upper age ranges have been revised.

Social Impact

The reproposed amendment provides county welfare agencies with information about basic monthly foster care payments when children are placed in homes of recipients of public assistance. The proposed amendment indicating increased DYFS foster child care rates will continue to provide equitable determinations of eligibility when CWA staff are considering the income of public assistance recipients.

Economic Impact

The reproposed amendment to N.J.A.C. 10:82-4.9(c) updates the rates published in the New Jersey Administrative Code to conform with increased base rates for monthly foster child care, as established by DYFS, effective July 1, 1991. The increased rates apply to public assistance recipients who have foster care children placed in their homes. Such increases in rates will have a very negligible, if any, impact on eligibility or grant level determinations made by county agencies. In any event, the incidence of utilization of public assistance households for foster care placement is insignificant.

Regulatory Flexibility Statement

The reproposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:82-4.9 Division of Youth and Family Services

(a)-(b) (No change.)

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

[1. Child under six years, $176.00 per month;
2. Six through nine years, $188.00 per month;
3. Ten through 14 years, $208.00 per month;
4. Fifteen years and over, $220.00 per month.]

Age	New Base Rate/Child
0-5	**$244.00 per month**
6-9	**$259.00 per month**
10-12	**$287.00 per month**
13 and over	**$305.00 per month**

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration
Scope

Proposed Amendment: N.J.A.C. 10:120-1.2

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-9 and N.J.S.A. 52:14B-4(b).

Proposal Number: PRN 1991-568.

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Submit comments by December 18, 1991 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The proposed amendment presents codification changes to the subsections in N.J.A.C. 10:120-1.2, the Scope section of Subchapter 1, Organization of the Division of Youth and Family Services, of Chapter 120, Administration, and one slight wording change in the recodified subsections.

When the full chapter, N.J.A.C. 10:120, was recently readopted at 23 N.J.R. 2309(b), (effective July 9, 1991), it was pointed out by a member of Senior Staff at DYFS that the subsections at N.J.A.C. 10:120-1.2 could be better reordered, to provide a different sense of emphasis, which would present a more accurate picture of the functions of the Division.

This revision of the language in the Scope section constitutes a change in the order of the subsections of N.J.A.C. 10:120-1.2, and provides a more accurate presentation of the functions of the Division.

Also, a phrase at N.J.A.C. 10:120-1.2(a) ("which utilizes local family day care sponsoring organizations to assist in registering day care home providers") which elaborated on the family day care services regulated by the Division has been deleted, since none of the other services listed is described, in detail, in this subsection.

Social Impact

The Division anticipates that the social impact will be beneficial, since readers of the New Jersey Administrative Code will receive a more accurate presentation of the mission of the Division of Youth and Family Services and of the scope of the Division's activities.

Economic Impact

The Division anticipates that there will be no economic impact resulting from this proposed amendment.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping, or other compliance requirements on small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The amendment is intended to explain the scope of the Division of Youth and Family Services.

Full text of the proposed amendment follows (deletions shown in brackets [thus]; additions shown in boldface **thus**):

10:120-1.2 Scope

(a) The Division of Youth and Family Services is responsible for the implementation of programs to preserve families and protect children from abuse and neglect in New Jersey.

(b) The Division is responsible for investigating allegations of child abuse and neglect occurring in families and institutions. [The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families'-in-crisis shelters and homes, and adoption agencies. The Division regulates the State's voluntary family day care registration program, which utilizes local family day care sponsoring organizations to assist in registering day care home providers. The Division is also responsible for supervising the social service units of the county welfare agencies, which include the adult protective services program and the personal attendant services program.

(b) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(c) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services, and supervision of staff training.

(d) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, day care centers, adoption placement centers, counseling, advocacy and case management.

(e) The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(f) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, services to the homeless, family planning, mental health therapy and counseling, housing-related services and legal services in non-criminal matters.]

(c) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, day care centers, adoption placement centers, counseling, advocacy and case management.

(d) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, services to the homeless, family planning, mental health therapy and counseling, housing-related services and legal services in non-criminal matters.

(e) The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families'-in-crisis shelters and homes, and adoption agencies. The Division also regulates the State's voluntary family day care registration program.

(f) The Division is responsible for supervising the social service units of the county welfare agencies, which include the adult protective services program and the personal attendant services program. The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(g) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(h) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services, and supervision of staff training.

[(g)]**(i)** The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district

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offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

CORRECTIONS

(a)

THE COMMISSIONER

Social Services
Inmate Marriage
Proposed New Rules: N.J.A.C. 10A:17-7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-562.

Submit comments by December 18, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules outline the process whereby an inmate may submit a request to marry to the Superintendent, and the process whereby the Superintendent decides whether to approve or disapprove an inmate's request. The proposed new rules also specify the roles of the Social Service Department and the correctional facility chaplain in arranging a marriage ceremony, the number of witnesses who may attend the ceremony and the activities that are permitted when a marriage ceremony is conducted within a correctional facility. The Department of Corrections is proposing these rules to establish procedures whereby an inmate may be able to marry while serving a sentence in a New Jersey correctional facility. The intent of the proposed new rules is to regulate marriages of inmates within the guidelines set forth in the U.S. Supreme Court case *Turner v. Safley* 482 U.S. 78, 96 L.Ed 2d. 64, 107 SCt 2254 (1987); that is, the rules must be reasonably related to correctional goals. The intent is not to ban marriages generally.

Social Impact

The proposed new rules will permit inmates to marry while serving a sentence in a New Jersey correctional facility and thereby enable them to strengthen and maintain family and community relationships. The strengthening and maintenance of such relationships contribute to the easing of tensions which are inevitably a part of the inmate experience while serving a sentence in a correctional facility.

Economic Impact

The proposed new rules will not have an economic impact on the Department because additional financial resources are not required to implement or maintain these rules. The rules provide for any costs or fees involved in the marriage ceremony or the prerequisite blood tests and marriage license to be assumed by the marriage partners.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposal follows:

SUBCHAPTER 7. INMATE MARRIAGE

10A:17-7.1 Procedure for submitting a request to marry

(a) An inmate, who is 18 years of age or older and wishes to marry while serving sentence at a State correctional facility, shall submit a written request to marry to the Superintendent of the correctional facility at which the inmate is currently assigned at least 90 days in advance of the proposed date of the wedding.

(b) An inmate may submit a request to marry outside of the correctional facility if the inmate is eligible for escorted or unescorted furlough, or the inmate may submit a request to marry within the correctional facility if the inmate is ineligible for furlough or prefers that the marriage ceremony be performed at the correctional facility.

(c) A request to marry shall not qualify an inmate for furlough who is otherwise ineligible for furlough.

(d) The request to marry, of an inmate whose marriage ceremony will be conducted in the community while on escorted or unescorted furlough, shall include:

1. The name of inmate;
2. The number of inmate;
3. The name of intended spouse;
4. The address of intended spouse;
5. The age of intended spouse and the inmate;
6. The present marital status of intended spouse;
7. The proposed date of ceremony;
8. The address of the place where the marriage ceremony will be performed;
9. A request for a furlough to coincide with the proposed date of marriage;
10. A summary of the action, if any, the inmate has taken regarding compliance with the requirements for:
   i. A marriage license;
   ii. Blood tests; and
   iii. Other provisions of State law;
11. A signed statement that indicates that the inmate and/or his or her intended spouse will pay all expenses incurred, and that there are no legal restrictions which would prohibit the marriage under the law; and
12. A statement authorizing the release of information to the intended spouse which includes the inmate's custody status, the length and type of sentence and any active detainers.

(e) The request to marry of an inmate whose marriage ceremony will be conducted within the correctional facility shall include:

1. The name of inmate;
2. The number of inmate;
3. The name of intended spouse;
4. The address of intended spouse;
5. The age of intended spouse and the inmate;
6. The present marital status of intended spouse;
7. The request for approval to use the correctional facility chapel, on a proposed date, for the marriage ceremony;
8. The type of ceremony preferred (civil or religious);
9. A summary of the action, if any, the inmate has taken regarding compliance with the requirements for:
   i. A marriage license;
   ii. Blood tests; and
   iii. Other provisions of State law,
10. A signed statement that indicates that the inmate and/or his or her intended spouse will pay all expenses incurred, including the costs for:
   i. The blood tests;
   ii The marriage license;
   iii. The provision of correction officers;
   iv. The use of a State vehicle;
   v. The meals of inmates and escorts; and
   vi. The tolls and parking expenses;
11. A signed statement that indicates that there are no legal restrictions which would prohibit the marriage under the law; and
12. A statement authorizing the release of information to the intended spouse, which includes the inmate's custody status, the length and type of sentence and any active detainers.

10A:17-7.2 Decision on requests to marry

(a) The decision of approval or disapproval of an inmate's request to marry shall be made by the Superintendent who shall make use of a committee, designated by him or her, to assist in the decision making. The committee shall consist of:

1. The Social Work Supervisor;
2. A chaplain;

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3. A custody staff person with the rank of Lieutenant or above; and

4. Any other staff member(s) designated by the Superintendent.

(b) Upon receipt of the inmate's request to marry, the Superintendent shall refer the request to the committee for an in-depth review.

10A:17-7.3 Committee considerations

(a) The committee shall consider all of the relevant factors pertaining to an inmate's request to marry and submit written recommendations for approval or disapproval to the Superintendent within 30 days of the request.

(b) Consideration by the committee shall not be construed as an assurance that an inmate's request to marry will be approved.

(c) An inmate's request to marry may be considered for approval if:

1. The inmate has made a satisfactory correctional facility adjustment;

2. The inmate's marriage would not present a risk to security or the orderly operation of the correctional facility;

3. The inmate's intended spouse is not presently incarcerated; and

4. The inmate is able to comply with all of the requirements of the State laws governing marriage.

(d) The committee may consider other factors such as:

1. The inmate's maturity;

2. The inmate's emotional stability;

3. The length and type of sentence;

4. The inmate's ability to make a rational, informed decision concerning entering the marriage relationship; and/or

5. Other factors deemed appropriate by the committee for consideration.

(e) The committee may request an updated psychological and/or psychiatric evaluation when such is deemed necessary to properly deliberate upon the inmate's maturity, emotional stability or ability to make a rational and informed decision concerning marriage.

(f) An inmate's request to marry may be considered and recommended for approval when the inmate can meet all the above stated criteria.

(g) The final decision on an inmate's request to marry shall be made at the discretion of the Superintendent.

10A:17-7.4 Notification of decision

(a) The Superintendent shall give to the inmate written notification of approval or disapproval of the request to marry as soon as possible after receiving it.

(b) The notification shall indicate:

1. Whether the inmate's request for a furlough to coincide with the proposed date of marriage has been approved; or

2. Whether the inmate's request for use of the correctional facility for the marriage ceremony on the proposed date is approved.

(c) If the correctional facility is to be used for the ceremony and the date requested by the inmate is in conflict with previously scheduled activities, the Superintendent may select an alternate date which is mutually convenient for the correctional facility and the inmate.

(d) The Superintendent shall also provide the following information to the intended spouse which shall specify:

1. The time, date and place of the impending marriage;

2. The custody status of the inmate, the length and type of sentence, any active detainers; and

3. The requirement of a premarital conference to clarify any issues regarding the marriage.

10A:17-7.5 Social Service Department

(a) Upon approval of the inmate's request to marry, the Superintendent shall notify the Social Service Department.

(b) A staff member from the Social Services Department shall be assigned to act as an advisor to assist the inmate and the intended spouse.

(c) A premarital conference meeting with the inmate and the intended spouse shall be held at the correctional facility to clarify any social, legal or financial issues regarding the impending marriage.

(d) If there is to be a civil ceremony, the staff member of the Social Service Department shall review, arrange and coordinate plans for the ceremony, including the request to a civil official who will perform the ceremony (see N.J.S.A. 37:1-13 for persons authorized to solemnize marriages).

10A:17-7.6 Correctional facility chaplain

(a) If the inmate requests a religious service, the Superintendent shall notify the chaplain upon approval of the inmate's request to marry.

(b) The chaplain shall interview the inmate to determine the specific faith-group requirements which need to be met.

(c) The decision as to whether the chaplain shall perform a marriage is within the chaplain's sole discretion.

(d) The chaplain, clergy person, or other authorized religious leader who will perform the ceremony shall be granted the opportunity to conduct pre-marital sessions, such as counseling, in preparation for the solemnization of the marriage. Such sessions shall be arranged with the least disruption to the security and good order of the correctional facility. Where appropriate, the attorney visit room will be made available for this purpose.

(e) The chaplain shall review, arrange or coordinate plans for the ceremony, including the notification of the officiating clergy person or authorized religious leader, if the ceremony is not to be performed by the chaplain.

10A:17-7.7 Marriage ceremony

(a) A marriage ceremony conducted within the correctional facility shall be private with no attendant publicity.

(b) The marriage ceremony may be performed by:

1. The correctional facility chaplain;

2. A religious leader from the community who visits the correctional facility; or

3. A person from the community who is authorized by law to perform marriages in the State of New Jersey.

(c) Witnesses shall not exceed six in number, excluding the officiating clergy person, except in instances in which the inmate and the intended spouse have a large number of verified close relatives who wish to attend, for example, mother, father, son, daughter, sister, brother, grandfather and grandmother.

(d) The Superintendent may permit relatives in excess of six people to attend the marriage ceremony if the relatives' attendance does not violate the security or the orderly operation of the correctional facility.

(e) The witnesses from the community must be on the inmate's approved visiting list or receive special permission from the Superintendent to attend the marriage ceremony. Normal security measures concerning visits shall be employed.

(f) Inmates from the same correctional facility may attend the marriage ceremony but their attendance shall not increase the maximum number of six witnesses. The correctional facility may also limit the number of inmates permitted to attend the marriage ceremony in order to maintain security and good order.

(g) The correctional facility may refuse to permit an inmate to attend a marriage ceremony in the interests of security and good order.

(h) Flowers may be used, pictures may be taken, and a record player or tape recorder may be used to provide music at the marriage ceremony if these activities do not present a risk to the maintenance of security or the orderly operation of the correctional facility.

(i) Outside photographers and/or musical groups shall not be permitted to attend the marriage ceremony under any circumstances.

10A:17-7.8 Reception activities and consummation of the marriage

There will be no reception activities after a marriage ceremony has been performed within a correctional facility, and the correctional facility will not provide accommodations for the consummation of the marriage following the marriage ceremony.

10A:17-7.9 Fees and costs

(a) The correctional facility shall not be responsible for any costs incurred by inmates who marry.

(b) Financial obligations for such items as marriage licenses, serological (blood) tests and fees for the person officiating, other than a full or part-time staff member of the correctional facility, shall be assumed by the marriage partners.

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(c) Blood tests for the inmate shall be performed at the correctional facility and the appropriate deduction shall be made from the inmate's business account.

(a)

THE COMMISSIONER

Records
Availability of Medical Information to Inmates
Proposed New Rule: N.J.A.C. 10A:22-2.6

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-577.

Submit comments by December 18, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections proposes to add a new rule, N.J.A.C. 10A:22-2.6, and recodify the existing N.J.A.C. 10A:22-2.6 through 2.10 as N.J.A.C. 10A:22-2.7 through 2.11. The new rule will set forth the policy and procedures for making medical information summaries available to inmates. This new rule is being proposed to comply with a recent Deputy Attorney General opinion which requires the Department of Corrections to develop and adopt rules governing the provision of copies of medical summaries to inmates who request such.

Social Impact

The new practice of permitting inmates to obtain summaries of their medical tests and treatment will result in improved communications between medical staff and the inmate population. Inmates will have a better understanding of their state of health, and may learn to make appropriate inquiry concerning treatment rendered or needed.

Economic Impact

Whether the practice of providing copies of medical summaries to inmates will have any adverse economic impact on the Department of Corrections is not yet known. Computer systems to provide these summaries are already in place in connection with other uses. No estimate is available as to the number of requests for medical summaries which will be made initially or on a long term basis. It is doubtful, however, that significant costs will be incurred. Provision has been made for the imposition of established copying fees.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the proposal follows:

10A:22-2.6 Availability of medical information to inmates

(a) An inmate may obtain a copy of his or her medical records or a summary thereof by submitting a written request, on Form 301-XII, to the correctional facility's Director of Professional Services or Supervisor of the Medical Department, or to the Superintendent in those correctional facilities which do not have a Director of Professional Services or Supervisor of the Medical Department.

(b) The correctional facility shall provide a copy of the medical records, or a summary thereof, to the inmate within 30 calendar days.

(c) Where available, a summary of the medical record shall be provided to the inmate and shall contain a computer print-out of the following:

1. A health care summary;
2. A medical test(s) summary;
3. An x-ray(s) summary; and/or
4. A pharmacy history.

(d) In those cases in which record summaries are not available by computer or a document cannot be duplicated, arrangements may be made for the inmate to review his or her medical records under supervision of a correctional facility medical staff person.

(e) Copies of psychological/psychiatric records shall not be provided to inmates (see N.J.A.C. 10A:22-2.8(a)1, Records authorized by the inmate or parolee for inspection or release).

(f) Only objective data shall be supplied. Information may be withheld if, in the opinion of the Medical Director or Superintendent, release of the information would:

1. Be harmful to the inmate;
2. Jeopardize the safety or well-being of other individuals;
3. Compromise the privacy rights of other individuals; and/or
4. Have a substantial adverse impact on the orderly operation of the correctional facility.

(g) The fee schedule set forth in N.J.A.C. 10A:22-2.11 shall apply to this section.

Recodify existing 10A:22-2.6 through 2.10 as **10A:22-2.7 through 2.11** (No change in text.)

INSURANCE

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Prohibition Against Dual Compensation for Dual Agency
Prohibition Against Kickbacks for Referrals
Disclosures—Mortgage Financing Services; Affiliations with Mortgage Lenders or Brokers
Prohibition Against Excluding Outside Lenders
Proposed New Rules: N.J.A.C. 11:5-1.38 through 1.42

Authorized By: The New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6 and 17; Real Estate Settlement Procedures Act, 12 U.S.C. §2607; *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.*, 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).

Proposal Number: PRN 1991-578.

A **public hearing** on this proposal will be held on:
Tuesday, December 17, 1991 at 9:00 A.M.
Real Estate Commission Hearing Room
Conference Rooms 219-220, Second Floor
Mary G. Roebling Building
20 West State Street
Trenton, New Jersey 08625

Submit written comments by December 18, 1991 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission is proposing new rules to implement recommendations for rulemaking made by Administrative Law Judge Arnold Samuels in his initial decision in the case of *Mortgage Bankers Ass'n v. New Jersey Real Estate Comm'n, et al.*, OAL Docket No. BRE-228-87, on remand from the New Jersey Supreme Court.

This litigation involved a declaratory ruling and proposals for regulations concerning interpretation of the Real Estate License Act, N.J.S.A. 45:15-17(i) and its application to the various financial relationships whereby real estate brokers receive compensation for providing mortgage financing services to the buyer and also receive a real estate commission from the seller on the sales transaction. Subsection 17(i) of the Real Estate License Act prohibits a real estate licensee from:

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Collecting a commission as a real estate broker in a transaction, when at the same time representing either party in a transaction in a different capacity for a consideration. [N.J.S.A. 45:15-17(i)].

Both the Administrative Law Judge (ALJ) and the Commission concluded that subsection 17(i) was not intended to prohibit real estate licensees from providing mortgage financing services to buyers for compensation. Rather it was intended to prohibit the substantial actual conflict of interest created when a broker undertakes dual agency for dual compensation in the sales transaction. A licensee who provides mortgage financing services to a buyer does not undertake representation of the buyer in the sale. Various real estate agencies presented evidence at the hearings showing that their personnel were taking mortgage applications and providing actual services to buyers using computerized loan originating systems, not merely making referrals to lenders or mortgage brokers. Both the ALJ and the Commission concluded that these activities do not conflict with the seller's interests; therefore, fees may be charged to the buyer for such related mortgage services, which go beyond mere referral, without violating subsection 17(i). The Commission issued its declaratory ruling interpreting subsection 17(i) and affirming and supplementing the ALJ's initial decision on February 13, 1991.

The Commission is now proposing rules to implement those rulemaking proposals made by the ALJ which were accepted by the Commission, and to clarify related questions which have arisen in interpreting and applying N.J.S.A. 45:15-17(i).

N.J.A.C. 11:5-1.38 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

This section implements the ALJ's first recommendation. The ALJ called for rules which would set forth clearly the Legislature's intention in subsection 17(i) to prohibit a real estate broker who undertakes dual agency representation in a real estate sales transaction from receiving compensation from both buyer and seller. These rules also embody the ALJ's decision, affirmed by the Commission, that subsection 17(i) does not prohibit a real estate broker from charging fees for providing mortgage financing services to buyers, beyond mere referral. N.J.A.C. 11:5-1.38(a) sets forth the basic prohibition against undertaking dual representation for both buyer and seller for compensation from both buyer and seller. In N.J.A.C. 11:5-1.38(b), the Commission has further made it clear that dual agency for dual compensation is also prohibited in rental transactions.

However, in N.J.A.C. 11:5-1.38(c) and (e), it is explained that the prohibition in subsection 17(i) applies only to the sales or rental transaction itself, and does not extend to encompass related transactions which may be contingencies in the contract or lease. Because the mortgage is a transaction between the buyer and lender, not between buyer and seller, a real estate broker who provides mortgage services to the buyer for a fee is not undertaking representation of the buyer in the sales transaction, and does not violate the basic prohibition intended by the Legislature in subsection 17(i) of the Real Estate License Act. As N.J.A.C. 11:5-1.38(e) states, a real estate broker may accept a fee for providing mortgage financing services to the buyer with disclosure to both parties to the sales transaction. The timing and content of the written disclosures required is covered in proposed N.J.A.C. 11:5-1.40.

N.J.A.C. 11:5-1.38(d) explains that where the broker has only accepted an agency to represent one party to the transaction as a real estate broker, the brokerage commission may be paid by the other party or shared by both with full disclosure. For example, in commercial transactions, the seller often agrees to pay a share or all of the buyer's agent's commission; this customary practice is permissible under subsection 17(i), as explained in proposed N.J.A.C. 11:5-1.38(d), provided that the broker's agency relationship as representative of the buyer has been fully disclosed to the seller, as required by subsection 17(b) of the License Act.

N.J.A.C. 11:5-1.39 Prohibition against kickbacks for related business referrals

The ALJ recommended that the Commission adopt regulations which clearly state that kickbacks, rebates, commissions or any other form of compensation paid to real estate brokers or salespeople for mere referral or recommendation to lending sources, without performance of substantial services, are prohibited. The Commission has implemented this recommendation in N.J.A.C. 11:5-1.39 but has broadened the prohibition to make it clear that such kickbacks are prohibited with respect to all kinds of related business referrals, not just referrals of buyers to mortgage lenders or brokers. A real estate licensee who accepts or solicits any form of kickbacks or compensation for mere referrals to lenders, attorneys, termite, radon or home inspectors, title insurers, or any other provider or services related to a real estate transaction, will be subject to sanctions pursuant to N.J.S.A. 45:15-17(e) for conduct demonstrating unworthiness, bad faith or dishonesty. This rule is based in part on the Federal anti-kickback prohibition in RESPA, 12 U.S.C. §1207. Therefore, the Commission proposes to adopt the Federal regulations and interpretations under RESPA by reference rather than create confusion and uncertainty among New Jersey licensees about what conduct is permitted. However, if deference to the Federal decisions proves to be insufficient to protect the real estate buying and selling public in New Jersey, the Commission may later adopt a stricter standard.

In N.J.A.C. 11:5-1.39(b), the Commission has added a specific prohibition intended to further protect the public from unethical steering of mortgages and other referrals. N.J.A.C. 11:5-1.39(b) prohibits real estate brokers from offering rewards or incentives to their salesperson for mere referrals to a particular lender, mortgage broker, or other provider of related services, such as a particular termite inspector, home inspector or attorney. However, there are circumstances where a real estate broker may employ a salespeople as a financial services representative within a real estate office who performs significant mortgage services such as taking the borrower's mortgage application and transmitting it to lenders using a computerized loan origination ("CLO") system. As the example included in the proposal states: such a salesperson can be compensated by his or her employing broker for performing actual services which clearly go beyond mere referral of the buyer to a lender.

N.J.A.C. 11:5-1.40 Disclosure by licensees providing mortgage financing services to buyers for a fee

In N.J.A.C. 11:5-1.40, the Commission has implemented the ALJ's second recommendation and specified the written disclosures which must be made to both buyer and seller by a licensee who expects to receive compensation for providing mortgage financing services to the buyer in addition to the sales commission. These disclosures are intended to inform both parties to the sale and, where applicable, to dispel any misimpression that a licensee who is representing the seller as agent or subagent is undertaking a dual agency on behalf of the buyer in the sales transaction by providing mortgage services to the buyer for a fee. As provided in N.J.A.C. 11:5-1.40(b), full written disclosure must be made to the buyer before charging or accepting a fee, or before providing services when the licensee expects to receive compensation or reimbursement for such services at a later time, or at closing. For example, a licensee who charges no fee to the buyer unless the loan closes, must provide the written disclosure required by N.J.A.C. 11:5-1.40(b) before providing any mortgage services to the buyer; the licensee cannot provide the services first and delay making the required disclosures to closing.

N.J.A.C. 11:5-1.40(d) and (e) specify the written disclosures to the seller when services are offered or provided to a buyer for a fee. A listing broker who offers mortgage financing services to buyers for compensation must include a general disclosure statement in the listing agreement as stated in N.J.A.C. 11:5-1.40(d). Although the ALJ recommended that this disclosure be made in a statement separate from the listing agreement, the Commission considered that the disclosure would be more effective and more likely to be retained by both the seller and listing broker if it was included within the listing agreement itself. N.J.A.C. 11:5-1.40(d) also requires a selling broker who offers to provide mortgage financing services to buyers for a fee to provide written disclosure to the seller at the time an offer is presented.

N.J.A.C. 11:5-1.40(e) provides that when either the listing broker or a cooperating subagent does actually provide mortgage services to the buyer, specific written disclosure of that fact, and of the amount of compensation to be earned by the licensee for those services, must be made to the seller at the time the buyer/borrower's mortgage application is submitted.

N.J.A.C. 11:5-1.41 Disclosure of licensee's affiliation with a mortgage lender or mortgage broker to whom the licensee refers buyers

N.J.A.C. 11:5-1.41 requires written disclosure to the buyer whenever a licensee refers a buyer to a mortgage lender or broker with whom the licensee is affiliated. The Commission considers that financial affiliations between real estate licensees and mortgage lenders or mortgage brokers are natural and inevitable given the realities of today's real estate market and the complexities of real estate financing and investment. Therefore, the Commission concluded that referrals to an affiliated mortgage lender or broker should not be prohibited because a blanket prohibition would harm the public; the affiliated mortgage lender or broker may very well be an acceptable, or even superior, source of mortgage financing for the buyer, which will facilitate the sale and, thus, benefit the seller. However, since the financial affiliation may color the real estate licensee's judgment, the buyer/borrower should be made

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aware of the affiliation when the referral is made, and encouraged to explore and compare other, non-affiliated sources of mortgage financing.

N.J.A.C. 11:5-1.42 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Based upon hearing testimony, the ALJ recommended that the Commission adopt regulations which "would penalize real estate brokers who exclude or deny access to outside loan solicitors in favor of their own in-house sources." N.J.A.C. 11:5-1.42 has been proposed to address this problem. The ALJ and the Commissioner considered that buyer's mortgage financing choices should not be limited to the in-house service, by real estate brokers who solicit loans in their real estate offices. Buyers need information about mortgage financing alternatives, and such information has traditionally been conveyed to salespersons by mortgage solicitors.

However, the Commission is also mindful that real estate brokers as office managers need to maintain control over the activities in their offices, to provide security for staff and customers, and to foster an orderly work environment. Uncontrolled visits by dozens of mortgage solicitors or other outsiders could plunge a crowded real estate office into chaos. In order to balance the need for access with the need for control, **reasonable access** is the watch word. What access will reasonably be permitted to mortgage solicitors will obviously vary based upon the size and circumstances of each real estate brokerage office. However, the Commission will consider access to be reasonable whenever three or more mortgage solicitors from non-affiliated lenders are permitted to visit and contact salespersons in the real estate office during business hours. This rule does not require a real estate broker who has had a bad experience with a particular lender or mortgage solicitor to do business with that lender or solicitor, nor does it require that the broker provide a desk, conference room or telephone in the office for the use of mortgage solicitors. Indeed, the Commission has **not** required that equal access be provided to all mortgage solicitors. The intent of this rule is to grant some reasonable access, so that real estate salespersons can provide buyer/borrowers with information about other choices of mortgage financing services, even when a real estate broker offers such services in-house. The problem of "lender lockout" is new to the Commission, and this rule is proposed as a reasonable first step toward addressing this thorny problem.

Social Impact

These proposed rules are intended to make it clear to all licensees that dual agency for dual compensation is illegal under the Real Estate License Act in New Jersey. These rules answer persistent questions which have arisen due to the complex and unique statutory language of subsection 17(i). Although other states have traditionally permitted real estate brokers to engage in dual agency for dual compensation with disclosure, the Legislature enacted subsection 17(i) to prohibit this practice in New Jersey since it creates an inherent and irreconcilable conflict between the broker's duties to seller and buyer.

These proposed new rules are also intended to respond to changes in the real estate brokerage market resulting from efforts by real estate brokers to expand the range of services they offer to include in-house or affiliated mortgage financing services. The growth of computer technology has provided real estate brokers the ability to offer buyers/borrowers a choice of mortgage lenders and loan programs, via computers located in the real estate brokerage office. Computers also provide the ability to complete and electronically transmit a mortgage loan application nearly instantaneously from the real estate office through the telephone system to the lender. These computerized loan origination ("CLO") systems are already in operation in New Jersey and nationwide. Such multi-lender CLO systems appear to facilitate buyer choice and competition between lenders. It is anticipated that the proposed rules will have a beneficial impact on both buyers and sellers by expanding the availability of mortgage financing, and making the mortgage application process more efficient and less time-consuming. One CLO system demonstrated at the hearings could issue a conditional mortgage commitment to a qualified buyer within 15 minutes of electronic transmittal of the mortgage application to the lender.

While the Commission recognizes that these new advances in technology may also create new and unanticipated problems and conflicts, government regulation should not, in the Commission's view, stand as an obstacle to change and business innovation in the real estate brokerage field. These rules are intended to foster disclosure to the public of those facts necessary for real estate buyers and sellers to make informed business decisions when offered these new mortgage financing services by real estate licensees.

The Commission also anticipates that its proposed rule N.J.A.C. 11:5-1.39, which expressly prohibits real estate licensees from soliciting or accepting kickbacks for referrals in real estate transactions, will have a positive social impact in preventing a resurgence of such corrupt practices and eliminating the hidden costs to consumers, which such illegal practices entail. Although the passage of RESPA, 12 U.S.C. §2607, has gone far toward eradicating such abuses in New Jersey, over the past decades, the proposed rule and enforcement by the Commission are intended to assure the New Jersey public that the practice of accepting kickbacks for referring customers to related business services will not be allowed to resurface in the local real estate brokerage market.

Finally, the rules requiring disclosures of affiliation are expected to benefit real estate buyers and sellers in both the residential and commercial sectors of the real estate industry by requiring disclosure of more complete information. While real estate brokers are not prohibited from owning or otherwise affiliating with mortgage lenders, such affiliation is, in the Commission's view, material information which must be disclosed by the licensee who makes a referral to the affiliate. Commercial real estate financing has not experienced the great changes now underway in the residential mortgage market; however, affiliation and consolidation between commercial real estate brokerage and mortgage brokerage has traditionally existed in New Jersey. The required written disclosures of compensation and of affiliation are expected to benefit those less sophisticated buyers or sellers of commercial, as well as residential, property who might otherwise have been unaware of the financial relationships which exist between real estate brokers and mortgage lenders or mortgage brokers. Commercial real estate brokers and mortgage brokers are reminded that these proposed rules are **not** limited to residential transactions. Once the proposed rules are adopted, any real estate broker who fails to provide the required written disclosures in either commercial or residential transactions will face sanction by the Real Estate Commission, and may also be subject to civil liability.

Economic Impact

The proposed rules are expected to have a positive economic impact on the real estate brokerage industry in New Jersey by clarifying the law in an area which had become confused. These rules combined with the rules and amendments proposed elsewhere in this issue of the New Jersey Register by the Department of Banking, clear the way for residential real estate brokers who desire to do so, to offer expanded mortgage financing services and to receive compensation for providing these services. These rules inform real estate brokers that, with proper written disclosure, it is legal in New Jersey to provide actual mortgage financing services to real estate buyers for compensation in addition to the sales commission. It is anticipated that, in addition to the large corporate and franchised brokerage offices which now offer such services, small residential brokers will have the opportunity to provide these expanded mortgage financing services through their membership in trade association. Officers of the New Jersey Association of Realtors testified at the hearings in this matter concerning the realtors' intention to establish a computerized mortgage loan origination system for its members. The expansion of such CLO systems may encourage competition between real estate brokers, and between lenders, to expand service to the public, and to improve efficiency and lower the cost of residential mortgage financing.

While some additional forms and recordkeeping are required, these requirements are not expected to have any substantial negative economic impact on real estate licensees or the public. The Commission has attempted to keep the required disclosure statements concise, readable, and has limited their use to transactions and situations where the information is immediately pertinent.

Regulatory Flexibility Analysis

A majority of real estate brokerage offices are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Keeping this in mind, the number of licensees which are required by these rules to provide disclosure forms and keep additional records has been kept to the minimum, in the Commission's view. The additional disclosure forms and recordkeeping required by proposed N.J.A.C. 11:5-1.40 apply only to real estate brokers who offer expanded mortgage financing services to buyers **and** expect to receive compensation in addition to the sales commission. Small real estate brokerage businesses which do not charge for such services are not subject to any additional requirements under this rule.

The form for disclosing affiliations and the record keeping requirements imposed in proposed N.J.A.C. 11:5-1.42 apply only to those real

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estate licensees which are affiliated with a mortgage lender or broker to whom they refer customers. A small real estate brokerage business which is not affiliated with any lender or mortgage broker, or which does not make referrals to any such affiliate, will not be subject to additional requirements under this rule. However, any individual licensee employed by a real estate broker, who has an individual affiliation, will be obligated to make the required disclosure and the employing broker will be required to keep a copy of that disclosure form along with other business records of the transaction. The Commission has attempted to define "affiliation" clearly and concisely so that all licensees, including small brokers, will know when this disclosure rule is applicable to them, or to the individual licensees in their employ.

Full text of the proposal follows:

11:5-1.38 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases "sales transaction" and "rental transaction" do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that full written disclosure of the agency relationship and of the compensation arrangement has been made to both parties to the transaction in the contract or lease.

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation, the written disclosures must comply with N.J.A.C. 11:5-1.40.

11:5-1.39 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-1.38(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be compliance with this subsection.

(b) Real estate brokers are prohibited from offering incentives to the salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral. For example, a real estate broker who is also a mortgage broker may compensate a salesperson licensed with that broker who performs actual services as a mortgage solicitor. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to salespersons for merely referring buyers to the in-house mortgage service.

11:5-1.40 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-1.12.

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting any fees for mortgage financing services or contracting for or providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;

2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;

3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-1.41, the disclosure must advise the buyer of that fact, give the names of such lenders and state:

You are under no obligation to use the mortgage services offered by this real estate licensee. You may obtain your mortgage loan from another source.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the Department of Banking pursuant to N.J.A.C. 3:1-16.3 or N.J.A.C. 3:1-16.11.

(d) A listing broker who offers to provide mortgage financing services to buyers for compensation shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation, shall provide the following disclosure statement to the seller, with a copy to the listing broker, at the time any written offer is presented.

This real estate agency may offer to provide mortgage financing services to the buyer for compensation in addition to the sales commission. As agent of the seller, this real estate agency has a fiduciary duty to you, the seller, which will not change should mortgage financing services be provided. In the event that mortgage financing services are provided to the buyer, this agency shall not undertake representation of the buyer in the real estate sale.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation and also represents the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/borrower.

_____
(name of licensee and brokerage agency)
represents the seller in this real estate sales transaction. Upon closing

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of title, this real estate agency will receive a sales commission paid from the seller's funds. This real estate agency also provides mortgage financing services to the buyer for compensation in the amount of _____. As agent of the seller, this real estate agency has a fiduciary duty to the seller which is not changed by providing mortgage services to the buyer. This agency does not represent the buyer in the real estate sale.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure, stated either as a dollar figure or as a percentage of the loan principal. The compensation received by the licensee may not be increased above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

11:5-1.41 Disclosure of licensee's affilitation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-1.39, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-1.12. The disclosure must include the following statement:

You are under no obligation to use the mortgage services of _____ who/which is affiliated with this real estate licensee. You may obtain your mortgage loan from another source.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;

2. The licensee owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee is owned by a corporate parent, or other business entity which is a majority shareholder in the lender or mortgage broker;

3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or

4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.

2. Where a salesperson or broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RESPA, 12 U.S.C. §2601 et seq.

11:5-1.42 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Inspection of Records

Proposed Amendment: N.J.A.C. 11:5-1.13

Authorized By: The New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1991-534.

Submit comments by December 18, 1991 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Real Estate Commission is proposing an amendment to N.J.A.C. 11:5-1.13, its rule entitled "Inspection of records."

The amendment was preceded by a petition for rulemaking, notice of which was published in the New Jersey Register on June 17, 1991 at 23 N.J.R. 1968(e). The proposed amendment incorporates the suggestion contained in the petition that the current text of subsection (c) of this rule be clarified. While it had been the intent of the Commission to proscribe the removal of all records from brokers' offices by licensees whose employment relationship with such brokers had terminated, the text of the current rule referred only to files on pending and closed transactions. This language did not sufficiently convey the Commission's intent that departing salespersons and broker-salespersons are prohibited from removing from the offices of their former employing brokers all files, including those on pending listing agreements on which no sales contract or lease had been signed.

The proposed amendment, in addition to adopting the suggestion of the petitioner with regard to files on pending listing agreements, also clarifies that the proscription on the removal of brokers' records applies to files on property management agreements being serviced by a broker. Finally, text is being added to the rule to clarify that the term "files" as used in the rule refers to all transaction records which brokers are required to maintain pursuant to N.J.A.C. 11:5-1.12.

Social Impact

The proposed amendment will have a beneficial impact upon all licensees and the public at large. Clarifying the amendment will assist both brokers and licensees who terminate their employment relationship with brokers by specifying all those materials which cannot be removed by such departing licensees from the files of the broker with whom they had previously been employed. By doing so, the efficiency and effectivenss of Commission investigations into complaints by the public will be enhanced. When Commission investigators seek to review the records of brokers on particular transactions, the effect of the amended rule will be to eliminate their being confronted with situations where such records have been removed by salespersons who have left the employ of that broker.

Economic Impact

It is not anticipated that the adoption of the proposed amendment will have a negative economic impact upon real estate licensees. Rather, by clarifying that the contents of brokers files on pending listings, as well as those on pending transactions wherein executory contracts or leases have been signed, cannot be removed by a departing licensee from

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the broker's office, the economic interests of brokers will be protected. This is true because the written documentation memorializing such transactions will be retained in the files of the broker, thereby avoiding the risk that it might be lost, destroyed or altered after having been removed by a licensee upon their termination of their employment with the broker. Licensees who are not licensed as brokers are prohibited by law from entering into listing agreements individually and may only do so as a representative of the broker through whom they are licensed. Also, by preserving those records at the brokers' offices, and thereby enhancing the efficiency of Commission investigations into complaints from the public, the resolution of disputes between complainants and brokers and between licensees and the Commission will be expedited.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Rather, this amendment merely clarifies the proscription upon the removal of certain records of the broker by a licensee upon the termination of their employment with that broker. Commission rule N.J.A.C. 11:5-1.12 imposes the requirement that the records referred to in this proposed amendment be maintained by all licensed brokers.

Full text of the proposal follows (additions indicated in boldface **thus**):

11:5-1.13 Inspection of records

(a)-(b) (No change.)

(c) All files on pending and closed **sale, exchange or lease** transactions, **all files on listings for sales or rentals, and all property management files** shall be maintained or stored at the offices of brokers licensed as employing brokers or corporate or partnership brokers. Upon terminating their employment with such a broker, and/or transferring to the employ of another such broker, no salesperson or broker-salesperson shall remove or cause to be removed any of the contents of such files from the offices of the broker. **The term "files" as used herein shall be construed to mean all transaction records required to be kept by brokers pursuant to N.J.A.C. 11:5-1.12.**

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF DENTISTRY

Announcement of Practice in a Special Area of Dentistry

Reproposed Amendment: N.J.A.C. 13:30-8.4

Authorized By: State Board of Dentistry, Agnes Clarke, Executive Director.

Authority: N.J.S.A. 45:6-7.

Proposal Number: PRN 1991-563.

Submit written comments by December 18, 1991 to:
Agnes Clarke, Executive Director
State Board of Dentistry
Post Office Box 45005
Newark, New Jersey 07101

The agency proposal follows:

Summary

A proposed amendment of N.J.A.C. 13:30-8.4, which would permit a general dentist to announce services in a special area of dentistry or a limitation of practice, was initially published in the March 5, 1990, New Jersey Register at 22 N.J.R. 783(a). The proposed amendment added a new subsection to the Board's rule concerning the announcement of practice in a special area of dentistry which required a general dentist who wished to advertise services in a special area of dentistry to use the phrase "General Dentist" immediately following his or her name and prohibiting use of the words "Specialist," "Specialty," or "Specializing."

Eighteen responses were received during the comment period generally expressing support for the right of general dentists to announce the services offered in their practices, including services that fall within the scope of any of the dental specialties, but expressing concern about some aspects of the amendment which could be misleading including, specifically, a general dentist's use of the phrase "Practice limited to." Based upon the responses received and upon further consideration, the Board published a reproposed amendment of N.J.A.C. 13:30-8.4 in the August 6, 1990 New Jersey Register at 22 N.J.R. 2257(a). The reproposed amendment specifically prohibited a general dentist from using the phrase "Practice limited to" or any other word or phrase connoting advanced education in a specialty area. The reproposed amendment also added a new subsection to the rule in regard to advertisement of services in an area of dentistry other than the recognized specialty areas in order to avoid any misconception that these are recognized areas of dental specialty.

Eleven responses were received during the comment period, including responses from one commenter representing six dental specialty organizations, the New Jersey Dental Association (N.J.D.A.), six professional associations representing various dental specialties and three licensed dentists. Generally, the majority of those responding accepted the notion that a general dentist should be permitted to indicate that he or she offers dental services in one or more of the special areas of dentistry. However, there was substantial divergence among the commenters in regard to the specific language that general dentists should be permitted to use in their advertising and the types of disclaimers which should be required in order to assure that the public could clearly differentiate between an advertiser who was a general dentist and one who was a specialist by virtue of advanced training and education.

Several commenters suggested that the Board permit general dentists to list special areas only and prohibit any other modifying language. Another commenter suggested that the Board allow general dentists to advertise services "exclusively" with the disclaimer, "General Dentist without Specialty Permit." Several of the commenters urged the Board to prohibit the general dentist from using the phrase "Practice concentrated in ____."

In regard to the new subsection concerning advertisement of services in an area of dentistry other than the recognized specialty areas, several commenters suggested that a disclaimer be required such as "____ is not a recognized specialty of the ADA or New Jersey." The commenters also expressed the opinion that advertising in the areas not recognized as specialty areas should not use terms such as "Specialist" or "Practice limited to."

Based upon the responses received, including discussions of the proposal at public Board meetings, and upon further consideration, the Board is persuaded that further changes to the amendment are required in order to assure that a proper balance is struck between the advertiser's right to offer dental services in a truthful and non-deceptive manner and the Board's responsibility to assure that its licensees do not advertise in a potentially misleading manner. Accordingly, the Board has determined to repropose the amendment to N.J.A.C. 13:30-8.4 in order to refine the amendment in the best interests of the public as well as the advertising licensees.

The reproposed amendment will require specialists who have been granted a specialty permit by the Board to include in any announcement of specialization the licensee's name and the phrase "New Jersey Specialty Permit No. ____." The dentist, other than a specialist granted a permit by the Board, who wishes to advertise services in a special area of dentistry must include his or her name and the phrase "General Dentist" immediately preceding or following each specialty area claim. In addition, the general dentist is prohibited from using the terms "Specialist," "Specializing," "Practice limited to," or any other word or phrase connoting the licensee is a specialist.

In order to address the unique circumstances regarding advertising under a banner heading for any of the special areas of dentistry in directories such as the Yellow Pages of a telephone book, the reproposed amendment will require such advertisements to contain the licensee's name and either the phrase "General Dentist" or "New Jersey Specialty Permit No. ____."

The subsection which addresses the advertisement of services in an area of dentistry other than the recognized special areas is amended to prohibit the advertiser from using any word or phrase connoting that he or she is a specialist or that the area of dentistry is a recognized specialty.

Two new subsections also have been added to this reproposed amendment. One requires a licensee to substantiate upon request the truthful-

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ness of any objective assertion or representation set forth in an advertisement. The second subsection provides that non-compliance with the rules shall be deemed professional misconduct.

The Board also is reproposing without change from the August 6, 1990 proposal a number of minor amendments in the language of other subsections for the purpose of consistency or clarification. This includes a few technical changes in order to correct typographical errors.

Social Impact

The reproposed amendment continues to have the purpose of providing useful information to potential patients seeking a dentist in a specialty area. Such patients now will have access to a larger list of dentists from which to choose when seeking services in a special area of dentistry. The reproposed amendment also provides the general dentist with the professional benefit of advertising the services which he or she actually offers in the practice. The Board is satisfied that this reproposed amendment further diminishes any possibility of confusion as to any licensee's specific credentials in regard to specialty. Therefore, potential patients will be better informed when choosing a dentist in a specialty area, and all dentists, both general dentists and specialists, will have the ability to advertise and offer their services in these specialty areas.

Economic Impact

There will be no economic impact upon the public as a result of this reproposed amendment except that which may possibly be gained from increased competition through advertising. General dentists who choose to advertise the availability of their services in a specialty area may gain economically in that they may attract more patients as a result of such advertising. The additional cost of including identifying terms in the advertising of all dentists who choose to offer services in a specialty area should be minimal.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable.

The State Board of Dentistry licenses approximately 19,500 dentists. The reproposed amendment creates no new reporting or recordkeeping requirements for these licensees, and the services of other professionals are not needed in order to comply. There are no initial capital costs or annual costs to comply. The only compliance requirement is specific identification as a general dentist or a specialist granted a permit in any announcement of practice in a special area. Because this requirement is intended to reduce confusion on the part of the public, no exemption from it is possible regardless of the size of practice.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:30-8.4 Announcement of practice in a special area of dentistry

(a) Any licensee who seeks to announce to the public that he **or she** is a specialist[,] **or** specializes in [or limits his practice to] one or more area(s) of dental practice listed in (b) below shall first obtain a permit to do so from the Board of Dentistry [for the licensee's main office and all branch locations].

(b) The following special areas of dentistry are hereby recognized as suitable for the announcement of [limited] **specialty** dental practices:

1. Endodontics;
2. Oral surgery;
3. Oral pathology;
4. [Orthodonics] **Orthodontics**;
5. Pediatric dentistry (also called Pedodontics);
6. Periodontics;
7. Prosthodontics;
8. Public health.

(c) The Board shall grant permission to announce [such limitation of practice] **specialty or specialization** to:

1. Any licensed dentist who is currently certified or currently eligible for certification by a specialty board recognized by the American Dental Association appropriate to that area of dental practice listed in (b) above; or

2. Any licensed dentist who first meets the educational requirements and standards approved by the Board. The educational requirements and standards of the Board[, subsequent to October 15, 1975] shall be the successful completion of a post-doctoral education of two or more years in duration in one or more of the special areas [of (c)1] **listed in (b)** above and which, at the time of completion, was accredited or [previsionally] **provisionally** accredited by the American Dental Association Council on Dental Education[; or].

[3. Any licensed dentist who has announced, in this State, a limitation of practice in a special area(s) of dentistry included in (b) above prior to October 15, 1975.]

[4.]**i.** The Board may review the credentials and educational background of any licensed dentist eligible by (c)2 above and [to] approve or deny permission to announce [limitation] **specialization** in a special area of dentistry.

[(d) A licensed dentist who wishes to announce the limitation of practice in a special area of dentistry in (b) above and who is permitted to do so under (c) above may use any of the following words and phrases in all advertisements as permitted by N.J.A.C. 18:30-8.6;

1. "Practice limited to ..." or "Specializing in ..." using the appropriate name for the special area of dentistry in subsection (b), in which the licensee was granted permission to announce limitation of practice, such as Endodontics, Oral Surgery, etc., and/or the name that identifies an individual licensee permitted to announce in that special area, such as Endodontist, Oral Surgeon, etc.

2. The post-graduate degree received from a recognized accredited academic institution.

3. The name of the current specialty board certification.

4. The limitation of practice certificate permit number issued by this Board.

(e) All licensed dentists who are not permitted by (c) above to announce the limitation of practice in a special area of dentistry shall be prohibited from doing so and shall not hold out to the public as being qualified in any special area of dentistry by:

1. Announcement through the press, sign, card, letterhead or printed matter, or any other means of public advertising;

2. Use of a term as "specialist";

3. Use of the name of a specialty or any phrase customarily used to imply to the public limitation of practice in a special area of dentistry as contained in (b) and (d) above.]

[(f)]**(d)** A licensed dentist permitted to announce by (c) above shall avoid any inference, implication or announcement by press, sign, card, letterhead or printed matter or any other means of public advertising that another licensed dentist not permitted to announce, and associated or employed in the same practice, is also qualified for the announcement in the [limited] **specialty** practice area.

[(g)]**(e)** These rules regarding the announcement of [limited] **specialty** practice shall not prohibit any licensed dentist from engaging in [an] **any** aspect of the practice of dentistry in accord with applicable laws or other rules and regulations of the Board.

[(h)]**(f)** Prior to making any announcement of [limitation of practice] **specialty** in accord with the preceding paragraphs, a licensed dentist shall apply to the Board for permission to do so. Application to the Board for permission to announce in a special area of dental practice shall be upon such form and contain such information as the Board may direct. When granted a permit of announcement of [limited practice] **specialty** in a designated area(s) of dentistry, a licensee shall display this permit or a copy thereof in [the main (and all branch)] **all** office location(s) during the period of [limited] **specialty** practice. If a licensee discontinues a [limited] **specialty** practice, the Board shall be so notified.

[(i) A licensed dentist granted a permit of announcement of limited practice by this section, but who wishes to conduct general practice combined with a practice in a special area(s) contained in (b) above shall:

1. Inform the board of such intentions and retain the permit of announcement in accord with (h) above;

2. Announce such a practice to the public by stating "General Practice of Dentistry and ..." using the appropriate name of the special area(s) in which the permit of announcement has been granted contained in (b) above;

3. Conform to (d) above, except for (d)1;

4. Not use the term "specialist" nor any term which would convey a singular area of expertise.

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(j) All advertisements and public representations of a licensee granted a permit of announcement of limited practice or specialization in a special area of dentistry shall contain the licensee's name and permit number.]

(g) All advertisements and public representations of a licensee granted a permit of announcement of specialization shall contain the licensee's name and the phrase "N.J. Specialty Permit No. _____." A licensee advertising or publicly representing that his or her practice specializes in or has licensees on staff who specialize in one or more of the special areas of dentistry in (b) above shall list the licensee's name and the phrase "N.J. Specialty Permit No. _____."

(h) If a dentist, other than a specialist granted a permit by the Board, wishes to advertise services in one or more of the special areas of dentistry in (b) above, such advertisement shall contain the licensee's name and the phrase "General Dentist" immediately preceding or following each specialty area claim in a type size and style at least as prominent as any service described as being offered in the practice. The advertisement shall not use the terms "specialist," "specialty," "specializing," "practice limited to," or any other word or phrase connoting that the licensee is a specialist. The advertisement of services exclusively in one specialty area shall be limited to those licensees who practice that specialty at all times and in all locations.

(i) If a dentist advertises under a banner heading for any of the special areas of dentistry in (b) above in any directory (for example, telephone book yellow pages), such advertisement shall contain the licensee's name and either the phrase "General Dentist" or "N.J. Specialty Permit No. _____."

(j) If a dentist wishes to advertise services in an area of dentistry other than the recognized special areas of dentistry in (b) above, such advertisement shall not use the terms "specialist," "specialty," "specializing," "practice limited to," or any other word or phrase connoting that the licensee is a specialist or that the area of dentistry is a recognized specialty.

(k) [A licensee advertising or publicly representing that his or her practice specializes in or is limited to one or more area(s) of dental practice listed in (b) above shall list the name and permit number of the Board licensee(s) rendering dental services in said special area(s) in all advertisements and public representations.] **The Board may require a licensee to substantiate the truthfulness of any objective assertion or representation set forth in an advertisement.**

(l) Noncompliance with these rules [for announcement of limitation of practice] **may be deemed professional misconduct and** may subject the licensee to suspension or revocation of his or her license to practice dentistry.

(m) Applications **for a permit pursuant to (a) above** may be obtained by writing to the Office of the Board of Dentistry, [1100] **1207** Raymond Boulevard, **P.O. Box 45029,** Newark, New Jersey [07102] **07101.**

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Authority of Executive Director
Proposed Amendment: N.J.A.C. 13:70-1.3

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-583.

Submit written comments by December 18, 1991 to:
Frank Zanzuccki, Deputy Director.
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment extends the powers of the stewards and judges contained throughout the Administrative Code to the Executive Director of the Racing Commission or his or her designee. This does not constitute a policy change but merely affirms in a rule the existing policy.

Although it is not stated in the Administrative Code that the Executive Director or his or her designee has at least the same powers as the stewards or judges, the Commission has always considered that to be the case. The Executive Director is the top Racing Commission employee designated to carry out the mission of this regulatory body. Stewards and judges are also employees of the Racing Commission working under the direction of the Executive Director. The Commission logically assumed that the Executive Director would possess, at a minimum, powers of the stewards and judges contained in the Administrative Code since they are in essence employees of the Executive Director. The Commission believes that by reflecting this authority in the Administrative Code a more secure legal foundation is available.

Social Impact

The proposed amendment will not have any social impact.

Economic Impact

This proposed amendment may result in a positive economic impact since legal arguments regarding the authority and power of the Executive Director may be reduced if not eliminated entirely thereby reducing preparation and court time of selected cases. A reduction in litigation time will produce a reduction in expenditures to the State and permit legal services to be reallocated sooner.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment codifies Commission policy concerning the authority of its Executive Director. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:70-1.3 Scope; **authority of Executive Director**

(a) The rules, regulations and conditions under which all horse racing shall be conducted in the State of New Jersey are prescribed by the racing law (N.J.S.A. 5:5-22[,] et seq.) and by the New Jersey Racing Commission.

(b) The Executive Director or his or her designee shall possess the same authority of the Racing Commission stewards and judges with respect to all provisions contained in the Administrative Code governing racing in New Jersey.

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Daily Double; Field Horses
Proposed Amendment: N.J.A.C. 13:70-29.48

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Numbers: PRN 1991-584.

Submit written comments by December 18, 1991 to:
Frank Zanzuccki, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The amendment to the daily double rule eliminates a provision that prohibits field horses from starting in races comprising the daily double. Field horses are horses that are combined as one wagering interest when there are more than 12 starters in a race. This is necessary since the computer system is only capable of displaying odds on 12 wagering

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interests. The provision that prohibits field horses in daily double races is not applicable since the purpose of this provision is to eliminate confusion. The provision is applicable only in trifecta races where a patron must select the correct order of finish of the first three horses. If field horses were permitted in trifecta races, a confusing situation could occur where the three horses in the field, that are combined as one wagering interest, could finish one through three. The winning trifecta in this case would include the field horses as the first finisher along with the horses finishing fourth and fifth. This type of situation will not occur in a daily double wager since the patron must select the winners of two consecutive races.

Social Impact

The proposed amendment will have a positive social impact to the extent that patrons will not be prohibited from daily double wagering when field horses are entered in races.

Economic Impact

The proposed amendment would have a positive economic impact on the State of New Jersey, track associations and horsemens' organizations by allowing racetracks to offer daily double wagering in races containing field horses. This will theoretically increase wagering by permitting racetracks to offer an additional wagering pool thereby increasing revenue to the State, track associations and horsemen.

Regulatory Flexibility Statement

The proposed amendment poses no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment removes the prohibition on field horses starting in races comprising the daily double. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:70-29.48 Daily double

(a)-(c) (No change.)

[(d) No field horses shall be allowed to start in races comprising the daily double.]

Recodify existing (e)-(r) as **(d)-(q)** (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Authority of Executive Director

Proposed Amendment: N.J.A.C. 13:71-1.1

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-585.

Submit written comments by December 18, 1991 to:
Frank Zanzuccki, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment extends the powers of the stewards and judges contained throughout the Administrative Code to the Executive Director of the Racing Commission or his or her designee. This does not constitute a policy change but merely affirms in a rule the existing policy.

Although it is not stated in the Administrative Code that the Executive Director or his or her designee has at least the same powers as the stewards or judges, the Commission has always considered that to be the case. The Executive Director is the top Racing Commission employee designated to carry out the mission of this regulatory body. Stewards and judges are also employees of the Racing Commission working under the direction of the Executive Director. The Commission logically assumed that the Executive Director would possess, at a minimum, powers of the stewards and judges contained in the Administrative Code since they are in essence employees of the Executive Director. The Commission believes that by reflecting this authority in the Administrative Code a more secure legal foundation is available.

Social Impact

The proposed amendment will not have any social impact.

Economic Impact

This proposed amendment may result in a positive economic impact since legal arguments regarding the authority and power of the Executive Director may be reduced if not eliminated entirely thereby reducing preparation and court time of selected cases. A reduction in litigation time will produce a reduction in expenditures to the State and permit legal services to be reallocated sooner.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment codifies Commission policy concerning the authority of its Executive Director. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**):

13:71-1.1 General provisions

(a) The rules, regulations and conditions under which all horse racing shall be conducted in the State of New Jersey are prescribed by the racing law and by the New Jersey Racing Commission.

(b) If at any time there is a conflict between the rules of the New Jersey Racing Commission and the rules of the United States Trotting Association, the rules of the Commission shall govern.

(c) The Executive Director or his or her designee shall possess the same authority of the Racing Commission stewards and judges with respect to all provisions contained in the Administrative Code governing racing in New Jersey.

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Daily Double; Field Horses

Proposed Amendment: N.J.A.C. 13:71-27.47

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-586.

Submit written comments by December 18, 1991 to:
Frank Zanzuccki, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The amendment to the daily double rule eliminates a provision that prohibits field horses from starting in races comprising the daily double. Field horses are horses that are combined as one wagering interest when there are more than 12 starters in a race. This is necessary since the computer system is only capable of displayng odds on 12 wagering interests. The provision that prohibits field horses in daily double races is not applicable since the purpose of this provision is to eliminate confusion. The provision is applicable only in trifecta races where a patron must select the correct order of finish of the first three horses. If field horses were permitted in trifecta races a confusing situation could occur where the three horses in the field, that are combined as one wagering interest, could finish one through three. The winning trifecta in this case would include the field horses as the first finisher along with the horses finishing fourth and fifth. This type of situation will not occur in a daily double wager since the patron must select the winners of two consecutive races.

Social Impact

The proposed amendment will have a positive social impact to the extent that patrons will not be prohibited from daily double wagering when field horses are entered in races.

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Economic Impact

The proposed amendment would have a positive economic impact on the State of New Jersey, track associations and horsemens' organizations by allowing racetracks to offer daily double wagering in races containing field horses. This will theoretically increase wagering by permitting racetracks to offer an additional wagering pool thereby increasing revenue to the State, track associations and horsemen.

Regulatory Flexibility Statement

The proposed amendment poses no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The amendment removes the prohibition on field horses starting in races comprising the daily double. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:71-27.47 Daily double

(a)-(c) (No change.)

[(d) No field horses shall be allowed to start in races comprising the daily double.]

Recodify existing (e)-(r) as **(d)-(q)** (No change in text.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Alcoholic Beverage Tax
Tax Rates on Alcoholic Beverages
Proposed Amendment: N.J.A.C. 18:3-2.1

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:42-1; 54:50-1; and 54:43-1.

Proposal Number: PRN 1991-574.

Submit comments by December 18, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment reflects the increase in alcoholic beverage tax rates effective July 1, 1990, pursuant to P.L. 1990, c.41 (see N.J.S.A. 54:43-1). This tax is applied to the first sale or delivery of alcoholic beverages to retailers in New Jersey and is based upon the number of gallons sold or otherwise disposed of in the State.

Social Impact

While the statutory tax increases may affect sales to retailers, the proposed amendment should have no social impact.

Economic Impact

The increase in alcoholic beverage tax rates has increased revenues for the State. Based on 1990 consumption, the State has realized a $33.4 million increase in tax revenues. As a codification of the statutory tax increase, the proposed amendment itself should have no economic impact.

Regulatory Flexibility Statement

The proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment is only intended to conform with the tax rate changes set forth in the statute (N.J.S.A. 54:43-1) effective July 1, 1990. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

18:3-2.1 Tax rates on alcoholic beverages

(a) The Alcoholic Beverage Tax Law levies and imposes upon any sale of alcoholic beverages made within this State, or upon any delivery of alcoholic beverages made within or into this State, the following excise taxes:

1. Beer—at the rate of [$0.03-1/3] **$0.10** a gallon or fraction thereof **from July 1, 1990 through June 30, 1992. On and after July 1, 1992, the rate will be $0.12 a gallon or fraction thereof;**

2. Liquors—at the rate of [$2.80 a gallon (effective: July 1, 1972)] **$4.20 a gallon thereof from July 1, 1990 through June 30, 1992. On and after July 1, 1992, the rate will be $4.40 a gallon thereof;**

3. Wines, vermouth and sparkling wines—at the rate of [$0.30 a gallon (effective July 1, 1972)] **$0.50 per gallon from July 1, 1990 through June 30, 1992. On and after July 1, 1992, $0.70 a gallon** including wines, vermouth and sparkling wines manufactured by holders of a farm winery license, or wines, vermouth and sparkling wines manufactured from grapes or fruit grown in New Jersey by holders of a plenary winery license issued pursuant to the provisions of N.J.S.A. 33:1-10.

(b)

DIVISION OF TAXATION

Sales and Use Tax
Receipt Defined
Proposed Amendment: N.J.A.C. 18:24-1.4

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1991-573.

Submit comments by December 18, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The Division of Taxation proposes to amend N.J.A.C. 18:24-1.4 to add language to the rule to identify as a reimbursable coupon one which uses the term "Mfr." Under the law, reimbursable coupons are valued in money and are part of the taxable receipt.

Social Impact

The proposed amendment will make it clear to taxpayers that the term "Mfr." appearing on a coupon or in an accompanying advertisement means a manufacturer's coupon. Thus, sales tax will be due from the taxpayer on the value of the coupon. The proposed amendment would eliminate any confusion regarding when reimbursable coupons are involved in the transaction. Both sellers and their customers should benefit from this clarification.

Economic Impact

There is no economic impact to the State by the enactment of this amendment.

Regulatory Flexibility Statement

The proposed amendment does not impose mandatory reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq. The amendment would only alert taxpayers to the meaning of the term "Mfr." when used on a coupon. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**):

18:24-1.4 Receipt defined

(a)-(h) (No change.)

(i) Where a manufacturer or a vendor issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the vendor

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will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax applicable to the entire receipt, that is, the amount of the price paid and the reimbursement received from the manufacturer. **The abbreviation "Mfr." appearing on the coupon shall constitute adequate notice that it is reimbursable by a third party.**

(j)-(n) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Casino Licensee's Organization
Proposed Amendment: N.J.A.C. 19:45-1.11

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c); 5:12-69(a); 5:12-70(j); 5:12-99.

Proposal Number: PRN 1991-580.

Submit comments by December 18, 1991 to:
Robert H. Barney, Assistant Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Among the required casino licensee departments previously proposed by the Commission in order to assure adequate internal control over casino activities and finances is a Management Information Systems Department (MIS). The Commission adopted rules concerning certain organization requirements at its June 27, 1991 meeting and they were published August 5, 1991 in the New Jersey Register at 23 N.J.R. 2323(a). Action was reserved at that time, on adoption of proposed paragraph (b)3 requiring an MIS department, based upon industry comments concerning the infeasibility of unified, comprehensive control of every detail of the overall use of computers by a casino licensee (N.J.A.C. 19:45-1.11(b)3). Subsequent to June 27, 1991, Commission staff have reevaluated MIS organizational requirements and have modified and added to the proposal in keeping with the experience of the casino industry and others in the fast-changing environment of MIS. This proposal supersedes the relevant part of the original proposal found at 23 N.J.R. 1302(a). In essence, the director of MIS is relieved of absolute day to day control over computer systems security access and operation although retaining a very strong management control over how other operating departments implement security and operational procedures established by the MIS department. Further, the rule has been enhanced to include reference to the broader role of the MIS department as principal technical advisor to the casino licensee regarding the harmonization of overall MIS activity. This responsibility is considered necessary in order to achieve effective operating results and to assure full compliance with State mandated system audit capabilities and quality standards.

Social Impact

The proposed amendment has no direct effect on persons or businesses external to the casino regulation process. The proposed amendment supports legislative requirements for the Casino Control Commission to maintain scrupulous controls over casino financial information. The proposed amendment creates positive, although indirect, benefits to the community in that an effectively managed casino industry results in a strong and stable business influence within the community.

Economic Impact

The proposed amendment has no economic effect on persons or businesses external to the casino regulation process. The proposed amendment is restricted to the management information systems operated by casino licensees for internal casino financial management and for the communication of information to the Commission in conjunction with the regulatory process. This amendment does not mandate investment in any particular types of computer hardware or software; rather, it addresses the organizational management of computer systems required by other rules or instituted by casino licensees for their own benefit. Accordingly, the amendment is not anticipated to have any significant economic impact.

Regulatory Flexibility Statement

Casino licensees are not "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis pursuant to small business concerns is required.

Full text of the proposed amendment follows (additons indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-2. (No change.)

3. [(Reserved)] **A management information system ("MIS") department supervised by a casino key employee holding a license endorsed with the position of executive employee. The MIS department shall be responsible for the quality, reliability and accuracy of all computer systems used by the casino licensee in the conduct of casino operations including, without limitation, specification of appropriate computer software, hardware, and procedures for security, physical integrity, audit, and maintenance of:**

i. Access codes and other data-related security controls used to insure appropriately limited access to computers and the system-wide reliabilty of data;

ii. Computer tapes, disks, or other electronic storage media containing data relevant to casino operations; and

iii. Computer hardware, communications equipment and software used in the conduct of casino operations.

4.-9. (No change.)

(c)-(f) (No change.)

(b)

CASINO CONTROL COMMISSION

Internal Controls
Procedures for Granting Credit
Patron Request for Suspension of Credit Privileges
Proposed Amendment: N.J.A.C. 19:45-1.27
Proposed New Rule: N.J.A.C. 19:45-1.27A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 101(j).

Proposal Number: PRN 1991-581.

Submit comments by December 18, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Recent amendments to the Casino Control Act enable any individual to request suspension of his or her credit privileges at all Atlantic City casinos. N.J.S.A. 5:12-101(j). The Act directs the Casino Control Commission to provide a list of such persons to the credit department of each casino licensee. The Act prohibits the extension of credit to any person designated on this list.

The proposed new rule implements subsection 101(j) by describing forms and procedures for the voluntary suspension of credit privileges. The rule requires that the request form, accompanied by valid identification credentials, be submitted in person at the Commission's Atlantic City offices or at the Commission Inspector's booth at any casino. The

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Commission will update a master list of persons who request suspension of credit privileges, and notify each casino credit department of any additions to or deletions from the list. Credit privileges must be suspended immediately upon notice that an individual has been included on the list.

Any voluntary suspension of credit privileges will be effective for a minimum of 30 days from the date of the request, and will remain in effect indefinitely or until such time as the affected individual submits a written request for reinstatement of credit privileges. As required by the Act, the Commission will notify each casino credit department no later than three days from submission of a request for reinstatement of credit privileges, and such notice must be implemented by the casino immediately upon notice.

Finally, in accordance with subsection 101(j), the names of persons who have requested suspension of credit privileges will be considered confidential.

The proposed amendment requires that, prior to the casino licensee's approval of the patron's credit limit, a credit department representative must verify, among other things, that the patron is not designated on the master list of persons who have voluntarily requested suspension of credit privileges pursuant to new rule N.J.A.C. 19:45-1.27A.

Social Impact

The Legislature, by enacting subsection 101(j) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., recognized the need for a means whereby compulsive gamblers might voluntarily suspend their credit privileges at all casinos licensed in the State. The proposed new rule and amendment likewise benefits such persons by establishing uniform forms and procedures for requests for the suspension of credit.

Economic Impact

Pursuant to the proposed new rule, casino licensees will be prohibited from extending credit to individuals who choose to terminate their credit privileges. The rule will thus benefit gaming patrons who might otherwise incur excessive debt due to compulsive gambling.

Although the implementation of these new procedures will involve additional administrative time and expense for the regulatory agencies and casino licensees, such costs should not be significant, and are necessary to fulfill the mandates of N.J.S.A. 5:12-101(j).

Regulatory Flexibility Statement

The proposed new rule and amendment affects only individuals and casino licensees, respectively, neither of which qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (deletions shown in brackets [thus]; additions shown in boldface **thus**):

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a)-(b) (No change.)

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1.-2. (No change.)

3. Verify the patron's outstanding indebtedness; [and]

4. Verify the patron's personal checking account information which shall include, but not be limited to, the following:

i.-vi. (No change.)

vii. Name and title of the person supplying the information[.]; **and**

5. Verify that the patron's name is not designated on the master list of persons who have voluntarily requested suspension of credit privileges pursuant to N.J.A.C. 19:45-1.27A.

(d)-(p) (No change.)

19:45-1.27A Patron request for suspension of credit privileges

(a) Any person may voluntarily suspend his or her credit privileges at all licensed casinos by submitting a written request to the Commission in accordance with this section.

1. Such request shall be submitted in person at the offices of the Casino Control Commission, Employee License Information Unit, Arcade Building, 2nd Floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey, or at the Commission inspector's booth at any licensed casino.

2. Any person requesting suspension of credit privileges shall present valid identification credentials containing the person's signature and either a photograph or a general description of that person.

(b) A request for suspension of credit privileges shall be in a form prescribed by the Commission, which shall include the following:

1. The name of the person requesting suspension of credit privileges;

2. The address of the person's residence;

3. The person's date of birth;

4. The name of each licensed casino where the person currently has an approved line of credit;

5. The signature of the person requesting suspension of credit privileges, indicating acknowledgement of the following statement: "I certify that the information which I have provided above authorizes the Casino Control Commission to direct all New Jersey casino licensees to suspend my credit privileges for a minimum period of 30 days from the date of this request and indefinitely thereafter, until such time as I submit a written request to the Commission for the reinstatement of any such credit privileges";

6. The type of identification credentials examined containing the person's signature, and whether said credentials included a photograph or general description of the person; and

7. The signature of a Commission employee authorized to accept such request, indicating that the signature of the person requesting suspension of credit privileges appears to agree with that contained on his or her identification credentials and that any physical description or photograph of the person appears to agree with his or her actual appearance.

(c) The Commission shall maintain an updated master list of all persons who have requested suspension of credit privileges pursuant to this section, and shall notify the credit department of each casino licensee in writing of any additions to or deletions from the list. The casino licensee shall date and time stamp any such notice immediately upon receipt.

1. Each casino licensee shall suspend the credit privileges of any listed person, effective immediately upon receipt of notice that such person's name has been added to the list.

2. An updated master list of persons who have requested suspension of credit privileges shall be maintained by the credit department of each licensed casino.

3. Each casino licensee shall note any suspension or reinstatement of credit privileges pursuant to this section in any existing credit file for the affected patron, including the following:

i. A copy of any applicable Commission notice of the suspension or reinstatement of credit privileges; and

ii. The date, time and signature of the credit department representative making the suspension or reinstatement entry in the credit file.

(d) Any person whose credit privileges have been suspended pursuant to this section may, no sooner than 30 days after the request for suspension of credit privileges, request reinstatement of his or her credit privileges by submitting a written request to the Commission in accordance with the procedures specified in (a)1 and 2 above.

1. Such request shall be in a form prescribed by the Commission, which shall include the following:

i. The information specified in (b)1, 2, 3, 4, 6 and 7 above; and

ii. The signature of the person requesting reinstatement of credit privileges, indicating acknowledgement of the following statement: "I certify that the information which I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for suspension of credit privileges, and authorizes the Casino Control Commission to permit any New Jersey casino licensee to reinstate my credit privileges."

2. The Commission shall delete such person's name from the list established pursuant to (c) above, and so notify the credit department of each casino licensee, no later than three days from submission of the written request for reinstatement of credit privileges. The casino licensee shall date and time stamp any such notice immediately upon receipt.

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3. Each casino licensee shall reinstate such person's credit privileges, effective immediately upon receipt of notice that his or her name has been deleted from the list.

(e) Information furnished to or obtained by the Commission pursuant to this section shall be deemed confidential, and shall not be disclosed except in accordance with this section and N.J.A.C. 19:40-4. No casino licensee shall disclose the name of any person who has requested suspension of credit privileges, other than to authorized credit department employees or other casino personnel whose duties and functions are involved in the extension of credit.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Wagers
Proposed Amendment: N.J.A.C. 19:47-2.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69, 70f and 100e.
Proposal Number: PRN 1991-579.

Submit comments by December 18, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

It is implicit in the rules of blackjack that, after each round of play, the dealer will collect all losing wagers and pay off all winning wagers. This requirement is expressly stated in the rules of the other table games. See N.J.A.C. 19:47-1.10(b), 3.10(b), 4.10(b), 5.6(f), 6.5(i) and 7.10(b). The collection of losing wagers is also provided for in the blackjack rules concerning surrender, N.J.A.C. 19:47-2.8(a); insurance wagers, N.J.A.C. 19:47-2.9(d); doubling down, N.J.A.C. 19:47-2.10(b); and splitting pairs, N.J.A.C. 19:47-2.11(d). The proposed amendment adds such an express provision to wagers in blackjack made pursuant to N.J.A.C. 19:47-2.3.

Social Impact

The proposed amendment is not expected to have any significant social impact, since both the regulatory agencies and casino licensees have always viewed the collection of losing wagers and payoff of winning wagers as an obviously implied rule of blackjack.

Economic Impact

The proposed amendment should not have any significant economic impact, since it merely codifies current practice in the game of blackjack.

Regulatory Flexibility Statement

The proposed amendment affects only the operations of casino licensees, none of which qualify as a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**):

19:47-2.3 Wagers

(a)-(e) (No change.)

(f) **After each round of play is complete, the dealer shall collect all losing wagers and pay off all winning wagers.** All winning wagers made in accordance with (a) above shall be paid at odds of 1 to 1, with the exception of standard blackjack, which shall be paid at odds of 3 to 2. Notwithstanding any other provision of this subsection, a casino licensee may, in its discretion, offer one or more of the following payout odds for winning wagers made in accordance with (a) above, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3:

1.-4. (No change.)

(g)-(l) (No change.)

(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Executive Commission on Ethical Standards Rules
Proposed New Rules: N.J.A.C. 19:61

Authorized By: Executive Commission on Ethical Standards, Rita L. Strmensky, Acting Executive Director.
Authority: N.J.S.A. 52:13D-21.
Proposal Number: PRN 1991-569.

Submit comments by December 18, 1991 to:
Rita L. Strmensky, Acting Executive Director
Executive Commission on Ethical Standards
28 West State Street, Rm. 1407
CN 082
Trenton, New Jersey 08625-0082

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:61 expired on July 7, 1991. The Executive Commission on Ethical Standards has examined the expired rules and is proposing new rules to govern the organization, jurisdiction, proceedings, advisory opinions, and general operations of the Commission.

The Commission's organizational rules govern the conditions under which the Commission meets (presiding member, quorum, executive or open meetings) and specify the rules that govern Commission actions (the requirement for majority vote, the resolution of conflicts with agency rules in favor of the Commission's rules), and provide for reasonable extensions of time for action under the Commission's rules as well as for the appointment of the administrative head of the Commission. This subchapter has been streamlined to reflect the requirements of the Open Public Meetings Act; notification and relaxation of rules provisions have been moved to another subchapter.

The jurisdictional subchapter of the Commission's rules states the Commission's jurisdiction over State officers and employees and special State officers and employees of the Executive Branch of government. This section contains a new requirement that departmental codes of ethics include a provision for the annual disclosure of outside employment and/or business interests by all employees and that all such disclosures be forwarded to the Commission for review. For the first time, the Commission's rules provide a procedure for public access to documents and reference the procedure by which anyone can secure photocopies of public documents.

With these proposed new rules, the Commission is eliminating previous burdensome and unnecessary requirements in the proceedings subchapter such as the filing of a complaint in writing in triplicate, and is simplifying and streamlining its proceedings when handling complaints. The Commission's rules dealing with complaints provide that the Commission will review every complaint or allegation, whether written or oral, for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission. For the first time, the rules provide for a confidentiality procedure while an investigation is in progress. The rules concerning complaints specify notification requirements to employees and the head of the department of the date of the meeting at which the Commission expects to consider a preliminary investigation report. The conditions under which complaints are dismissed by the Commission or are set down for a hearing are specified in the rules. Also included in this section are provisions regarding penalties that may be imposed in accordance with N.J.S.A. 52:13D-21(i) or in accordance with the provisions of Title of 11A and the rules of the Department of Personnel.

The rules also specify the conditions for issuance of subpoenas by the Commission. The Commission's proposed rules set forth the handling of complaints that are filed by members of the Commission and the handling of complaints that are filed with the State agency employing an officer or employee who is alleged to have violated the Conflicts Law.

The Advisory Opinions subchapter of the proposed rules sets forth the minimum requirements that requests for opinion shall be made in writing, contain the facts and circumstances giving rise to the questions, and shall be filed with the Commission.

The general provisions of the Commission's rules set forth the Commission's power to undertake investigations, hold hearings, and issue

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opinions. This section also contains the requirement that the Advisory Opinions of the Commission and notices of disciplinary action taken by the Commission will be filed with the Office of Administrative Law. Included in this section is the statement regarding the validity of the rules if any portion is declared invalid as well as the procedures for requesting the Commission to promulgate, amend or repeal rules.

Finally, the rules set forth the positions in State government that have responsibility for matters affecting casino activity.

Social Impact

The effect of the proposed rules is to provide a procedural framework within which the Executive Commission on Ethical Standards can administer and enforce the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. The Conflicts Law was enacted and the Commission was created in response to an atmosphere of distrust of public officials and employees in the early 1970s. The Commission is empowered to enforce the statute as a means of ensuring propriety and preserving public confidence in persons serving in government.

The proposed rules will have a beneficial social impact in that any person who wishes to file a complaint with the Commission and State officers or employees or special State officers or employees who are the subjects of a complaint or who wish to seek an advisory opinion from the Commission will have a clear set of rules governing the handling of such matters by the Commission.

It is anticipated that the proposed rules will enable the Executive Commission to continue to administer and enforce the Conflicts Law to the benefit of the public. The functioning of the Commission has positive consequences to members of the public and to public officials and employees who need to hold the respect and confidence of the people. The public officials and employees who violate the public trust or enter into conflicts of interest will be negatively impacted by these rules in that the Commission has a procedural framework under which to investigate and prosecute violations of the Conflicts Law.

Economic Impact

The proposed rules will have no discernable economic impact on the public, State officers and employees or special State officers and employees or State agencies or the Executive Commission since the rules simply establish the Commission's organization, jurisdiction, and procedures with regard to complaints, advisory opinions, and other provisions.

Regulatory Flexibility Statement

The proposed rules impose no reporting, record keeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary. The rules provide standards for the administration and general operations of the Commission, including rule for the filing of complaints, disclosure of interests, and public access to documents.

Full text of the proposed new rules follows:

CHAPTER 61
EXECUTIVE COMMISSION ON ETHICAL STANDARDS

SUBCHAPTER 1. ORGANIZATION

19:61-1.1 Scope of rules

The rules in this chapter shall constitute the practices and procedures of the Executive Commission on Ethical Standards and shall govern all activities of the Commission pursuant to N.J.S.A. 52:13D-12 et seq.

19:61-1.2 Meetings and offices

The Commission shall meet at the call of its chairman upon not less than three days notice to members thereof. The Commission may maintain offices in such place or places as it may deem advisable.

19:61-1.3 Presiding member

The chairman shall preside, but in case of absence or inability to serve, the vice chairman shall temporarily preside in his or her stead. In the absence of both, the senior member attending shall preside. Seniority of the members of the Commission shall be determined by the order of their respective appointments to the Commission.

19:61-1.4 Quorum

Four members of the Commission shall constitute a quorum. If a quorum does not attend a session of the Commission, the presiding member may adjourn the Commission, or, in the absence of all the members, the Executive Director or his or her designee may adjourn the Commission from day to day.

19:61-1.5 Executive or open meetings

Meetings of the Commission, including open and executive sessions, shall be conducted in compliance with the provisions of the open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

19:61-1.6 Majority vote

No determination of the Commission shall be rendered unless supported by the vote of members constituting a majority of the quorum present. Minutes of Commission meetings may be approved by a majority of eligible members. A member is eligible to vote on minutes of meetings that he or she attended.

19:61-1.7 Conflict with agency rules

Any conflict between the rules established by the Commission and those developed by the various State agencies to implement their respective Codes of Ethics shall be resolved in favor of the rules established by the Commission.

19:61-1.8 Enlargement of time

A reasonable extension of time for the taking of any action for which these rules prescribe a time limitation may be granted by the Commission upon a clear showing of good cause and the absence of prejudice.

19:61-1.9 Administrative head

The Commission may appoint an Executive Director who shall serve as the administrative head of the Commission. In the absence of an administrative head, the Chairman may designate an individual to serve as acting administrative head.

19:61-1.10 Definitions

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

"Commission" shall mean the Executive Commission on Ethical Standards continued and established in the Department of Law and Public Safety by the provisions of N.J.S.A. 51:13D-12 et seq.

"Chairman" and "Vice Chairman" shall mean the members of the Executive Commission on Ethical Standards designated by the Governor to serve as the Chairman and Vice Chairman thereof.

SUBCHAPTER 2. JURISDICTION

19:61-2.1 Jurisdiction of the Commission

(a) The jurisdiction of the Commission shall extend to those situations arising under the provisions of N.J.S.A. 52:13D-12 et seq., involving State officers and employees, and special State officers and employees of the Executive Branch of the government, and as granted under the provisions of Executive Orders.

(b) All determinations made by State agencies with regard to the Conflicts of Interest Law or a Code of Ethics shall be filed with the Commission. It shall be within the discretion of the Commission to review said determinations and affirm, reverse or modify same.

19:61-2.2 Agency codes of ethics

(a) State agencies shall include in their Codes of Ethics a requirement that all employees annually disclose outside employment and/or business interests.

(b) All disclosures made in accordance with said Code of Ethics requirements shall be forwarded to the Commission for review.

19:61-2.3 Procedure where Commission is without jurisdiction

Whenever it shall appear that the Commission is without jurisdiction over a matter brought before it, it shall so notify the person bringing the matter. Where possible, the matter shall be forwarded to the proper agency for further action.

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19:61-2.4 Access to documents

(a) Every financial disclosure statement accepted for filing by the Commission, requests for advisory opinions from the Commission and replies to requests for advisory opinions, complaints or pleadings related to a complaint, all final orders, decisions and opinions shall be maintained by the Commission.

(b) Any person shall, upon request, be afforded opportunity to examine a document, or a photocopy of any document so maintained at the Commission offices between 9:30 A.M. and 4:30 P.M. on business days.

19:61-2.5 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:61-2.4 shall be provided in accordance with the procedures and fees set forth in N.J.S.A. 47:1A-1 et seq.

(b) Fees for photocopies shall be due and payable at such time as the photocopies have been prepared.

SUBCHAPTER 3. PROCEEDINGS

19:61-3.1 Complaints; procedure

(a) Every complaint or allegation, whether written or oral, received by the Commission shall be reviewed by the Commission's staff for an initial determination as to whether the alleged conduct falls within the jurisdiction of the Commission.

1. It shall be within the discretion of the Commission to transfer those complaints involving the alleged violation of a code, rule, or regulation promulgated by a State agency, to that agency for disposition in accord with its procedures.

2. It shall be within the discretion of the Commission to transfer those complaints involving the alleged violation of another State statute to the appropriate enforcing authority.

(b) The Commission shall promptly conduct and complete a preliminary investigation of all complaints; such investigation may include interviews of the complainant, the State officer or employee involved, and any other individuals who possess knowledge of the circumstances surrounding the alleged conduct.

(c) At the beginning of the preliminary investigation, the Commission shall assign a case number to the complaint.

1. During the course of the preliminary investigation, the complaint shall be identified only by case number, not by the name(s) of the State officer(s) or employee(s) involved.

2. No information regarding the complaint shall be made public until after the Commission action in accordance with (g) or (h) below.

(d) Upon the conclusion of the preliminary investigation, a written report of the investigation shall be made to the entire Commission.

(e) The Commission shall notify the employee(s) involved and the head of the department employing said State officer(s) or employee(s) of the date of the meeting at which the Commission expects to consider the report of the preliminary investigation.

(f) If a Commission member holds office or employment in the same Department which employs the State officer or employee named in the complaint, he or she shall disqualify himself or herself from participation in any decisional process relating to that particular case.

(g) If the Commission, after consideration of the report of the preliminary investigation, finds that there has been no violation of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated pursuant thereto, as alleged, it shall dismiss the complaint. Said dismissal, together with the report upon which it is based, shall be part of the permanent records of the Commission.

(h) If the Commission, after considering the report of the preliminary investigation, determines that there are indications of a violation meriting further proceedings, the complaint shall be set down promptly for hearing at the Office of Administrative Law pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, or the Commission may hold the hearing itself. If the Commission hears the matter, it shall follow the standards of the Administrative Procedure Act.

(i) After the hearing is concluded, a decision shall be issued in accordance with the time frame set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-10.

(j) If the Commission determines that the State officer or employee has violated the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule, or regulation promulgated by any State agency pursuant thereto, it shall fine said State officer or employee in accordance with the provisions of N.J.S.A. 52:13D-21(i). An assessed penalty may be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1).

1. The Commission may further order or direct the State agency employing the State officer or employee to suspend said officer or employee for a period not in excess of one year, in accordance with the provisions of Title 11A and the rules of the Department of Personnel.

2. Should the Commission find that the conduct of said State officer or employee constitutes a willful and continuous disregard of the provisions of N.J.S.A. 52:13D-12 et seq., or any code, rule or regulation promulgated by any State agency pursuant thereto, it may order or direct the State agency employing the State officer or employee to remove the State officer or employee from his or her office or employment and may further direct that the State agency bar such person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding five years from the date on which he or she was found guilty by the Commission, in accordance with the provisions of Title 11A and the rules of the Department of Personnel.

19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, Commission member, or administrative staff member thereof, from day to day until the examination of such person or persons shall be completed. The Chairman or, in his or her absence, the Vice Chairman or, in the absence of both, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b) The subpoena may also contain a direction that such person bring with him or her to the examination, any books, papers, or documents designated therein.

(c) If a person subpoenaed to attend any hearing refuses or fails to appear to be examined , or to answer any question or to produce any books, records, accounts, papers and documents when ordered to do so by the Commission, the Commission may apply to the Superior Court to compel the person to comply forthwith with the subpoena, directive or order of the Commission.

19:61-3.3 Complaint by member of Commission

Any member of the Commission may file a complaint with the Commission. Said complaint shall thereafter be treated in accordance with N.J.A.C. 19:61-3.1, except that the complainant Commission member shall thereafter be precluded from participating in any decisional processes having to do with that particular cause.

19:61-3.4 Complaint before State agency

A complaint alleging the violation by a State officer or employee of a code, rule, or regulation promulgated by a State agency pursuant to the provisions of N.J.S.A. 51:13D-12 et seq., may be filed with the State agency employing said officer or employee in accord with the procedures established by the agency to process such complaints. Upon receipt of such complaint, the State agency shall file a copy of same with the Commission. It shall be within the discretion of the Commission to direct the State agency to transfer the complaint to it for hearing in accord with N.J.A.C. 19:61-3.1.

19:61-3.5 Determination by State agency

Notice of all determinations made by State agencies in connection with hearings conducted pursuant to N.J.A.C. 19:61-3.1 shall be filed with this Commission. All determinations which involve the removal of a State officer or employee or any other disciplinary actions shall be effective when approved by this Commission and in accord with

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the provisions of Title 11A and the rules of the Department of Personnel.

19:61-3.6 Relaxation of rules

The rules set forth in this subchapter regarding the procedural requirements for the filing of complaints may be relaxed by the Commission in any instance where it shall be mainfest to the Commission that a strict adherence to them will work surprise or injustice. In any matter not expressly controlled by these rules or by statute, the Chairman shall exercise his or her discretion.

SUBCHAPTER 4. ADVISORY OPINIONS

19:61-4.1 Requests for advisory opinions

Requests for advisory opinions from the Commission concerning possible violations of N.J.S.A. 52:13D-12 et seq., or any code, rules or regulations promulgated pursuant thereto, may be made by any person or persons. Said request shall be made in writing; shall contain a full statement of the facts and circumstances giving rise to the question in issue; and shall be filed with the Commission.

SUBCHAPTER 5. GENERAL PROVISIONS

19:61-5.1 Investigations and hearings

The Commission shall have the power to undertake investigations and hold hearings into matters having relevance to the provisions of N.J.S.A. 52:13D-12 et seq., whether or not a formal complaint has been filed or request for advisory opinion made, and to this end, the full investigative authority and subpoena power of the Commission shall obtain and be available as required.

19:61-5.2 Publication

(a) The Chairman of the Commission shall cause to be filed with the Office of Administrative Law:

1. All advisory opinions of the Commission rendered pursuant to N.J.S.A. 52:13D-21(g); and

2. Notice of any disciplinary action taken by the Commission pursuant to N.J.S.A. 52:13D-21(i).

19:61-5.3 Validity of rules of any portion declared invalid

If any rule, sentence, paragraph or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

19:61-5.4 Procedures to request Commission action to promulgate, amend or repeal rules

(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with Chapter 27, Laws of New Jersey 1981, Section II (N.J.S.A. 52:14B-4(f)) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning this Commission's Administrative Code Rules, from the Executive Commission on Ethical Standards.

(c) When considering the petition, the Commission shall comply with the time lines and procedures contained in Chapter 27, Laws of New Jersey 1981 Section II (N.J.S.A. 52:14B-4(f)).

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Executive Commission on Ethical Standards has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection and Energy; Division of Coastal Resources; or successor agencies;

i. Bureau of Coastal Project Review or successor agency (one chief and three regional supervisors classified as Supervising Environmental Specialists or successors performing those functions);

ii. Tidelands Resources Council or successor agency (members of the Council);

2. Department of Community Affairs (Division of Housing) or successor agencies:

i. Bureau of Construction Code Enforcement or successor agency (Chief; assistant chief; supervisor, plans approval or successors performing those functions);

ii. Bureau of Housing Inspection or successor agency (Chief; supervisor, Housing Code Compliance assistant regional supervisor, Housing Code Enforcement or successors performing those functions);

3. State Athletic Control Board or successor agency (Commissioner; three members or successors performing those functions).

(b) The list in (a) above is in addition to the persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Homelessness Prevention Program Eligibility

Proposed Amendment: N.J.A.C. 5:12-2.1

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27C-24 and 52:27D-280.

Proposal Number: PRN 1991-582.

Submit comments by December 18, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX (609) 633-6729

The agency proposal follows:

Summary

The portion of the N.J.A.C. 5:12-2.1 that provides that applicants for assistance under the Homelessness Prevention Program shall be presumed to be able to pay shelter costs after the expiration of the period of assistance if their shelter costs do not exceed the greater of 60 percent of gross income or 100 percent of net income is being deleted because it has been found to be unworkable. Documentation will be required to be submitted by applicants to verify the claimed cause of inability to pay housing costs, such documentation to make it clear that there is a clear temporal relationship between the problem and the inability to pay. Eligibility for mortgage loan assistance is limited to persons who have been owner-occupants of a single family dwelling (which may be an attached or detached house or a condominium unit) for at least three years.

Social Impact

The resources available to the Homelessness Prevention Program are limited and must be allocated to those who are most likely to be able to pay their shelter costs once the period of assistance ends. The shelter cost to income ratio requirement has not proven to be a useful way of determining which applicants are most likely to meet that standard. Applicants are not, and will not be, automatically disqualified on the basis of the ratio and each applicant will continue to have an opportunity to demonstrate ability to pay.

The limitation of mortgage loan assistance to persons who have been owner-occupants of a single family dwelling for at least three years is, again, an attempt to direct limited resources towards those for whom the assistance is most likely to achieve the intended result of restoring self-sufficiency and retention of the home. There have been numerous cases in which homeowners with little or no equity have received assistance and then declared bankruptcy, with the result that loans are not repaid and the money is then not available to assist others.

The requirement that the relationship between the problem and the current inability to pay shelter costs is intended to make clear to applicants that this program is limited to providing short-term assistance to

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people with short-term problems who will not need further assistance later on in order to pay their shelter costs.

Economic Impact

Certain marginal applicants will be screened out by the proposed amendment. It will be more likely that assistance will go to those who are in the best position to benefit from it in the manner intended, thereby increasing the number of households that will actually be kept from becoming homeless.

Regulatory Flexibility Statement

The proposed amendment affects only households that are in danger of becoming homeless. It does not affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:12-2.1 Eligibility

(a)-(f) (No change.)

(g) No person or household determined by the Bureau of Housing Services to be unlikely to pay shelter costs after the period of assistance has ended shall be eligible for assistance. [A person or household having shelter costs not in excess of the greater of 60 percent of gross income or 100 percent of net income shall be presumed to be able to pay shelter costs after the expiration of the period of assistance.]

(h) To be eligible for assistance, a person or household must have experienced an uncompensated loss of income or increase in expenses for a limited period of time that are necessarily incurred for the preservation of human life. [which must be documented, for one or more of the following reasons] **Applicants must submit documentation verifying that one or more of the following caused, and is coincidental in time with, the inability to pay housing costs**:

1.-6. (No change.)

(i) Assistance to any person or household facing foreclosure as a result of mortgage or property tax arrearages shall be in the form of a loan which shall be secured by a recorded mortgage.

1. No person or household shall be eligible for a mortgage loan unless the home [was] **is an owner-occupied single family dwelling (which may be an attached or detached house or a condominium unit) that was** owned **and occupied by the applicant** for at least [one year] **three years** prior to falling into arrears on the mortgage **loan** or property taxes.

2.-3. (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Enforcing Agencies
Uniform Construction Code Administrative Reports (UCCARS)

Proposed Amendments: N.J.A.C. 5:23-4.5 and 4.19

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1991-570.

Submit comments by December 18, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments mandate that municipalities electronically transmit monthly reports to the Department using the computerized data collection and report-generating program, "Uniform Construction Code Administrative Reports," UCCARS I. This software is available to municipalities, free of charge, from the Department. Training and technical support are also available, free of charge, through the Department. A three year phase-in of electronic reporting is proposed, separating municipalities into groups based on construction activity.

The amendments are made pursuant to the Commissioner's authority to prescribe the use of particular forms for the administration of the Uniform Construction Code. Any municipalities which perceive this requirement as a hardship may apply for an exception under N.J.A.C. 5:23-4.5(g) (formerly N.J.A.C. 5:23-4.5(e)).

Electronic transmission is more efficient and accurate than monthly mailings of data that require separate data entry in both the municipality and in the Department. Additionally, from the UCCARS I reports, the Department can automatically generate and send Federally required census data to Federal authorities.

Currently, 274 municipalities have voluntarily obtained UCCARS I. Approximately 185 of these send their monthly reports electronically. Since April 1, 1991, 33 municipalities have extended their internal research and report generating capabilities by obtaining UCCARS II.

Social Impact

Computerized data storage and retrieval makes code enforcement more efficient and accurate. It represents an economical expenditure of funds budgeted for code enforcement. It enables a code office to be responsive to applicants and their questions and concerns.

Economic Impact

Municipalities that have invested in UCCARS I estimate that they save five to eight hours of their control person's time each month or save approximately 12 control person work days per year. Beyond this direct savings, the value of an integrated specialized computer system lies in its potential for future savings in easy and efficient reporting to the Department.

Regulatory Flexibility Statement

The proposed amendments will not directly affect small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments place filing requirements on local government. The efficiency imparted to code enforcement by computerization will, however, make possible savings for all applicants to the construction offices in each municipality.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a)-(c) (No change.)

(d) [Reports] **Monthly reports:**

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department [as required by N.J.A.C. 5:23-4.19] by the tenth business day following the end of each calendar month:

Report No.	Name
R-811A	Municipal Monthly Activity Report Certificates
R-812A	Municipal Monthly Activity Report Permits

2. Municipalities currently submitting monthly reports electronically shall continue to do so. Municipalities that do not already submit monthly reports electronically using UCCARS I shall begin to do so according to the following schedule:

i. By December 31, 1992, all municipalities issuing 600 or more permits per year as determined by the Department shall submit monthly reports electronically.

ii. By December 31, 1993, all municipalities issuing fewer than 600, but more than 200, permits per year as determined by the Department shall submit monthly reports electronically.

iii. All other municipalities shall have the option of submitting monthly reports electronically or by mail. Any municipality which issues more than 200 permits per year as determined by the Department for any future year shall submit monthly reports electronically beginning during the following year.

3. As long as funding permits, the Department shall provide the UCCARS I software, training and technical support for the system

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free of charge to municipalities. Municipalities may submit monthly reports electronically using an alternative system compatible with UCCARS as determined by the Department and capable of transmitting a monthly report based on UCCARS specifications.

4. Municipalities, at their option, may choose to add UCCARS II and III systems to their UCCARS I System and may obtain them, at no cost, from the Department, when available.

[2.](e) **Quarterly reports:** The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly, **with the accompanying fees,** pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840A	State Training Fee Report

Recodify existing 3. as (**f**) (No change in text.)

Recodify existing (e)-(h) as (**g**)-(**j**) (No change in text.)

5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the [act] **Act**, an enforcing agency, including the [department] **Department**, when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fee shall be accounted for and forwarded to the Bureau of [Housing Inspection] **Regulatory Affairs** in the manner herein provided.

(b) Amount: This fee shall be in the amount of $0.0016 per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

[1. The municipality shall, in addition to the fees described in (a) above, collect the above fees as part of its usual responsibilities.]

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840A State Training Fee Report in accordance with N.J.A.C. [5:23-4.5(d)] **5:23-4.5(e)**. Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey."

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Revocation of Licenses and Alternative Sanctions

Proposed Amendment: N.J.A.C. 5:23-5.25

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1991-571.

Submit comments by December 18, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Three member review committees, with alternates, consisting of persons licensed as subcode and construction officials, will be establshed in each subcode discipline (building, plumbing, electrical, fire protection and elevator) to make recommendations to the Department concerning the appropriateness of punitive actions that the Department proposes to take against licensees for alleged violations of the Code. Licensees are to be given notice of any action proposed to be taken and of their right to present their side of the story to the appropriate review committee. This review is not an administrative hearing, and is not in lieu of an administrative hearing, which may still be had after the final order is issued. The review is non-adversarial in nature and is intended to give the Department the benefit of the perspective of practitioners in the field when it evaluates the seriousness of allegations.

Social Impact

Licensees who believe allegations of violations to be in error, or proposed sanctions to be excessive, are given the opportunity to present their cases to a committee of their peers, who may appreciate, better than Department staff and administrators, the circumstances of the act or omission complained of. Their recommendations should help insure fairness in the process.

Economic Impact

Review committee members will not be paid, although they may receive compensation for out-of-pocket expenses. There will, therefore, be no significant economic impact.

Regulatory Flexibility Statement

This proposed amendment applies to licensed individuals employed to enforce the Uniform Construction Code, and not to business entities. It will be economically beneficial to private enforcing agencies, which are "small businesses" within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to the extent that sanctions against licensees whom they employ may be dropped or mitigated as a result of the review committee process in some cases and the agencies will not incur costs involved in replacing persons whose licenses are suspended or revoked.

Full text of the proposal follows (additions indicated in boldface **thus**):

5:23-5.25 Revocation of licenses and alternative sanctions

(a)-(c) (No change.)

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons licensed and currently employed by municipalities as subcode officials in the subcode, at least two of whom shall also be licensed as construction officials and at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members of each review committee prior to their appointment.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person shall be a member of a review committee for more than two consecutive terms. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed and currently employed by municipalities as subcode officials in the subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

3. In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

4. The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

5. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within 10 business days

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following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

6. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

7. A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Notice of Correction and Extension of Comment Period

Hospital Reporting of Uniform Bill—Patient Summaries

Procedural and Methodological Regulations

Financial Elements and Reporting

Proposed Amendments: N.J.A.C. 8:31B-3.73(a)1ii and iii, 3, 4 and 5

Take notice that the Department of Health has found that a portion of the proposed amendments to N.J.A.C. 8:31B-3.73 intended for publication in the October 21 issue of the New Jersey Register at 23 N.J.R. 3097(a) was not published. Accordingly, the Department is publishing this notice of correction to that proposal and reopening the comment period **for amendments to the following only: N.J.A.C. 8:31B-3.73(a)1ii and iii, 3, 4 and 5.**

Submit written comments by December 18, 1991 to:

Beatrice E. Manning, Ph.D., Director
Reimbursement Systems Development, Evaluation and Research
Room 602, CN 360
Trenton, NJ 08625

Full text of the corrected proposal follows:

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient), as described in N.J.A.C. 8:31B-2, or N.J.A.C. 8:31A-8.1, whichever is appropriate: determination of actual case-mix as determined by the same GROUPER used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. [Variable financial] **Financial** elements:

i. Except as specified above, reconciliation for [direct] patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. **Effective with the 1992 rate year, the Department shall not reconcile each hospital's all-inclusive rate per N.J.A.C. 8:31B-3.23 and 3.26. A hospital shall retain its rate year collected revenues, subject to audit procedures described in N.J.A.C. 8:31B-3.17. There will not be a Schedule of Rates Variance on the volume variable financial elements, but there will be a comparison of aggregate charges to approved revenue.** Hospitals shall be reconciled to the lower of aggregate charges or approved revenue for the rate year, utilizing cost and billing data submitted pursuant to N.J.A.C. 8:31B-2.5. The Department shall provide 30 days' notice of its intent to close the data base. This notice shall be given no earlier than **60 days following** the end of the [second] **first** quarter following the rate year. No additional cases shall be added after the closing of the data base. The Schedule of Rates so developed and approved, adjusted to actual measure economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation. **The Department will adjust a hospital's schedule of rates in the year following Commission action, to include any variances associated with excess cross-subsidized revenue (a comparison of rate year revenue versus rate year costs); medical denials; outside collection costs; patient bill appeals; and taxes. The Department will also adjust rates for any decreases in approved revenue that are due to the hospital's failure to set charges in correspondence with approved revenue. Adjustments to rates resulting from this regulation will be implemented as a percent of the PCB added to the Schedule of Rates. This adjustment will be made to the Schedule of Rates for the rate year following Commission action. No further reconciliation of this amount will occur.**

[ii. Reconciliation for volume direct costs, adjusted for actual measured inflation, will be based on the payment rates described in N.J.A.C. 8:31B-3.24(c)1 and 2 and the hospital's actual inpatient and same day surgery volume for the rate year. All inpatient costs are volume variable.

iii. At reconciliation, base year costs must be adjusted to take account of inflation in the period between the base year and the rate year. Each component of Non-Labor costs shall be adjusted using the final economic factor values for each proxy developed in the period between the base year and the rate year. Labor components shall be adjusted using the value for each proxy which was applied in calculating the hospital's PCB in that rate year.]

[iv.]**ii.** (No change in text.)

[v. The technology adjustments defined in N.J.A.C. 8:31B-3.26(b) and 3.51 will be reconciled to actual rate year case-mix and volume for direct patient care rates and actual volume for indirect volume variable rates.]

[2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined shall remain fixed during the rate period except as modified for actual inflation for those components of indirect costs not included in (a)1ii above. Any under or overcollection of indirect patient care revenue from revenue centers which are not volume variable as indicated in N.J.A.C. 8:31B-3.24 shall be compensated by a Schedule of Rates Variance as described below.

ii. The Hospital Rate Setting Commission may limit rate adjustments if a hospital has not demonstrated good faith effort to obtain from Medicare the appropriate level of reimbursement.]

(b) Any adjustment due to the reconciliation described in (a) above will be implemented as a percentage add-on to the hospital's rates, and no further reconciliation will occur. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health, unless a different collection period is specified by the Commission.

iii. Effective with the 1992 rate year, the Capital Facilities Allowance will be reconciled in accordance with N.J.A.C. 8:31B-3.27. For rate year collection, a percent add-on of the rate year PCB/CRB will be computed to facilitate a per discharge/visit collection. This amount will be reconciled to rate year approved costs, as defined in N.J.A.C. 8:31B-3.27, to compute a variance, which will be implemented as a percent adjustment to the PCB/CRB. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health, unless a different period is specified by the Commission.

[ii.]**iv.** (No change in text.)

3. [Other indirect financial elements:] Actual uncompensated care[, net income from other sources and changes in working capital] will be reconciled and included in allowable revenue. [The final amount of the Working Cash Infusion is based on the most recent audited financial statement to the rate year and is included in Net Revenue.]

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4. (No change.)

[5. Nonparticipating payers: For discharges after January 1, 1989, to the extent that payments made by or on the behalf of Medicare patients are different than Commission-approved revenues for a rate year, the Hospital Rate Setting Commission will adjust rates to assure that New Jersey hospitals will continue to receive their approved revenues.

i. For purposes of final reconciliation, Medicare revenues will be defined as revenue accrued during the rate year including deductibles, coinsurance, and all pass-through reimbursement such as direct teaching and capital, as adjusted by the notice of Program Reimbursement (NPR) issued by the fiscal intermediary at final settlement.

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RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code
Applicability
Adopted Amendment: N.J.A.C. 5:18-1.4

Proposed: September 16, 1991 at 23 N.J.R. 2813(a).
Adopted: October 23, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: October 23, 1991 as R.1991, d.570, **without change.**

Authority: N.J.S.A. 52:27D-198.

Effective Date: November 18, 1991.
Expiration Date: January 4, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:18-1.4 Applicability
(a)-(g) (No change.)
(h) Any requirement in this chapter that is applicable to a building shall also be applicable to the exterior portion of the premises in which the building is located, or to a premises that does not include a building, if the Bureau or the fire official finds compliance with such requirement in such exterior area or premises to be necessary for the protection of the safety of persons upon the premises, firefighters or the general public.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Subcodes
Adopted Amendments: N.J.A.C. 5:23-3.15 and 3.21

Proposed: September 3, 1991 at 23 N.J.R. 2619(a).
Adopted: October 23, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: October 23, 1991 as R.1991, d.571, **with technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3) **and with the following proposed amendments not adopted, but still pending:** N.J.A.C. 5:23-3.21(c)1i-ii and (c)7-8.

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 18, 1991.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
COMMENT: A comment was received from David C. Washington, AIA, objecting to the proposed replacement of the phrase "three stories" by the phrase "two stories." Mr. Washington contends that this change, applied together with the definition of the basement as the first story in many structures, eliminates the possibility of half story spaces in buildings designed under the CABO code. He suggests the addition of the same definition of "habitable attic" as is used in the BOCA code.
RESPONSE: The Department is adopting only those portions of the proposed amendment to the CABO code that relate to handrails, smoke detectors, foundations, wall construction, roof coverings, solid fuel burning room heaters and plumbing. The other portions, including the amendment to Appendix F that is of concern to Mr. Washington, will be reviewed further by the Department and may be addressed in a new proposal. No final decision is being made at this time on the issue raised by Mr. Washington.

Summary of Agency-Initiated Changes:
In order to provide a clear performance standard, and because there is no reason for differentiation in the CABO code regarding the installation and testing of smoke detectors, the Department has amended N.J.A.C. 5:23-3.21(c)1iv to delete the requirement merely for an "audible" alarm and to add a reference to Section 1018.6 of the building subcode which incorporates standards for audibility.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

5:23-3.15 Plumbing subcode
(a)-(b) (No change.)
(c) The following amendments are made to the 1991 Supplement to the 1990 National Standard Plumbing Code.
1. Chapter 2 entitled "General Regulations" is amended as follows:
i. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a) and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "Section 3.12.1" and substitute in lieu thereof the words "N.J.A.C. 5:23-2.9".
2. Chapter 5 entitled "Traps and Cleanouts" is amended as follows:
i. Section 5.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.
3. Chapter 6 entitled "Interceptors" is amended as follows:
i. Section 6.3.2(b) is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 5.
4. Chapter 9 entitled "Indirect Water Piping and Special Waste" is amended as follows:
i. Section 9.1.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.
ii. Section 9.3.2 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.
5. Chapter 11 entitled "Sanitary Drainage Systems" is amended as follows:
i. Section 11.7.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority".
6. Chapter 13 entitled "Storm Drains" is amended as follows:
i. Section 13.1.1 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority".
ii. Section 13.1.2 is amended to delete the words "Administrative Authority" and substitute in lieu thereof "Authority having jurisdiction".
iii. Section 13.1.5 is amended to delete the words on lines 1 and 2 "around the perimeter of all buildings having basements, cellars or crawl spaces or floors below grade" and in lieu thereof, substitute the words "in accordance with Section 1224.5 of the building subcode".
7. Chapter 16 entitled "Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewage Systems Are Not Available" is deleted.

5:23-3.21 One and two family dwelling subcode
(a)-(b) (No change.)
(c) The 1990 and 1991 amendments to "The CABO One and Two Family Dwelling Code/1989" are adopted with the following modifications:
1. The following amendments are made to Chapter 2 entitled "Building Planning":
i-ii. (Reserved)
iii. R-214.1 Handrails: Delete paragraph 2 and replace with the following text: "All stairway handrails shall have a circular cross section with an outside diameter of at least 1¼ inches and not greater than 2 inches, or approved rails of equivalent graspability".

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iv. R-215.1 Smoke detectors required: Delete this section and replace with the following text: "Single- or multiple-station smoke detectors shall be installed and maintained at the following locations:

(1) In the immediate vicinity of the bedrooms;

(2) In all bedrooms; and

(3) In each story including basements.

All detectors shall be interconnected such that the actuation of one alarm will actuate all the alarms in the individual unit *[and shall provide an alarm which will be audible in all sleeping areas]*. ***When the installation of detectors is complete, each detector, and all interconnecting wiring for multiple-station detectors, shall be subject to acceptance testing in accordance with section 1018.6 of the building subcode.*** All detectors shall be approved and listed and shall be installed in accordance with *[the manufacturer's instructions]* ***section 1018.1 of the building subcode***.

Exception***:***

1. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level***,*** provided that the lower level is less than one full story below the upper level."

2. The following amendment is made to Chapter 3 entitled: Foundations:

i. From section R-304.1 Concrete and masonry: Delete the exception.

3. The following amendments are made to Chapter 4 entitled: Wall construction:

i. From section R-404.3.1 Unreinforced masonry: Delete the second paragraph of the exception.

ii. From section R-404.3.2 Reinforced masonry: Delete the exception.

4. The following amendment is made to Chapter 8 entitled: Roof Coverings:

i. In section R-801.3 Roof covering materials: On line eight, delete the phrase: "in areas . . . 3 feet" and replace with the phrase: "when the edge of the roof is less than 5 feet from the property line."

5. The following amendment is made to Chapter 11 entitled: Equipment, General:

i. Sec. M-1112: At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482."

6. Part V—Plumbing, is amended as follows:

i. Chapters 20 through 24 are deleted in their entirety. All requirements for plumbing shall be provided in accordance with the plumbing subcode listed in N.J.A.C. 5:23-3.15.

7-8. (Reserved)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Barrier-free Subcode
Enforcement
Adopted New Rule: N.J.A.C. 5:23-7.6A

Proposed: September 3, 1991 at 23 N.J.R. 2620(a).

Adopted: October 9, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: October 15, 1991 as R.1991, d.561, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: November 18, 1991.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Comments were received from Kenneth Faerber, Chairman, Code Committee of the Elevator Safety Inspector Association of New Jersey and Russell A. Bauer, P.E., C.S.P., President, Technical Inspection, Inc., a firm that performs elevator inspections, both of whom asked that the rule be amended to assign responsibility for the enforcement of N.J.A.C. 5:23-7.68 through 7.81 to the elevator subcode official or licensed elevator inspector, instead of to the building subcode official.

RESPONSE: In response, the Department pointed out that municipalities are not required to employ elevator subcode officials until July 1, 1992. Therefore, assignment to an official who is already in place is necessary, at least as an interim measure. If a further rule change is agreed to by the elevator subcode committee and the Code Advisory Board, it can be made operative by July 1, 1992.

Full text of the adoption follows.

5:23-7.6A Enforcement

(a) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. Plan review with regard to compliance with N.J.A.C. 5:23-7.55(a)1, 7.56(a) (first paragraph (a) only) and (a)1, 7.57(a), 7.58(a) and 7.82(a) shall be the joint responsibility of the building and plumbing subcode officials.

2. Plan review with regard to compliance with N.J.A.C. 5:23-7.85 shall be the joint responsibility of the plumbing, fire protection and electrical subcode officials.

3. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-7.55(a)2 and 3, 7.57(a)2 and 3, 7.58(a)1 and 3 through 5, 7.61(a)4 and 5, 7.66, 7.82(c) and (d), 7.91(d), 7.95(a)4ii and vi, 7.96(a)1ii, 3iii and 4iii shall be the responsibility of the plumbing subcode official.

4. Inspection with regard to compliance with N.J.A.C. 5:23-7.55(a)1 and 7.82(a) shall be the responsibility of the building subcode official.

5. Inspection with regard to compliance with N.J.A.C. 5:23-7.56(a) (first paragraph (a) only) and (a)1, 7.57(a), 7.58(a), and 7.85, as modified in (a)7 below, shall be the responsibility of the plumbing subcode official.

6. Enforcement of N.J.A.C. 5:23-7.1 through 7.11, 7.89 and 7.90 shall be the responsibility of all subcode officials.

7. Inspection of controls of mechanisms referred to in N.J.A.C. 5:23-7.85 regulated by the electrical, fire protection or plumbing subcodes shall be the responsibility of the corresponding subcode officials. Controls of all other mechanisms shall be inspected by the building subcode official.

8. Enforcement of the remaining sections of this subchapter shall be the responsibility of the building subcode official.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of the South Branch Raritan River
Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: March 4, 1991 at 23 N.J.R. 647(b).

Adopted: October 21, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: October 22, 1991 as R.1991 d.567, **without change.**

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEP Docket Number: 004-91-01.

Effective Date: November 18, 1991.

Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Response:

Notice of the proposed amendment was published on March 4, 1991 in the New Jersey Register at 23 N.J.R. 647(b). The Notice advised that a public hearing had been scheduled for March 20, 1991 at the Engineering and Construction Element, Department of Environmental Protection and Energy, 501 E. State Street, Trenton, N.J., to afford the public an opportunity to be heard. In addition, secondary Notice of the proposal was published on March 13, 1991 in the Hunterdon Review. Both notices invited written comments to be submitted by April 3, 1991 and an-

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nounced the holding of the public hearing. No members of the public attended the public hearing. Hearing officer John Scordato recommended the adoption of the proposed redelineation without change. The record of the public hearing may be inspected or a copy obtained by contacting Samuel A. Wolfe, Esq., Office of Legal Affairs, Department of Environmental Protection and Energy, CN 402, Trenton, N.J. 08625.

No comments were received.

Full text of the adoption follows:

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection and Energy, Engineering and Construction Element, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

State of New Jersey
Department of Conservation and Economic Development
Division of Water Policy and Supply
Delineation of Floodway and Flood Hazard Area
South Branch Raritan River
Plates SB-10, 11 and 12

(a)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of the Passaic River

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: March 4, 1991 at 23 N.J.R. 648(a).
Adopted: October 21, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: October 22, 1991 as R.1991 d.568, **without change.**
Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.
DEP Docket Number: 005-91-01.
Effective Date: November 18, 1991.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Response:
Notice of the proposed amendment was published on March 4, 1991 in the New Jersey Register at 23 N.J.R. 648(a). The Notice advised that a public hearing had been scheduled for March 20, 1991 at the Engineering and Construction Element, Department of Environmental Protection and Energy, 501 E. State Street, Trenton, N.J., to afford the public an opportunity to be heard. In addition, secondary Notice of the proposal was published on March 13, 1991 in the Star Ledger. Both notices invited written comments to be submitted by April 3, 1991 and announced the holding of the public hearing. No members of the public attended the public hearing. Hearing officer John Scordato recommended the adoption of the proposed redelineation without change. The record of the public hearing may be inspected or a copy obtained by contacting Samuel A. Wolfe, Esq., Office of Legal Affairs, Department of Environmental Protection and Energy, CN 402, Trenton, N.J. 08625.

No comments were received.

Full text of the adoption follows:

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection and Energy, Engineering and Construction Element, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

State of New Jersey
Department of Environmental Protection
Passaic River
Supplemental Flood Hazard Studies & Mapping
Plate Nos. 10, 11 & 11B

(b)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of Lawrence and Heathcote Brooks

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: March 4, 1991 at 23 N.J.R. 649(a).
Adopted: October 21, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Filed: October 22, 1991 as R.1991 d.569, **without change.**
Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.
DEP Docket Number: 006-91-01.
Effective Date: November 18, 1991.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Response:
Notice of the proposed amendment was published on March 4, 1991 in the New Jersey Register at 23 N.J.R. 649(a). The Notice advised that a public hearing had been scheduled for March 20, 1991 at the Engineering and Construction Element, Department of Environmental Protection and Energy, 501 E. State Street, Trenton, N.J., to afford the public an opportunity to be heard. In addition, secondary Notice of the proposal was published on March 13, 1991 in the Home News. Both notices invited written comments to be submitted by April 3, 1991 and announced the holding of the public hearing. No members of the public attended the public hearing. Hearing officer John Scordato recommended the adoption of the proposed redelineation without change. The record of the public hearing may be inspected or a copy obtained by contacting Samuel A. Wolfe, Esq., Office of Legal Affairs, Department of Environmental Protection and Energy, CN 402, Trenton, N.J. 08625.

No comments were received.

Full text of the adoption follows:

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Delineation of Floodway and Flood Hazard Area
of Lawrence and Heathcote Brooks
Sheet Nos. 15, 16, 17, 17A, 18, 19, 21 & 22 of 54
Profile Plates 02P and 29P

(c)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL

1992-93 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6

Proposed: July 15, 1991 at 23 N.J.R. 2115(a).
Adopted: September 10, 1991 by the Fish and Game Council, Cole Gibbs, Chairman.
Filed: October 24, 1991 as R.1991 d.572, **without change.**
Authority: N.J.S.A. 13:1B-29 et seq.

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DEP Docket Number: 026-91-06.
Effective Date: November 18, 1991
Operative Date: January 1, 1992.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing news releases to 72 newspapers of general circulation and approximately 50 outdoor writers and specialty publications.

A public hearing concerning the proposal was held before the Fish and Game Council on August 13, 1991 at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division), located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Notice of the hearing was filed with the Secretary of State on August 6, 1991, was posted on the Secretary of State's bulletin board and was delivered to the Newark Star-Ledger and Atlantic City Press. The hearing was attended by 15 members of the general public of which seven presented verbal comment. One letter relevant to the proposal was received by the Department during the public comment period which closed on August 14, 1991. The record of the public hearing may be inspected or a copy obtained by contacting Samuel A. Wolfe, Esq., Office of Legal Affairs, Department of Environmental Protection and Energy, CN 402, Trenton, N.J. 08625.

The following individuals commented on the proposal:
Agust Gudmundsson—Unaffiliated
Henry Hill—New Jersey Anglers Sportsmen
Joe Kasper—Delaware River Fisherman's Association
George Howard—New Jersey Federation of Sportsmen Club
Larry Strang—Paradise Fishing Club
Ray Berger—New Jersey Trout Unlimited
George MacDonald—Toms River Trout Unlimited
Robert Doyle—Unaffiliated
Henry Brandenby—Toms River Trout Limited

N.J.A.C. 7:25-6.3(a)

COMMENT: The opening day of the trout season should be on the first Saturday in April instead of the second Saturday in April.

RESPONSE: It is the Division's policy to open the trout season on the first Saturday in April following April 6th which in 1992 is April 11, the second Saturday of April. For long term planning purposes, following this policy results in the most optimum stream and weather conditions for the Spring trout stocking program.

N.J.A.C. 7:25-6.3(d)

COMMENT: The streams should be closed to fishing till 6:00 A.M. on the day following trout stocking rather than to 5:00 P.M. on the day of stocking.

RESPONSE: The comment is beyond the scope of the proposal. The commenter will, however, have the opportunity to comment on any and all provisions contained in the Fish Code when the Department proposes readoption of the Chapter prior to its expiration on February 15, 1996.

N.J.A.C. 7:25-6.4

COMMENT: Fishing in those waters which are currently restricted to fly-fishing only for a portion of the year should be restricted to fly-fishing only year-round.

RESPONSE: The comment is beyond the scope of the proposal. The commenter will, however, have the opportunity to comment on any and all provisions contained in the Fish Code when the Department proposes readoption of the Chapter prior to its expiration on February 15, 1996.

N.J.A.C. 7:25-6.4 to 6.7

COMMENT: Scent enhancers and scent enhanced baits should be prohibited in Trout Conservation Areas and Wild Trout Streams as proposed.

RESPONSE: The Council and the Division acknowledge the support of the proposal by these commenters.

N.J.A.C. 7:25-6.5 and 6.7

COMMENT: The Tom's River Trout Conservation Area should be extended as proposed.

RESPONSE: The Council and the Division acknowledges the support of the proposal by these commenters.

N.J.A.C. 7:25-6.6

COMMENT: The size limit for all trout in those streams designated as "Wild Trout Streams" should be 12 inches.

RESPONSE: The physical and biological limitations of the habitat afforded by most of the streams in this category limit the growth potential of the trout which inhabit them allowing relatively few trout to ever get larger than ten inches in length. Some take of trout is considered to be beneficial for these waters for the purpose of retaining a measure of dynamics in the fish population structure allowing for growth and replacement of mature fish. The 12 inch size limit would not accomplish this objective.

N.J.A.C. 7:25-6.13(o)

COMMENT: The size limit for channel catfish should be 16 inches.

RESPONSE: Prior to the proposal of the 1992-93 Fish Code there was no size limit on channel catfish. A 12 inch size limit was proposed as this was the predicted average size that the channel catfish, currently being stocked by the Division, would attain a year following their release. This one year "at large" is considered to be beneficial for the program as it allows the channel catfish to adapt to their surroundings, put on growth and become less vulnerable to being taken in mass quantities. The 16-inch size limit would allow for two years of protection following stocking, but since the program objective is to stock on a two year cycle, this degree of protection could result in an overpopulation of channel catfish and reduce their growth potential.

General

COMMENT: Pacific salmon should not be stocked in the Delaware River.

RESPONSE: The Division's proposed program to evaluate the stocking of Pacific salmonids in the Delaware River drainage is a fisheries management issue which is unrelated to the proposal amending the Fish Code.

Full text of the adoption follows.

SUBCHAPTER 6. 1992-1993 FISH CODE

7:25-6.2 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Baitfish" means the following species:

1. Alewife (anadromous and landlocked forms) — Alosa pseudoharengus;
2. Blueback herring — Alosa aestivalis;

Recodify existing 2.-13. as 3.-14. (No change in text.)

. . .

7:25-6.3 Trout Season and Angling in Trout-Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19, and (i) below, the trout season for 1992 shall commence 12:01 A.M. January 1, 1992 and extend to midnight March 22, 1992. The trout season shall re-open at 8:00 A.M. Saturday, April 11, 1992 and extend to include March 21, 1993.

(b) Except as provided in N.J.A.C. 7:25-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight March 22, 1992 to 8:00 A.M. on April 11, 1992 in ponds, lakes or those portions of streams that are listed herein for stocking during 1992.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 17, 24; May 1, 8, 15, 22, 29.
2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April 16, 23, 30; May 7, 14, 21, 28.
3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 13, 20, 27; May 4, 11, 18, 25.
4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 13, 20, 27; May 4, 11, 18, 25.

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5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 13, 20, 27; May 4, 11, 18, 25.

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 17, 24; May 1, 8, 15, 22, 29.

7. Paulinskill River and E. Br. and W. Br.—County Route 648 Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April 16, 23, 30; May 7, 14, 21, 28.

8. Pequest River—Source to Delaware River—April 17, 24; May 1, 8, 15, 22, 29.

9. Pohatcong Creek—Route 31 to Delaware River—April 14, 21, 28; May 5, 12, 19, 26.

10. Ramapo River—State line to Pompton Lake—April 16, 23, 30; May 7, 14, 21, 28.

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 15, 22, 29; May 6, 13, 20, 27.

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 14, 21, 28; May 5, 12, 19, 26.

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 13, 20, 27; May 4, 11, 18, 25.

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April 13, 20, 27; May 4, 11, 18, 25.

15. Wallkill River—W. Mt. Road to Route 23, Hamburg—April 13, 20, 27; May 4, 11, 18, 25.

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April 17, 24; May 1, 8, 15, 22, 29.

(e) Except as provided in N.J.A.C. 7:25-6.7, no person shall catch, take, kill or possess trout during the closed period (5:00 A.M. to 5:00 P.M. on any of the waters listed for in-season closures.

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parentheses indicates the anticipated number of stockings to be carried out from April 13 through May 31, provided that, in the event of emergency conditions, the Division may suspend stocking of any or all of the following:

1. (No change.)

2. Bergen County

Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)

Hohokus Brook—Forest Road to Whites Pond—(4)

Indian Lake—Little Ferry—(4)

Mill Pond—Park Ridge—(3)

Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)

Saddle River—State Line to Dunkerhook Road, Fairlawn—(5)

Tienekill Creek—Closter, entire length—(3)

Whites Pond—Waldwick (4)

3.-12. (No change.)

13. Monmouth County

Englishtown Mill Pond—Englishtown—(3)

Garvey's Pond—Navesink—(3)

Hockhocksen Brook—Hockhocksen Road to Garden State Parkway bridge (northbound)—(5)

Holmdel Park Pond—Holmdel—(5)

Manasquan Reservoir—Howell Township—(3)

Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(5)

Mohawk Pond—Red Bank—(4)

Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)

Shark River—Hamilton, Route 33 to Remsen Mill Road—(5)

Spring Lake—Spring Lake—(3)

Takanassee Lake—Long Branch—(4)

Topenemus Lake—Freehold—(3)

Yellow Brook—Heyers Mill Road to Muhlenbrink Road, Colts Neck Township—(2)

14.-16. (No change.)

17. Salem County

Harrisonville Lake—Harrisonville—(3)

Maurice River—Willow Grove Lake Dam to Sherman Avenue, Vineland—(4)

Schadler's Sand Wash Pond—Penns Grove—(3)

18. (No change.)

19. Sussex County

Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)

Andover Junction Brook—Andover, entire length—(2)

Beaver' Run Brook—Beaver Run, entire length—(1)

Bier's Kill—Shaytown, entire length—(2)

Big Flat Brook, Upper—Saw Mill Lake, High Point State Park, to 100 feet above Steam Mill Bridge on Crigger Road—(4)

Canistear Reservoir—Newark Watershed—(3)

Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(5)

Cranberry Lake—Byram Township—(3)

Culver's Lake Brook—Frankford Township, entire length—(2)

Dry Brook—Branchville, entire length—(3)

Franklin Pond Creek—Hamburg Mt. Wildlife Management Area, entire length—(5)

Glenwood Brook—Lake Glenwood to State line—(2)

Iliff Lake—Andover Township—(3)

Kymer's Brook—Andover, entire length—(2)

Lake Musconetcong—Netcong—(2)

Lake Hopatcong—Lake Hopatcong—(3)

Lake Ocquittunk—Stokes State Forest—(3)

Little Flat Brook—Sandyston Township, entire length—(5)

Little Swartswood Lake—Swartswood—(3)

Lower Blue Mountain Lake—Delaware Water Gap National Recreation Area—(3)

Lubbers Run—Byram Township, entire length—(5)

Neldon Brook—Swartswood, entire length—(2)

Papakating Creek—Plains Road bridge to Route 565, Lewisburg—(2)

Papakating Creek, W. Br.—Libertyville, entire length—(2)

Pond Brook—Middleville, entire length—(5)

Roy Spring Brook—Stillwater, entire length—(1)

Saw Mill Lake—High Point State Park—(3)

Shimers Brook—Montague Township, entire length—(2)

Stony Lake—Stokes State Forest—(3)

Swartswood Lake—Swartswood—(3)

Trout Brook—Middleville, entire length—(2)

Tuttles Corner Brook—Tuttles Corner, entire length—(2)

Wawayanda Lake—Vernon—(3)

20.-21. (No change.)

(g) (No change.)

(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 11, 1992 until midnight May 31, 1992 or more than four of these species during the periods of January 1, 1992 to midnight March 22, 1992 and June 1, 1992 through midnight March 21, 1993 except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir in Hunterdon County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 22, 1992 and extending to 8:00 A.M., April 11, 1992 must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly-Fishing Waters

(a) From 5:00 A.M. on Monday, April 20, 1992 to and including November 30, 1992 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1992 to midnight March 22, 1992 and from 8:00 A.M. on April 11, 1992 to midnight March 21, 1993 the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5 P.M. on days listed for stocking:

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1. (No change.)
(c) (No change.)
(d) The following regulations shall apply to the above designated fly-fishing waters:
1. (No change.)
2. Not more than six trout may be killed daily during the April 11 through May 31 portion of the season; at other times the limit is four. Trout in excess of the creel limit may be caught provided such trout are immediately returned to the water unharmed.
3. (No change.)
4. Expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel.
5. (No change.)
6. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait.

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May 25, 1992 through March 21, 1993.
1. Pequest River—An approximate 1.0 mile portion, within the Pequest Wildlife Management Area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to the Conrail Railroad Bridge upstream of the Pequest Trout Hatchery Access Road.
2. Pequannock River—An approximate 1.2 mile stretch of river extending from the Route 23 bridge at Smith Mills upstream to the Route 23 bridge at Smoke Rise.
(b) The following shall apply to the Seasonal Trout Conservation Areas designated at (a) above:
1.-2. (No change.)
3. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait.
Recodify existing 3.-5. as 4.-6. (No change in text.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) The following streams, or portions thereof, are designated as Wild Trout Streams. Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation.
1.-10. (No change.)
11. Indian Grove Brook (Bernardsville);
Recodify existing 11.-17. as 12.-18. (No change in text.)
19. Passaic River (Source to Rt. 202, Bernardsville);
Recodify existing 18.-29. as 20.-31. (No change in text.)
(b) The following shall apply to the Wild Trout Streams designated in (a) above:
1.-2. (No change.)
3. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait;
4. A person shall not kill or have in possession, while fishing the portions of the Pequannock River and Van Campens Brook designated as Wild Trout Streams, any brown trout less than 12 inches in total length. For all other designated Wild Trout Streams, and for brook and rainbow trout in the Wild Trout Stream designated portions of the Pequannock River and Van Campens Brook, the minimum length for trout shall be seven inches in total length.
5. During the period extending from 8:00 A.M. April 11, 1992 to September 15, 1992, a person shall not have in possession while fishing any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed; and
Recodify 5. as 6. (No change in text.)

7:25-6.7 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas

(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the provision at (b) below governing these areas on a year-round basis:
1. Toms River, Ocean County—a one mile stretch of river from the downstream end of Riverwood Park in Dover Township, defined by markers, downstream to the Route 571 bridge; and
2. East Branch of Paulinskill River, Sussex County—from the Limecrest Railroad Spur Bridge downstream to its confluence with the West Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles.
(b) The following shall apply to the Year-round Trout Conservation Areas designated at (a) above:
1.-3. (No change.)
4. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait;
Recodify existing 4.-5. as 5.-6. (No change in text.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) The following lakes are designated as Trophy Trout Lakes:
1. Round Valley Reservoir; and
2. Merrill Creek Reservoir.
(b) The following rules apply to the Trophy Trout Lakes designated at (a) above:
1. In Round Valley Reservoir the minimum size of brown trout and rainbow trout shall be 15 inches and in Merrill Creek Reservoir the minimum size of rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be two in total;
2.-3. (No change.)
4. The season for lake trout shall extend from 12:01 A.M., January 1, 1992 to midnight, September 15, 1992 and from December 1, 1992 to midnight, September 15, 1993.
5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Major Trout Stocked Lakes

(a) The following lakes are designated as Major Trout Stocked Lakes:
1.-3. (No change.)
Recodify 5.-7. as 4.-6. (No change in text.)
(b) The following apply to the Major Trout Stocked Lakes designated at (a) above:.
1.-2. (No change.)
3. A person shall not take, kill or have in possession, in one day, more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 11, 1992 until May 31, 1992 or more than four of these species during the periods of January 1, 1992 to midnight March 22, 1992 and June 1, 1992 through midnight March 21, 1993. Trout, if taken during the period commencing at midnight, March 22, 1992 and extending to 8:00 A.M., April 11, 1992 must be returned to the water immediately and unharmed.

7:25-6.10 Baitfish

(a) (No change.)
(b) In waters listed in N.J.A.C. 7:25-6.3 to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March 22 to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than 3.5 feet square.
(c) In Deal Lake, up to 35 per day of alewife or blueback herring, in the aggregate, may be taken per person with a dip net not more than 24 inches in diameter, or as otherwise provided for in (d) below. Possession limit is one day's limit.
(d) (No change.)

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7:25-6.13 Warmwater fish

(a) (No change.)

(b) Except as provided in N.J.A.C. 7:25-6.18, the size limits prescribed for rock bass, redfin pickerel and chain pickerel are hereby eliminated in all waters except in Lake Hopatcong and Swartswood Lake (Sussex County) and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel.

(c)-(h) (No change.)

(i) The minimum length prescribed for northern pike shall be 24 inches, and 30 inches for the muskellunge and tiger muskie. The daily bag and possession limit for these species shall be two in aggregate.

(j)-(n) (No change.)

(o) The minimum length for channel catfish shall be 12 inches. The daily creel and possession limit shall be five.

(p) The minimum length for black crappie and white crappie shall be eight inches. The daily creel and possession limit for these species shall be 10 in aggregate.

7:25-6.19 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, except as provided in N.J.A.C. 7:25-6.13(e) to (n), the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Daily Bag Limit
Trout	April 11-Sept. 30	No minimum	5
Largemouth bass and smallmouth bass	No closed season	12 inch minimum	5 in total
Walleye	No closed season	18 inch minimum	3
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
Striped bass x white bass hybrid	No closed season	16 inch minimum	2
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION ELEMENT

Permit Applications, Operating Standards, and Recordkeeping Requirements

Adopted Amendments: N.J.A.C. 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2 and 12.4

Proposed: October 15, 1990 at 22 N.J.R. 3186(a).

Adopted: October 15, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: October 15, 1991 as R.1991 d.562, **with technical changes** not requiring additional publication and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 031-90-09.

Effective Date: November 18, 1991.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed October 15, 1990. One comment was received during the public comment period which closed November 14, 1990. The amendments are being adopted without change. The following is a list of persons and organizations who submitted comments on this proposal:

Thomas J. Detweiler, Chemical Industry Council of New Jersey

COMMENT: The Department proposed to delete N.J.A.C. 7:26-10.6(b)2i and ii which provide the existing status surface impoundments may continue to operate with a single non-leaking liner. The Federal Hazardous and Solid Waste Amendments (HSWA) of 1984 and the United States Environmental Protection Agency's regulations allow an interim status surface impoundment to obtain a variance from the double liner requirement. The State should continue to provide a case-by-case determination based on the technical aspects of the impoundment operations, contents, geological setting, etc.

RESPONSE: The State of New Jersey relies heavily on groundwater as a source of drinking water and in many cases this groundwater is near the surface. A surface impoundment that is not adequately lined poses a significant threat to that groundwater and to the health of the citizens of this State. All liners eventually leak. In New Jersey this would likely result in groundwater contamination, posing a potential public health hazard. The potential impacts of a leaking liner are magnified given the State's high population density. A double liner system with a leak detection system will allow for the detection and remediation of leaks before they impact the State's groundwater. Furthermore, as discussed below, all active hazardous waste surface impoundments in this State have a double liner system or are pursuing such a system. Therefore, a variance at this point would not be appropriate.

COMMENT: The Department is effectively reducing the four-year allowance for either retrofitting surface impoundments or ceasing receipt of hazardous waste provided by HSWA to a two-year time period. Furthermore, surface impoundments which had existing status and have been permitted and are operated in accordance with valid New Jersey Pollutant Discharge Elimination System (NJPDES) permits should not be subject to the proposed N.J.A.C. 7:26-10.6(b)2 until the end of the current permit term.

The requirement to cease receiving hazardous waste within two years from promulgation will unilaterally terminate these valid permits issued by the Department without considering specific technical merits. Since these amendments change permit conditions on permits which were recently issued, the commenter recommended that a "grandfathering" clause be added to the proposed changes to include these permits.

RESPONSE: Most of the surface impoundments affected by this provision are regulated under the Federal RCRA and HSWA law and regulations. As a result, most owners and operators of surface impoundments have already complied with these requirements since the Federal HSWA deadline to comply was November 8, 1988. Therefore, the Department is not limiting the four-year grace period for compliance allowed by HSWA. The two-year grace period provided by the Department at N.J.A.C. 7:26-10.6(b)2 affects only those surface impoundments not regulated by RCRA or HSWA; essentially, this is the class of surface impoundments managing "State only" hazardous wastes. In the case of newly regulated wastes, the Department's two-year grace period will be

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more stringent than the Federal grace period of four years. The Department's experience with the retrofitting of surface impoundments has shown that two years is ample time to complete the design of the unit, hiring of a contractor, and physical construction of the unit. In the case of surface impoundments electing to close rather than retrofit, two years is ample time for the submittal and review of a closure plan, since it has been the Department's experience that closure plan submission and review can generally be completed in six months.

Furthermore, since there are only two permitted facilities which will be affected by this particular regulatory change, and both already have received approval of closure plans, there is no need to provide a "grandfathering" provision. The Department is not aware of any valid NJPDES permit that would be affected by this amendment. Therefore, no grandfathering provision is provided.

COMMENT: The Economic Impact presented in the proposal does not address the number of surface impoundments in the State of New Jersey that will be impacted by these amendments.

RESPONSE: The commenter is correct. The Department believes that there are only two operating surface impoundments that do not meet the double liner requirements. The authorization for one will expire in December 1991. The second is temporarily authorized and will most likely be closed or retrofitted within the two-year time period. Except for these two cases, surface impoundments that did not have double liners have either been closed or retrofitted.

Summary of Changes Upon Adoption:

At N.J.A.C. 7:26-10.6(a)2, the two deadlines established by reference to the effective date of this amendment are replaced by the actual dates of May 18, 1993 and November 18, 1993, respectively.

Proposed N.J.A.C. 7:26-12.4(a)17ii is recodified upon adoption as N.J.A.C. 7:26-12.4(a)17iv, as existing subparagraphs (a)17ii and iii were inadvertently overlooked in the proposal. A reference to this subparagraph in paragraph (a)18 is also corrected.

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

7:26-9.2 General prohibitions

(a) (No change.)

(b) A person shall not cause, suffer, allow or permit:

1.-4. (No change.)

5. The application of waste oil or any other hazardous waste, or the application of any other material contaminated with dioxin or any other hazardous waste, to the land for the purpose of dust suppression or road treatment.

Recodify 5.-7. as 6.-8. (No change in text.)

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

(e) A person shall not cause, suffer, allow, or permit the placement, including disposal, of any hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave.

7:26-10.6 Surface impoundments

(a) (No change.)

(b) A surface impoundment that is used for storage, treatment or disposal of hazardous waste shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the surface impoundment to the adjacent subsurface soil or groundwater or surface water during the active life of the surface impoundment, including the closure period as described in N.J.A.C. 7:26-9.8(i), and any post-closure monitoring period as described in N.J.A.C. 7:26-9.9(b).

1. A new surface impoundment, a new surface impoundment at an existing facility, a replacement of an existing surface impoundment, or a lateral expansion of an existing surface impoundment or cell shall be designed with a liner system in accordance with the following:

i. A surface impoundment shall have two or more liners installed to cover all surrounding earth likely to be in contact with the waste or leachate and shall have a leachate collection system between such liners. The liners and leachate collection system shall protect human health and the environment;

ii. The primary or upper liner shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature so as to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iii. The secondary or lower liner shall consist of soil at least three feet (.091 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of a synthetic material at least 30 mils (.03 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature so as to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iv.-x. (No change.)

2. The owner or operator of an existing surface impoundment which is subject to section 3005(j)(l) of the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6925(j)(l), shall comply with the design standards of (b)1 above or have initiated closure by November 8, 1988 in accordance with section 3005 of RCRA. The owner or operator of an existing surface impoundment that is not subject to section 3005 of RCRA but is subject to this section of the State's hazardous waste management rules shall comply with the design standards of (b)1 above or shall submit a closure plan to the Department *[within 18 months after (the effective date of this amendment)]* ***by May 18, 1993*** and shall cease receiving hazardous waste *[within two years after (the effective date of this amendment)]* ***by November 18, 1993*** and initiate closure in accordance with N.J.A.C. 7:26-9.8.

(c)-(h) (No change.)

7:26-10.8 Hazardous waste landfills

(a)-(b) (No change.)

(c) A landfill that is used for the disposal of hazardous wastes shall have a liner system that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water during the active life of the landfill, including the closure period as described in N.J.A.C. 7:26-9.8(i), and any post-closure monitoring period as described in N.J.A.C. 7:26-9.9(b).

1. A new landfill or cell, a new landfill or cell at an existing facility, a replacement of an existing landfill or cell, or a lateral expansion of an existing landfill or cell shall be designed, constructed, and installed with a liner system in accordance with the following:

i. The liner system shall consist of two or more liners which shall be installed to cover all surrounding earth likely to be in contact with waste or leachate and with a leachate collection system installed between such liners. The liners and leachate collection system shall protect human health and the environment;

ii. The primary or upper liner shall consist of a synthetic material at least 40 mils (0.04 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iii. The secondary or lower liner shall consist of soil at least five feet (1.5 meters) thick with a maximum saturated hydraulic conductivity of 3.28×10^{-9} ft/sec (1×10^{-7} cm/sec) under maximum anticipated hydrostatic head or shall consist of synthetic material at least 40 mils (0.04 inches) thick which is designed to prevent the flow of liquid through the liner. The liner shall have properties of such a nature to ensure that the prevention of liquid flow through the liner is maintained throughout, at a minimum, the active life, including the closure period, and post-closure period of the facility;

iv.-x. (No change.)

2. (No change.)

(d) (No change.)

(e) Operational standards for hazardous waste landfills include the following:

1.-9. (No change.)

10. The following shall not be placed in a hazardous waste landfill:

i.-ii. (No change.)

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iii. Waste containing free liquid whether or not absorbents have been added;

iv.-v. (No change.)

11.-22. (No change.)

(f)-(j) (No change.)

7:26-11.3 Surface impoundments

(a)-(h) (No change.)

(i) The owner or operator of a surface impoundment shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26-10.6(b) for each new surface impoundment at an existing facility, replacement of an existing surface impoundment, or lateral expansion of an existing surface impoundment that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(j) The owner or operator of a surface impoundment referred to in (h) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of such notice.

7:26-11.4 Hazardous waste landfills

(a) Operational standards for hazardous waste landfills include the following:

1.-7. (No change.)

8. Bulk or non-containerized liquid waste or waste containing free liquids, whether or not absorbents have been added, shall not be placed in a hazardous waste landfill;

9.-13. (No change.)

(b) (No change.)

(c) The owner or operator of a hazardous waste landfill shall install two or more liners and a leachate collection system in accordance with N.J.A.C. 7:26-10.8(c) with respect to each new landfill or cell at an existing facility, replacement of an existing landfill or cell, or lateral expansion of an existing landfill or cell that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(d) The owner or operator of a landfill or cell referred to in (c) above shall notify the Department at least 60 days prior to receiving waste. The owner or operator of the facility submitting such notice shall submit a Part B application within 180 days of the Department's receipt of that notice.

Recodify (c)-(d) as (e)-(f) (No change in text.)

7:26-12.2 Public participation in the permit process

(a) Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign and submit an application to the Department as described in this section. Procedures for applications, issuance and administration of emergency permits are found exclusively in N.J.A.C. 7:26-12.9. Procedures for claiming confidentiality are found in N.J.A.C. 7:26-17. Owners or operators of a facility eligible for a permit-by-rule under N.J.A.C. 7:14A-4.5 are not required to obtain a hazardous waste facility permit under this section for that facility.

(b) (No change.)

(c) If the Department, upon examination of a Part A application, has reason to believe that the application fails to meet the requirements of N.J.A.C. 7:26-12.2(e) below, the Department shall notify the owner or operator in writing of such apparent deficiency. Such notice shall specify the grounds for the Department's belief that the application is deficient. The owner or operator shall have 30 days from the receipt of the Notice of Deficiency to respond and to explain or remedy that deficiency. If, after such notification and opportunity for response, the Department determines that the application is deficient, the Department may terminate the facility's existing facility status pursuant to N.J.A.C. 7:26-12.3(f)3.

Recodify (c)-(l) as (d)-(m) (No change in text.)

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this subchapter. Each hazardous waste facility permit shall include permit conditions necessary to protect human health and the environment and to achieve compliance with State rules, including all applicable requirements at N.J.A.C. 7:26-9 through 12, as well as any other applicable rules. To satisfy this requirement, the Department may directly incorporate applicable requirements of these or other subchapters into the permit or may establish other permit conditions that are based on these or other subchapters. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter and/or other subchapters shall be given in the permit.

1.-16. (No change.)

17. The following reports required by N.J.A.C. 7:26-9 and 10 shall be submitted in addition to those required by (a)12 above:

i.-iii. (No change.)

*[ii.]***iv.*** An annual certification shall be submitted by the permittee that the permittee has a program in place to reduce the volume and toxicity of hazardous waste generated by the permittee, and that the method of treatment, storage, or disposal of the generated hazardous waste is that method currently available to the permittee that minimizes the present and future threat to human health and the environment.

18. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, the certification required by *[(a)17ii]* ***(a)17(iv)*** above, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application.

(b)-(h) (No change.)

(i) Each permit shall be reviewed by the Department upon expiration. The Department shall modify the permit as necessary to ensure that the facility continues to comply with the currently applicable regulatory requirements.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Recycling Center Rules

Adopted New Rules: N.J.A.C. 7:26A

Proposed: October 1, 1990 at 22 N.J.R. 3088(a).

Adopted: October 1, 1991 as R.1991 d.529, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-99.11 et seq.

DEPE Docket Number: 029-90-08.

Effective Date: November 18, 1991.

Expiration Date: November 18, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (Department) is adopting rules to implement the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq. (Act). The Act provides for Department regulatory oversight of recycling activities and prior approval of recycling centers which receive recyclable materials other than source separated metals, glass, paper, plastic containers, and cardboard.

To implement the statutory authority delegated to the Department by the Act, the Department is adopting a new chapter at N.J.A.C. 7:26A. The proposed new rules were published in the New Jersey Register at 22 N.J.R. 3088(a) on October 1, 1990. Secondary notice was given by publishing notices in 10 newspapers of general circulation and by direct mailing the full text of the proposal to 78 potentially affected facilities and other interested parties. A total of 284 comments were received from the public. Written comments were received from 48 persons during the public comment period which closed on December 1, 1990. A public hearing was held on November 14, 1990 at the Trenton War Memorial in Trenton, New Jersey.

Eleven persons presented comments at the public hearing. The following persons presented written comments and/or made oral comments at the public hearing:

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(A) Clifford Heath, President, New Jersey Asphalt Pavement Association
(B) Jim Sinclair, First Executive Vice President, New Jersey Business and Industry Association
(C) Bill Cleary, Executive Director, New Jersey Concrete and Aggregate Association
(D) Paul DeCosimo, Executive Director, New Jersey Paper Recycling Association
(E) Vincent J. Dotoli, Attorney
(F) Jean Clark, President, New Jersey Recycling Forum
(G) George J. Kayser, Environmental Professionals, Inc.
(H) Larry Zaayenga, Monmouth County Solid Waste Coordinator, Monmouth County Department of Planning
(I) Robert Young, President, American Soil, Inc.
(J) Leah Healey, Morris County Municipal Utilities Authority
(K) Frank J. Brill, New Jersey Auto and Metal Recyclers Association

The following persons submitted written comments:
(1) John J. Serkies, Recycling Officer, Office of Business Advocacy
(2) Alvin J. Zach, Director, Newark Department of Engineering
(3) Dominick J. D'Attilio, Sanitation Superintendent/Municipal Recycling Coordinator, City of East Orange
(4) Mitchell L. Press
(5) Audrey Winzinger, Robert T. Winzinger, Inc.
(6) Morris County Municipal Utilities Authority
(7) Frank J. Brill, New Jersey Auto and Metal Recyclers Association
(8) Clare Mullett, Manager of Procurement Services, Garden State Paper Company, Inc.
(9) Douglas O. Hunts, Vice President, Ox Contractors, Inc.
(10) Kenneth Wishnick, Divisional Vice President, External Affairs, Browning-Ferris Industries
(11) Duane S. Royal, Alcoa Recycling Company, Inc.
(12) George J. Kayser, Environmental Professionals, Inc.
(13) Mary Pat Robbie, Management Specialist, Burlington County Board of Chosen Freeholders
(14) Richard N. Myers, President, Weldon Asphalt Company
(15) Michael L. Rodburg, Lowenstein, Sandler, Kohl, Fisher & Boylan
(16) Leslie G. London, Kraft & McManimon
(17) Wayne DeFeo, Manager, Mid-Atlantic Region, National Solid Wastes Management Association
(18) Mary Anne Fieux, Recycling Coordinator, Cape May County Municipal Utilities Authority
(19) Robert A. Briant, Jr., Assistant Executive Director, Utility and Transportation Contractors Association of New Jersey
(20) Lawrence J. Zaayenga, Monmouth County Solid Waste Coordinator, Monmouth County Planning Board
(21) Frank A. LoBiondo, Assemblyman, New Jersey General Assembly
(22) Bruce C. Rosetto, President, Rosetto Recycling Center, Inc.
(23) Steven Fass, Refuse/Environmental Systems
(24) Andrew J. Naporano, Jr., President, New Jersey Chapter, Institute of Scrap Recycling Industries
(25) Clifford J. Heath, President, New Jersey Asphalt Pavement Association
(26) Dorothy MacArthur, Recycling Program Supervisor, Mercer County Improvement Authority
(27) Diane C. Mensinger, Union Carbide Chemicals and Plastics Company, Inc.
(28) Susan E. Hoffman, Cohen, Shapiro, Polisher, Shriekman and Cohen
(29) Jeffrey S. Callahan, Deputy Director, Union County Utilities Authority
(30) Robert M. McCarthy, Director, Middlesex County Department of Solid Waste Management
(31) Jean Clark, President, New Jersey Recycling Forum, Inc.
(32) Ernest J. Kuhlwein, Jr., Assistant Director, Ocean County Department of Solid Waste Management
(33) Matthew J. Ernandes, Jr., Administrator, Township of Bordentown
(34) Michael V. Manno, Vice President, Newark Asphalt Corp.
(35) Alice S. Tempel, Environmental Specialist, Borough of South Plainfield
(36) Erica Schiffman, Project Manager, New Jersey Act
(37) Lawrence A. Hecker, Counselor at Law
(38) Curt Macysyn, Associate Director, Fuel Merchants Association of New Jersey
(39) Chuck DeWoody, Wheaton Industries
(40) James A. Shissias, Public Service Electric and Gas Company
(41) Mrs. Mary Mazepa, Recycling Coordinator, Borough of South Plainfield
(42) Susan D. Sawtelle, Counsel to Public Service Electric and Gas Company, Piper & Marbury
(43) Elaine B. Hinkle, Township Clerk, North Hanover Township
(44) Alan Feit, Township Manager, Township of Mount Holly
(45) Frank R. Costello, Mayor, City of Beverly
(46) John W. Crafchun, Township Manager, Township of Medford
(47) Joseph J. Przywara, Environmental Health Coordinator, Ocean County Health Department
(48) Marion E. Hay, Municipal Clerk, Township of Mansfield

The comments and the Department's responses follow, with the appropriate commenter's letter and/or numbers assigned below for each comment. As a preliminary matter it is noted that the Department has deleted the terms "traditional recyclable material" and "non-traditional recyclable material" throughout the rule and replaced the term "traditional recyclable material" with the term "Class A recyclable material" and replaced the term "non-traditional recyclable material" with the term "Class B recyclable material." The new terms will be used throughout this adoption document as well, both in response to comments and in the summary of changes section. In the proposal the term "traditional" was chosen because these materials, consisting of source separated glass, metal, paper, plastic containers and cardboard, are materials with a long history of recycling and high degree of recognition among the public as recyclable. The term "non-traditional" was applied to all other source separated recyclable materials because these materials, consisting largely of construction and demolition waste, do not have as long of a well-established history of recycling and also do not have as a high of a degree of recognition among the public as recyclable. However, the true basis for distinguishing between two classes of recyclable materials is that one class ("traditional") is specifically identified by the Recycling Act as excluded from Department approval prior to receipt, storage, processing or transfer at a recycling center, while the other class ("non-traditional") is not. See N.J.S.A. 13:1E-99.34b. Because the terms "traditional" and "non-traditional" are not based in the Act, and because there may be a tendency to attach values to these terms which are not supported by the Act, the Department has decided to replace these terms with the neutral terms, "Class A" and "Class B", and to define these terms so that they are clearly linked to the statutory approval criteria. Thus, Class A recyclable material means source separated non-putrescible recyclable material specifically excluded from Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, which material currently includes source separated non-putrescible metal, glass, paper, plastic containers and corrugated and other cardboard. Class B recyclable material means a source separated non-putrescible recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b. The most common types of Class B recyclable materials are included in the definition for ease of reference and clarity for the regulated community.

Subchapter 1

N.J.A.C. 7:26A-1.3 Definitions

Clean Fill

1. COMMENT: The definition of "clean fill" found in N.J.A.C. 7:26A-1.3 does not indicate any size restriction for materials which may become clean fill. (2)

2. COMMENT: The definition of "clean fill" found in N.J.A.C. 7:26A-1.3 should not include concrete and ceramic. (5)

3. COMMENT: It is doubtful that the Department would be able to monitor what actually gets buried as clean fill. This could potentially result in the commingling of solid waste in an open pit. (5)

4. COMMENT: Any application to bury or use clean fill as subgrade should show proof that the land being filled does not contain wetlands and is not located in the floodplain. (5)

5. COMMENT: A contractor requesting permission to use clean fill should pay a fee, which would fund enforcement actions necessary to monitor these operations. This situation is possibly the most volatile one created by the rules. (5)

6. COMMENT: Within the definition of "clean fill" found in N.J.A.C. 7:26A-1.3, the definition of "uncontaminated" needs to be specifically defined. (12, B)

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7. COMMENT: The issue of "clean fill," as defined in N.J.A.C. 7:26A-1.3, has nothing to do with recycling and should not be included in these rules. (12)

8. COMMENT: The clean fill issue is not a recycling activity, should not be the Office of Recycling's responsibility, and, therefore, this section should be omitted from the rules. Most of this "clean fill" could be recycled, and by allowing "landfilling" (that is, use as fill), these rules bypass the waste flow rules and remove a supply of recyclable materials. This is counter to the intent of these rules. (12)

9. COMMENT: The definition of "clean fill" found in N.J.A.C. 7:26A-1.3 should include wood or vegetative wastes. (18)

10. COMMENT: The definition of "clean fill" found in N.J.A.C. 7:26A-1.3 should contain glass and ceramic (as written); however, should not include stone, dirt and gravel which may interfere with mining operations regulated by other agencies. (20)

11. COMMENT: The information required with respect to the clean fill approval requirements should also be sent to the county where the facility is located. (29)

12. COMMENT: Sheetrock (plasterboard, wallboard) has been proposed by recyclers as fill. If this is not acceptable to DEP, it should be included here as an excluded material.

13. COMMENT: N.J.A.C. 7:26-3.17(a)2 (clean fill approval requirements) should be modified as follows: "The materials are used only for the grading of land, the preparation of building sites at construction projects, road subgrade at road construction sites, or to fill excavations or trenches resulting from the installation, maintenance, repair or removal of subgrade utility piping or equipment."

14. COMMENT: A new subsection should be inserted between N.J.A.C. 7:26A-3.17(b) and 3.17(c), as follows: In any instance where the clean fill material utilized to fill excavations or trenches resulting from the installation, maintenance, repair or removal of subgrade utility piping or equipment has been secured from an approved recycling center as defined in this subchapter, the notice requirement set forth in N.J.A.C. 7:26A-3.17(b), (c) and (d) shall not apply. (40)

15. COMMENT: Clean fill approval by the DEP should not be required if the fill is indeed clean. (B)

RESPONSE: The Department agrees with the commenters' concern that the definition of "clean fill" as proposed lacked sufficient detail and was unclear. The Department also agrees that the use of recyclable materials as clean fill for purposes of land reclamation is a reuse, rather than a recycling, of such materials. Accordingly, the Department has deleted the definition of "clean fill," and the associated clean fill approval requirements. To the degree applicable, the use of clean fill as defined at N.J.A.C. 7:26-1.4 will continue to be subject to regulations administered by the Department's Division of Solid Waste Management, Bureau of Landfill Engineering.

Commingled source Separated traditional (now Class A) recyclable materials

16. COMMENT: The definition of commingled source separated traditional (now Class A) recyclable materials is flawed in that it is narrowly focused and shortsighted. (23, D)

RESPONSE: The Department agrees that the definition of commingled source separated traditional (now Class A) recyclable materials at N.J.A.C. 7:26A-1.3 is too narrow in scope and thus detrimental to innovation in recycling. For example, if a municipality or county decided to collect and recycle paper containers, such as milk cartons, and have residents place the milk cartons with glass bottles and metal cans in one container, the proposed definition of commingled source separated traditional (now Class A) recyclable material would not allow it because it restricted commingling of Class A recyclable materials such that source separated paper grades could not be commingled with metal, glass and plastic containers. Therefore, the Department has deleted this definition from N.J.A.C. 7:26A-1.3. The Department has included a definition of "commingled" at N.J.A.C. 7:26A-1.3 and a provision regarding commingling at N.J.A.C. 7:26A-4.1(a)1iii to provide guidance to the regulated community regarding the overall issue of commingling. These provisions allow commingling of all types of Class A recyclable material and commingling of Class B recyclable materials for receipt at a recycling center to the extent authorized by the recycling center approval. Thus, commingling of Class A recyclable material is unrestricted and commingling of Class B recyclable materials is restricted only insofar as the recycling center operator has equipment and procedures capable of separating commingled materials.

Contaminant

17. COMMENT: The definition of "contaminant" found in N.J.A.C. 7:26A-1.3 should be better defined as to what a contaminant is, that is, is rainwater a contaminant? (2, B)

RESPONSE: The Department agrees with the commenter that the definition of "contaminant," as proposed, is unclear. For this reason, the Department has modified the definition upon adoption to make it clear that the term is limited to "solid waste" as defined in N.J.A.C. 7:26-1.4. The modified definition defines "contaminant" as "solid waste which adheres to, or which is otherwise contained on or in, source separated recyclable materials."

Disposition

18. COMMENT: The definition of "disposition" found in N.J.A.C. 7:26A-1.3 should also include sorting. (5, D)

RESPONSE: As a result of changes made upon adoption to clarify the definition of "source separation" or "source separated," the term "disposition" is no longer used in the definitions of those terms or elsewhere in the rules. Therefore, the Department has deleted the definition of "disposition" from the rules.

Manufacturers

19. COMMENT: The definition of "manufacturer" found at N.J.A.C. 7:26A-1.3 should not be limited to traditional (now Class A) recyclers. It should include non-traditional (now Class B) recyclers as well. (3, 5, 14, 17, 28, 40)

RESPONSE: Class A and Class B recyclable materials move in different manners through the materials handling system toward reuse applications. These differences are described below. The Department believes that these differences make it necessary for persons using Class B recyclable materials as raw materials in production to be subject to the requirements of these rules.

Typically, a Class A material is separated at a residence or commercial structure pursuant to a mandatory recycling ordinance, collected and transported to a recycling center where further separation of metals by type, glass by color, paper by grade and plastics by resin type occurs. The material is then typically sent to an additional processing stage for either further separation by grade and baling, in the case of paper, magnetic separation and baling, as is the case for aluminum and other light metals, and label and closure separation and pelletizing or flaking, in the case of plastics. The material is then generally ready for direct use as a raw material for manufacture into new products.

Class B materials do not typically flow in the same manner. Receipt, storage, and processing to final use specifications typically occur at the same site. For example, a wood processor will shred or chip and screen (for size and contaminant removal) at one time, using one or possibly two pieces of machinery. The material is then ready for sale and use as a groundcover in various applications. This facility functions as a recycling center as described above. Had the material not been handled in this way, it would have required management as a solid waste, with all the attendant solid waste planning and regulatory activities which are imposed. Moreover, as a matter of law, activities involving Class B materials are subject to Departmental review pursuant to N.J.S.A. 13:1E-99.34b.

Municipal Recycling Depot

20. COMMENT: A definition of municipal recycling depot should be included in these rules. (4)

RESPONSE: The Department did not propose a definition of "municipal recycling depot" as suggested by the commenter. However, the Department agrees that a definition of "municipal recycling depot" would improve the regulation of recycling pursuant to these rules. Therefore, the Department will propose a definition to amend this rule within the next three months.

Non-commingled source separated traditional (now Class A) recyclable material

21. COMMENT: A definition for non-commingled source separated traditional (now Class A) recyclable materials is needed to define what is meant in subsection N.J.A.C. 7:26A-4.2(g). (15)

RESPONSE: The Department has revised the rule upon adoption to delete the use of the term non-commingled source separated materials. The reference to non-commingled source separated traditional (now Class A) recyclable materials was used exclusively in the provision in subchapter 4 regarding "out-of-State transport of recyclable materials." This reference was intended as a label for source separated Class A

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recyclable materials which were not commingled, for example, color-separated glass containers, and which, therefore, did not require prior Departmental approval for out-of-State transport. The originally proposed out-of-State transport provision has been deleted on adoption, and the reference to non-commingled source separated traditional (now Class A) recyclable materials has been removed from the rules. Therefore, no definition is necessary.

Non-traditional (now Class B) recyclable materials

22. COMMENT: The definition of "non-traditional (now Class B) recyclable material" found at N.J.A.C. 7:26A-1.3 should be modified in order to provide for transportation of non-source separated demolition debris. (3)

RESPONSE: The regulatory requirements for the transportation of non-source separated demolition debris are contained in the solid waste rules found at N.J.A.C. 7:26, because by definition non-source separated demolition debris is solid waste. These rules adopted at N.J.A.C. 7:26A concern activities (transportation, storage, processing and utilization) related to source separated materials or products, that is, recyclable materials. Class B recyclable materials are merely a subset of the universe of recyclable materials, which must, by definition found at N.J.S.A. 13:1E-99.11 et seq., be separated from solid waste.

23. COMMENT: The definition of "non-traditional (now Class B) recyclable material" found at N.J.A.C. 7:26A-1.3 should specifically include solis contaminated with petroleum hydrocarbons which are destined for recycling. (12, 38, G)

RESPONSE: The definition of "non-traditional (now Class B recyclable material" has been modified to include certain source separated petroleum contaminated soils. Specifically, this definition has been modified to include, among other things, the following: source separated petroleum contaminated soil that is delivered to a nonmobile in-State asphalt plant, concrete production plant or brick making facility for incorporation as a raw material in its production process; and source separated petroleum contaminated soil which is processed at its point of generation by a mobile recycling center whose mobile recycling equipment produces asphalt, concrete or bricks by incorporating source separated petroleum contaminated soil as a raw material in its mobile production process. The reuse of other source separated petroleum contaminated soil will be addressed in a separate proposal currently under regulatory development by the Department.

24. COMMENT: The definition of non-traditional (now Class B) recyclable material as found at N.J.A.C. 7:26A-1.3 should be removed. (17)

RESPONSE: Only recycling centers which receive, store, process or transfer Class B recyclable materials are subject to the approval requirements under these rules. Therefore, a definition of non-traditional (now Class B) recyclable material is necessary to establish what types of operations are subject to these requirements. As indicated above, the name of such facilities has, upon adoption, been changed to Class B recyclable material.

25. COMMENT: Recycling centers for non-traditional recyclable materials, as defined at N.J.A.C. 7:26A-1.3, should be limited to receiving only single materials. Commingled and/or mixed "non-traditional recyclable materials" should be processed at material recovery transfer stations. (29)

RESPONSE: The Department will not restrict recycling centers for Class B recyclable materials to single materials only. Efficiencies are created by commingling certain Class B recyclable materials, such as concrete, brick and block. However, such facilities can only receive source separated recyclable materials. It has been determined that limited commingling, such as that described above, provides the recycling industry with needed flexibility, while still maintaining the integrity of the source separation requirement of N.J.S.A. 13:1E-99.11 et seq. Therefore, a prohibition on the commingling of source separated Class B recyclable materials is not warranted.

26. COMMENT: Construction materials such as concrete, asphalt, rock and excavated soil should not be classified as waste materials and should not be regulated by these rules. (34, A, C)

RESPONSE: The waste construction materials identified in this comment are classified as Type 13 bulky waste in the Department's solid waste rules at N.J.A.C. 7:26-2.13. However, such materials, when source separated, may be recycled at an approved Class B recycling center. These materials may be accepted and separated from solid waste for recycling at a transfer station or material recovery facility as controlled by that facility's solid waste permit. In such cases, the separated recyclable material could be sent to a recycling facility as a source separated recyclable material.

27. COMMENT: N.J.A.C. 7:26-1.3 defines "non-traditional recyclable materials" but does not include in the definition of demolition debris such items as wood or other materials that may be obtained from the razing of a building. Is the reclaiming and chipping of wood from demolished houses acceptable under these rules? (47)

RESPONSE: The Department agrees that the definition of non-traditional (now Class B) recyclable material at N.J.A.C. 7:26A-1.3 should be more explicit and clearer to the regulated community. Although the definition, as proposed, explicitly listed "wood waste" as a type of Class B recyclable material, it did not specifically refer to wood waste and other demolition debris in the context of construction, remodeling, repair and demolition of houses, buildings or other structures. Therefore, this definition has been revised so that wood waste, as well as other source separated, non-putrescible, materials, excluding Class A recyclable materials, which result from construction, remodeling, repair and demolition on houses, commercial buildings, pavements and other structures is included in the definition. The foregoing materials are clearly defined as Class B recyclable materials. Thus, the reclaiming and chipping of wood from demolished houses is an acceptable recycling activity using a Class B recyclable material regulated as a Class B recyclable.

Plastics

28. COMMENT: There are other recyclable plastics besides "plastics containers" (for example, film). Such plastic materials will not be recognized because the language found in N.J.A.C. 7:26A-1.3 reads "plastic containers." (27)

RESPONSE: The Department agrees with the commenter that there are other recyclable plastics in addition to "plastic containers." However, recyclable plastics other than plastic containers are regulated as a Class B recyclable material because the definitions of Class A and Class B recyclable materials are based upon the statutory bifurcation at N.J.S.A. 13:1E-99.34. The statute groups "plastic containers" with source separated glass, metals, paper and cardboard. The Department has designated these materials as Class A recyclables. All other recyclable materials are Class B recyclable materials.

The Department disagrees with the commenter that plastic materials other than containers will not be recognized by the rules. These materials are Class B recyclable materials pursuant to the definition of Class B recyclable material found at N.J.A.C. 7:26A-1.3. Such materials fall within the category of a source separated recyclable material which is not, pursuant to statute, a Class A recyclable material.

29. COMMENT: The following definition of recyclable plastics should be added to these rules to give manufacturers the impetus to implement research and development projects: "Recyclable plastics are those thermoplastic materials that can be reheated and reformed multiple times. Examples of the polymers are PET (Polyethylene terephthalate), HDPE (High Density Polyethylene), LDPE (Low Density Polyethylene) and LLDPE (Linear Low Density Polyethylene). Recyclable plastics include soda, milk, juice and water bottles; household containers such as soap detergent and cleaning agents; polyethylene film such as produce bags, merchandise, grocery carry-out bags, pallet wrap and other packaging materials which may include the labels and caps and closures." (27)

RESPONSE: The Department will not adopt the definition of "recyclable plastics" suggested by the commenter. The Department is bound by statute in its regulatory approach to the definition of plastics. Recyclable plastics other than containers are a Class B recyclable material, as discussed above. The commenter's suggested definition is contrary to the statutory provisions of N.J.S.A. 13:1E-99.34b because plastic containers are the only plastic material excluded prior Departmental approval pursuant to section 34b.

These rules do not impact the incentives for manufacturers to implement plastics recycling research and development projects. The economic and technical viability and incentive structure for those projects are determined by factors beyond the scope and influence of these rules.

Processing

30. COMMENT: "Processing," as defined in N.J.A.C. 7:26A-1.3, should not include volume reduction (such as baling of plastic containers) which is done at a municipal recycling depot. (4)

RESPONSE: Volume reduction, such as baling, is considered by the Department to be a form of processing because it changes the physical characteristics of a recyclable materials to conform to end market specifications. The processing of recyclable materials at municipal recycling depots has not been exempted from the approval process established by these rules because the Recycling Act, N.J.S.A. 13:1E-99.11 et seq.,

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does not distinguish municipal recycling depots from other recycling centers which are subject to Department approval prior to operation.

31. COMMENT: The definition of "processing" found at N.J.A.C. 7:26A-1.3 should not be limited only to source separated recyclables. The definition should include the sorting and processing of commingled non-traditional materials as well (5).

RESPONSE: The definition of "processing" does not preclude the sorting and processing of commingled Class B recyclable materials. A recycling center which has been approved to receive certain source separated commingled Class B recyclable materials may sort the commingled recyclables, if necessary, and process them.

Recyclable material and recycling

32. COMMENT: The proposed definitions for "recyclable material" and "recycling" found at N.J.A.C. 7:26A-1.3 are inconsistent with P.L. 1987, c.102. Furthermore, both definitions should include the phrase "which would otherwise become solid waste." (15, 31, 5, 26)

RESPONSE: The Department agrees that the proposed definitions of "recyclable material" and "recycling" are inconsistent with P.L. 1987, c.102 because they do not indicate that recyclable materials or recycling are limited to those materials which would otherwise become solid waste. Therefore, the Department has revised these definitions such that this reference is included, thereby rendering the definitions identical to P.L. 1987, c.102. The revised definition of "recyclable material" is "those materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products." The revised definition of "recycling" is "any process by which materials which would otherwise become solid waste are collected, separated, processed and returned to the economic mainstream in the form of raw material or products."

33. COMMENT: Percentage of residual should be the distinction between "recycling" and "manufacturing" as found in N.J.A.C. 7:26A-1.3. (5)

RESPONSE: The percentage of residue generated by a recycling center versus a manufacturer is not the variable which distinguishes between the two in regard to the regulatory approach taken by the Department. The fact that a paper manufacturer and tree stump recycler both generate two percent residue from their operations, for example, is irrelevant as it pertains to these rules. Pursuant to N.J.S.A. 13:1E-99.34, certain recycling centers require regulatory oversight, that is, those handling what the Department has labeled as Class B recyclable materials. Therefore, in addition to the production capability required for classification as a manufacturer, the types of material handled will serve as the distinction between "recycling" and "manufacturing" for the purposes of this chapter, and not the percentage of residue.

34. COMMENT: The distinction between recycling and solid waste management is blurred by the proposed rules and the distinction between these two terms is necessary. (31)

RESPONSE: The Department agrees with the commenter that a distinction between recycling and solid waste management is blurred by the rules as proposed. In order to address this concern, the Department has incorporated by reference the definition of "solid waste" found at N.J.A.C. 7:26-1.6 upon adoption. This change will clearly distinguish recycling from solid waste management. The Department's rules pertaining to solid waste are significantly different than these rules pertaining to recycling. The submittal requirements for facilities which require a solid waste facility permit are much different than the submittal requirements for facilities which require a recycling center approval. For example, those facilities which require a recycling center approval are not required to submit a registration statement, engineering design approval and Environmental and Health Impact Statement, whereas facilities which require a solid waste facility permit are required to submit such information. The Department has also revised the definition of "recycling" as found in the regulations to include the phrase "which would otherwise become solid waste", thereby rendering it identical to the statutory definition of "recycling" found at N.J.S.A. 13:1E-99.11 et seq. While this addition to the definition of "recycling" further clarifies the distinction between recycling and solid waste, it is clear that recycling is an integral component of solid waste management and cannot be considered to be an unrelated field.

Recycling center

35. COMMENT: The definition of "recycling center" found at N.J.A.C. 7:26A-1.3 should include the requirement of sale or donation of recyclable finished products in order to prevent disposal in a landfill. (5)

RESPONSE: Because the definition of "recycling center" as found in N.J.S.A. 13:1E-99.12 does not reference the sale or donation of recyclable finished products, the regulatory definition does not contain this limitation. However, the Department agrees with the commenter that the marketability of the finished products is an important issue. For this reason, recycling centers which require the prior approval of the Department must demonstrate the marketability of the products which they will generate. In addition, subsequent to approval, these recycling centers must also provide the Department with a report which includes verifiable information on the amount of product marketed throughout the year. Disposal of recyclable materials in a landfill does not constitute recycling and will not be accepted by the Department as a recycling activity. Furthermore, a facility which transfers recyclable material to a landfill for disposal will not be deemed a recycling center. Therefore, the Department does have regulatory oversight of the final disposition of the recyclable materials received at these recycling centers sufficient to prevent disposal of recyclable materials as solid waste.

36. COMMENT: Under the definition of "recycling center" found in N.J.A.C. 7:26A-1.3, can these centers also receive commingled non-traditional (now Class B) recyclable materials? (13, 16)

RESPONSE: The Department has deleted the reference to commingled source separated recyclable materials in the definition of "recycling center" because it is not necessary. The reference to source separated recyclable materials in this definition encompasses both commingled and non-commingled Class A and Class B recyclable materials. Therefore, commingled Class B recyclable material may be received at recycling centers approved for such activity. The specific Class B recyclable materials which may be received at a Class B recycling center, if any, shall be determined by the information submitted to the Department as per subchapter 3, and shall be specified in the approval letter issued pursuant to N.J.A.C. 7:26A-3.5.

37. COMMENT: The provision in the definition of "recycling center" which indicates that a recycling center shall not include a manufacturer is appreciated because the storage requirements for recycling centers and manufacturers are very different. (27)

RESPONSE: The Department agrees that the operation of a recycling center and a manufacturer differ in important ways. As noted by the commenter, this is reflected in the definition of recycling center.

Residue

38. COMMENT: The definition of "residue" found at N.J.A.C. 7:26A-1.3 should be revised to recognize the authority of some districts to direct disposal of residues generated by facilities which accept out-of-county materials. (13)

RESPONSE: The amount of residue from a recycling center operating in accordance with this chapter will be de minimis and, for the purposes of disposal, considered to have been generated at the recycling center, not from the district in which the recyclables originated and shall be disposed of in accordance with waste flow rules in place for the municipality and county in which the center is located. In the event that the Department determines that the residue generated by a recycling center exceeds de minimus levels specified in the approval issued pursuant to N.J.A.C. 7:26A-3.5 or 7:26A-3.7, the Department will use that determination as an indication that the recycling center is operatings as a solid waste facility. When a county is considering an amendment of the distict solid waste management plan to include a recycling center, the generation and disposal of residue from the recycling center should be one of the issues evaluated. Counties may not redirect the disposal of such residue out-of-county unless the redirection is done pursuant to an adopted and certified county solid waste management plan.

39. COMMENT: The definition of "residue" found in N.J.A.C. 7:26A-1.3 should be tied to an allowable percentage of residue for each type of process. (5)

RESPONSE: Residue generation at recycling centers is affected by many variables, including, but not limited to, collection techniques, processing methods and quality control provisions. These variables are generated by similar recycling processes. Thus, determining the allowable percentage of residue for each type of recycling process represents a very difficult task, as well as a costly task in terms of Departmental staff time and resources. Accordingly, no percentage of allowable residue will be established for each type of recycling process. Instead, allowable percentages will be determined on a case by case basis according to information submitted to the Department by the recycling center appli-

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cant, including equipment and process information and the nature of materials received at the recycling center.

Source separation

40. COMMENT: The phrase "discrete classes of materials" found in the definition of "source separation" at N.J.A.C. 7:26A-1.3 is too vague. In addition, the definition of "source separation" found at N.J.A.C. 7:26A-1.3 is inconsistent with the definition found in P.L. 1987, c.102. In particular, the definition is problematic because it defines recyclable materials as solid waste. (5, 13, 15, 23, 31, D, F)

RESPONSE: The Department agrees that the definition of "source separation" needs clarification. The use of the phrase "discrete classes of materials" in the definition was intended to emphasize that recyclable materials must, as a class, be kept separate from solid waste. However, as indicated by the commenter, use of this phrase is potentially confusing and is inconsistent with the statutory definition. The statutory criteria for source separation provide adequate guidance concerning the requirement that recyclable material be kept separate from solid waste for the purpose of recycling. The definition has therefore been revised as follows: "Source separation" or "source separated" means the process by which recyclable materials which would otherwise become solid waste are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling."

41. COMMENT: The definition of "source separation" found at N.J.A.C. 7:26A-1.3 should be expanded to include other solid waste sources besides residential, commercial and institutional. (16, 29)

RESPONSE: The Department agrees with the commenter. The proposed definition of "source separation" has been revised upon adoption. The reference to "residential, commercial and institutional" solid waste has been deleted so that the definition now refers to all solid waste sources. The Department has made this revision to reflect the fact that recyclable materials can be source separated from sources other then residential, commercial and institutional sources, such as construction sites.

Traditional (now Class A) recyclable materials

42. COMMENT: The definition of "traditional recyclable material" found at N.J.A.C. 7:26A-1.3 should include concrete and asphalt. (14, E)

43. COMMENT: Concrete and asphalt should be removed from the definition of "non-traditional (now Class B) recyclable material" found at N.J.A.C. 7:26A-1.3. (14)

RESPONSE: The term "Class A recyclable material" is utilized as a label for those source separated recyclable materials specified in P.L. 1987, c.102 as materials which a recycling center may receive, store, process or transfer without the prior approval of the Department. These materials consist of paper, glass, metal, plastic containers and cardboard, the most commonly recycled materials. The the Department has labeled certain source separated recyclable materials other than Class A recyclable materials, such as concrete and asphalt, as Class B recyclable materials, and has developed an approval process in subchapter 3 which sets out the conditions under which they may be recycled. The Legislature intended the Department to provide regulatory oversight for facilities which receive, store, process or transfer recyclable materials other than Class A recyclable materials. Because materials such as concrete and asphalt were not specifically enumerated in the statute as exempt from the Department's approval authority, and because of New Jersey's past experience with illegal dumping and the operation of illegal solid waste facilities involving these types of materials, the Department will require the prior approval for the recycling of concrete and asphalt, except where conditional exemption for prior approval is provided in these rules. Therefore, waste concrete and asphalt will remain as Class B recyclable materials. By labelling concrete and asphalt as Class B recyclable materials, the Department is not limiting their ability to be recycled. As with Class A recyclable materials, once source separated, materials such as concrete and asphalt are no longer considered to be solid waste and may be recycled. However, because there are greater environmental concerns attendant to facilities which accept concrete, asphalt, wood waste and other source separated construction materials, such facilities must obtain approval from the Department prior to operation.

44. COMMENT: The definition of "traditional (now Class A) recyclable materials" found at N.J.A.C. 7:26A-1.3 should be expanded to include the phrase "including but not limited to discarded automobiles or other vehicles, and appliances," after the word "metal." (15)

RESPONSE: The definition of Class A recyclable materials includes source separated non-hazardous metals. Source separated non-hazardous metals from discarded automobiles or other vehicles and appliances are included as part of this category. Because the definition applies to all metals, and because it would be burdensome to list every possible item which falls under the category of source separated metals, no additional clarification of the definition will be made.

45. COMMENT: The definition of "traditional (now Class A) recyclable materials" found at N.J.A.C. 7:26A-1.3 is unclear as to what the term "container" applies to. (23, 29)

RESPONSE: The Department agrees with the commenter. The definition of Class A recyclable material has been modified by deleting the word "or" to clarify that the word "container" modifies plastics only. This modification will eliminate the confusion which the regulated community has expressed regarding whether this definition referred to metal containers, glass containers and paper containers, or simply plastic containers. This modification is consistent with the intent of N.J.S.A. 13:1E-99.11 which allows for the recycling of all metal, glass and paper without the prior approval of the Department, and which exempts only plastic containers from any prior Departmental approval.

N.J.A.C. 7:26A-1.4 Exemptions

46. COMMENT: Clarification of N.J.A.C. 7:26A-1.4(a)1 is necessary to determine if milled asphalt or other non-traditional (now Class B) recyclable materials are exempt from these rules. Specifically, is any milled asphalt or other non-traditional (now Class B) recyclable material, which upon generation meets raw material specifications or is processed to raw material specifications at the point of generation and which is further reprocessed prior to introduction into the manufacturing process, accepted as part of a recycling activity, not subject to the limitations on the amounts of unprocessed and processed recyclable materials authorized to be accepted, stored and processed. (28, 40)

RESPONSE: The Department has determined that milled asphalt which has been processed at the point of generation into a marketable recyclable product should not be regulated as a waste material. Therefore, the storage of milled asphalt at recycling centers and other facilities is not subject to Departmental storage limitations. However, owners or operators of approved recycling centers which receive milled asphalt must ensure that the storage of milled asphalt at the recycling center shall not encroach upon the storage areas which are subject to Departmental regulation. It is noted here that the exemption from the recycling center approval process for manufacturers at N.J.A.C. 7:26A-1.4(a)1 has been revised as it pertains to the provision regarding asphalt manufacturing plants. The revised provision is as follows: "... This exemption shall also apply to asphalt manufacturing plants which receive solely source separated recyclable asphalt." The Department has made this modification because asphalt chunks or slabs are incorporated into the asphalt production process in the same fashion as are asphalt millings.

Concerning the request to expand this exemption to include any material which may meet a raw material specification upon generation, or which may be processed to a raw material specification at the point of generation and which may further be reprocessed prior to introduction into the manufacturing process, it should be noted that if a material meets a raw material specification upon generation, that is, can be reused in its same form without any processing, that material is not considered to be a recyclable material, since it does not meet the definitional requirement as a material which would otherwise become solid waste, and therefore is not subject to these rules. Similarly, if the material is processed to raw material specifications at the point of generation and used at that point, subject to local planning board approval, it is exempt from Departmental approval pursuant to N.J.A.C. 7:26A-1.4(a)2.

47. COMMENT: The exemption for asphalt manufacturing plants found in N.J.A.C. 7:26A-1.4(a)1 is unclear. If reprocessing is not directly related to the recycling activity, then it should not be included in the definition. (13)

RESPONSE: The reference to reprocessing set forth in the exemption at N.J.A.C. 7:26A-1.4(a)1 was included because milled asphalt, which is processed to raw material specification at the point of generation, has a tendency to re-form or solidify when stored. As a result, reprocessing is often required before utilization. Therefore, the reference to reprocessing set forth in this exemption was required in order to indicate that reprocessing of milled asphalt is allowable under this exemption. While the reference to reprocessing was directly related to the exempted activity set forth in the proposed exemption, the point is now moot because the

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exemption for manufacturers at N.J.A.C. 7:26A-1.4(a)1 has been revised as it pertains to the provision regarding asphalt manufacturing plants. The revised provision is as follows: "... This exemption shall also apply to asphalt manufacturing plants which receive solely source separated recyclable asphalt prior to its introduction into the asphalt manufacturing process."

48. COMMENT: Why is broken asphalt not exempt from the rules while milled asphalt is exempt under N.J.A.C. 7:26A-1.4A(a)1? (19, 25, A)

RESPONSE: The Department agrees with the commenter that broken asphalt should also be exempt under N.J.A.C. 7:26A-1.4(a)1. Accordingly, the exemption at N.J.A.C. 7:26A-1.4(a)1 has been revised such that an asphalt plant which receives "solely source separated recyclable asphalt," including broken asphalt chunks and not solely milled asphalt, is exempt from approval. Therefore, there is no longer any regulatory distinction in this exemption between asphalt millings and broken asphalt chunks. The Department has made this modification because asphalt chunks or slabs are incorporated into the asphalt production process in the same fashion as are asphalt millings. This modification will provide greater flexibility to asphalt recyclers in their choice of raw material.

49. COMMENT: An asphalt manufacturing plant which receives, stores and processes asphalt scrap into sub-base material should be included as an exempt activity in these rules. (A)

RESPONSE: The exemption for manufacturers at N.J.A.C. 7:26A-1.4(a)1 has been revised to include asphalt manufacturing plants that receive solely source separated recyclable asphalt. This exemption, however, is intended for those asphalt manufacturing plants which reintroduce asphalt scrap back into the asphalt manufacturing process, not for asphalt manufacturing plants which merely produce sub-base material from the asphalt scrap received. These two types of operations are distinct in that the first represents a manufacturing process, whereas the latter operation is characteristic of a recycling center. Pursuant to N.J.S.A. 13:1E-99.34b, recycling centers which receive, store, process or transfer source separated recyclable materials other than metal, glass, paper, plastic containers, corrugated and other cardboard require the prior approval of the Department. Therefore, an asphalt manufacturing plant which receives source separated asphalt scrap for the production of sub-base material does require the prior approval of the Department, as detailed in subchapter 3 of these rules.

Reuse

50. COMMENT: The sentence found in N.J.A.C. 7:26A-1.4(a)2, involving reuse, is too vague as to whether burial or spreading an end product on the ground is a reuse. (5)

RESPONSE: The Department agrees that the proposed exemption for reuse may have been construed to allow the burial or spreading of end product on the ground as a form of reuse. Accordingly, the Department has added the requirement that materials be reused "as a product" as a condition of the exemption at N.J.A.C. 7:26A-1.4(a)2. This addition will preclude burial or indiscriminate spreading of processed material for which no generally accepted construction application is evident. Additionally, the exemption for recyclable materials that are generated, processed and reused as a product exclusively at the point of generation has been revised to specify that such reuse is conditioned upon receipt of all applicable local approvals. This latter condition presupposes the application of the New Jersey Uniform Construction Code as an applicable local approval required for the exemption. The administration of this code precludes burial or indiscriminate spreading of processed material in any site development or construction related activity.

51. COMMENT: Clarification is needed as to who will monitor a situation to determine whether all material produced on site is being reused exclusively at the point of generation as directed in N.J.A.C. 7:26A-1.4(a)2. (9)

RESPONSE: Enforcement of all requirements described in these rules will be done through a combination of local and county health and enforcement officials as well as by Department enforcement staff. Concerning the reuse requirement in N.J.A.C. 7:26A-1.4(a)2, evidence that material produced on site is not being reused exclusively at the point of generation would disqualify the site activities from the exemption and subject those activities to regulation as either a solid waste facility or recycling center, as appropriate.

Six month storage

52. COMMENT: The six month storage limitation found in N.J.A.C. 7:26A-1.4(a)2 poses problems for projects entailing the rehabilitation, repair or break up of existing roadways. Such projects would require the storage of broken asphalt, concrete or tree stumps, as well as mobile crushers for longer than six months. (19)

RESPONSE: The Department agrees that variations in the duration of construction projects, such as road repair, may necessitate the storage of asphalt, concrete, stumps and the like for greater than six months at the construction site. Therefore, the six month limitation set forth in the exemption proposed at N.J.A.C. 7:26A-1.4(a)2 has been deleted. This modification will eliminate material storage time constraints in recognition of normal and unanticipated construction delays. Nevertheless, oversight of such activities will be provided for by the requirement which has been added to N.J.A.C. 7:26A-1.4(a)2 which calls for those facilities operating pursuant to this exemption to obtain local site plan approval for the operation.

53. COMMENT: Recycling operations which handle tree branches, limbs and brush or tire retreading operations although exempted under N.J.A.C. 7:26A-1.4(a)3 and 4, respectively, should be required to notify the appropriate county and municipal agencies of their operation and provide tonnage and origin information on an annual basis to the county to document recycling. (18)

RESPONSE: The Department agrees with the commenter and has modified N.J.A.C. 7:26A-1.4(b) to require that those persons operating within the scope of an exemption are required to notify the Department, the host municipality and the host county prior to operations. Such operations must submit tonnage information to the municipalities from which the recyclable material originated as per the requirement of N.J.A.C. 7:26A-1.4(b)4. This reporting requirement is consistent with the tonnage reporting system of N.J.S.A. 13:1E-99.11 which calls for tonnage reporting by municipalities.

Tire retreaders

54. COMMENT: Who would monitor the exempted tire operations? (5)

RESPONSE: Enforcement of all requirements described in these rules will be done through a combination of local and county health and enforcement officials as well as by Department enforcement staff. If it is determined that a tire retreading operation is not operating within the confines of the exemption at N.J.A.C. 7:26A-1.4(a)4, that facility would be subject to regulation as either a solid waste facility or recycling center as set forth in N.J.A.C. 7:26A-1.4(b)3.

55. COMMENT: All recycling centers which receive tires should be regulated; the 1,000 tires/month exemption found in N.J.A.C. 7:26A-1.4(a)5 should be deleted. (18)

RESPONSE: The Department does not agree with the comment that all recycling centers which receive tires should be regulated by the approval process established by subchapter 3 of these rules. The Department believes that the conditional and limited exemptions for certain tire receipt and storage operations are an appropriate means by which to properly regulate such operations. The Department proposed exemptions from subchapter 3 review and approval for tire remolders and retreaders. The Department conditioned this exemption upon suitable processing equipment on-site and time limitations on storage. The Department also proposed an exemption for receipt of tires by a recycling center, provided that on-site storage not exceed six months, the total number of tires received per month is limited, tires are stored properly, mosquito colony formation is prohibited, and fire control plans are filed with local fire officials.

However, based upon this and other comments and data made available to the Department, the Department has modified the technical limitations placed upon exempt tire storage and tire retreading or remolding operations, as discussed below.

The limitation of "1,000" scrap tires per month proposed in 7:26A-1.4(a)5 has been deleted and replaced with "5,000" scrap tires per month. The amount of scrap tires that a person or recycling center may receive per month as per N.J.A.C. 7:26A-1.4(a)5 has been increased from 1,000 to 5,000 tires per month because there is no greater environmental risk or health or safety concern associated with the storage of 5,000 scrap tires per month than there is with the storage of 1,000 scrap tires per month because the conditions of this exemption act as environmental safeguards. For example, scrap tires stored pursuant to this exemption shall not be processed at the exempt storage site, thereby eliminating noise pollution concerns and air quality concerns. In addition, scrap tires stored pursuant to this exemption must be stored in roll-off containers or trailers dedicated to scrap tire storage. This ensures that scrap tires will not be indiscriminately dumped on the site by the person operating pursuant to the exemption.

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Scrap tire storage must also be in accordance with N.J.A.C. 7:26A-3.8(b) and (c) which address prevention of mosquito colony formation at such sites and fire control measures for such site. Lastly, scrap tires stored pursuant to this exemption must be transferred to an end-market or to approved recycling centers, or to tire facilities exempted by these rules. This ensures that scrap tires stored pursuant to this exemption are managed in an environmentally sound manner. The proposed limit may have resulted in the regulation of each phase in the tire collection and processing chain which was not the intent of the proposal. For example, data provided to the Department indicates that municipal and county tire collection sites typically store more than 1,000 tires per month. Pursuant to the proposed limit, such operations would be required to obtain a general approval. The tires collected by municipal and county tire collection programs are typically transferred to tire recycling centers which process the scrap tires into a marketable product. Such tire recycling centers are also required to obtain a general approval. This regulation of each phase in the tire collection and processing chain could ultimately discourage tire recycling efforts in New Jersey. Thus, by increasing the limit of this exemption to 5,000 tires per month, the Department has reduced the universe of tire collection sites which would be required to obtain general approval. For example, such a modification would exempt most municipal and county tire collection sites from regulation as a recycling center, as per N.J.A.C. 7:26A-3.2(a). This modification will, therefore, make tire collection programs more attractive to municipal and county recycling officials, among others.

56. COMMENT: The storage timeframe on proposed N.J.A.C. 7:26A-1.4(a)7 indicates that temporary storage of non-traditional (now Class B) recyclable materials shall not exceed one month. This storage period is too short. It would limit and inhibit the start-up of recycling activity. (12, 4)

RESPONSE: The Department agrees that the one month storage timeframe of proposed N.J.A.C. 7:26A-1.4(a)7 (recodified as N.J.A.C. 7:26A-1.4(a)8) is too limiting. The storage exemption was originally proposed to assist recycling centers in the collection of materials at remote locations for accumulation in amounts sufficient to render recycling of these materials economically efficient. Based upon this and other comments the Department has determined that a one month storage period may not be long enough to allow for accumulation of a sufficient amount of material for transfer to the recycling center. Therefore, the Department has increased the storage timeframe to two months. In order to counter any increased environmental or health concerns associated with this increased storage time, the Department has further modified N.J.A.C. 7:26A-1.4(a)8 to subject the temporary storage of recyclable materials to applicable county and municipal laws and regulations concerning storage of these materials. With this additional control, the Department has determined that storage of these materials for a two month period does not pose any greater environmental threat or a health or safety concern than does the storage of these materials for a one month period. Furthermore, the Class B recyclable materials which are eligible for this exemption are inert and nonputrescible. The environmental or health concerns associated with storage of these materials for a two month period are therefore no greater than for storage for a one month period.

Rolloffs/containers

57. COMMENT: The requirement to store all materials in containers, as described in the exemption at N.J.A.C. 7:26A-1.4(a)7, would be burdensome..Outside storage on the ground should be acceptable. (20)

RESPONSE: The Department agrees in part with the commenter, and has modified N.J.A.C. 7:26A-1.4(a)7 upon adoption as discussed below.

The rolloff container storage requirement proposed was designed to control potential environmental and nuisance impacts associated with unlimited or uncontrolled storage. However, based upon this and other comments, the Department finds that the objectives of the proposed provision can best be met by establishing a general performance standard, subject to municipal and county oversight. The performance standard requires that materials be stored in a manner which prevents runoff, leakage or seepage from the storage areas into or onto the soil around the storage area, and be conducted in accordance with all applicable county and municipal laws and regulations.

These requirements will adequately control temporary storage. On-site temporary storage on the ground, if properly conducted consistent with the performance standard, could meet the conditions of the exemption.

58. COMMENT: How will container storage of non-traditional (now Class B) recyclable materials, as described in N.J.A.C. 7:26A-1.4(a)7i, be addressed? In addition, who will monitor the requirement for storage of tree stumps in containers? (5)

RESPONSE: The requirement at N.J.A.C. 7:26A-1.4(a)7i (adopted as 1.4(a)8i) regarding storage of Class B recyclable material in containers dedicated exclusively for this purpose has been eliminated as discussed in the previous comment. The revised provision requires that storage be consistent with the applicable standards of county or municipal law or regulation. This revision will provide recyclers with greater flexibility in storage options while maintaining adequate control over storage by local authorities. Furthermore, in regard to monitoring, enforcement of all requirements described in these rules will be done through municipal and county health and enforcement officials as well as by DEP enforcement staff.

59. COMMENT: Clarification of the wording found in N.J.A.C. 7:26A-1.4(a)7ii is necessary to clarify the issue of whether a manufacturer that receives raw material can further process that material prior to utilizing it in the recycling operation. (7)

RESPONSE: The Department disagrees with the commenter that the exemption at N.J.A.C. 7:26A-1.4(a)7ii (codified as N.J.A.C. 7:26A-1.4(a)8ii upon adoption) needs additional clarification. This exemption does not pertain to manufacturers, as defined in these rules, and therefore imposes no limit on processing of recyclable materials at a manufacturing facility.

60 .COMMENT: Does N.J.A.C. 7:26A-1.4(a)7ii allow for the consolidation of small volumes of non-traditional (now Class B) recyclable materials into larger volumes for cost effective transport? This should be allowed. (12)

RESPONSE: The exemption for the temporary storage of Class B recyclable material proposed at N.J.A.C. 7:26A-1.4(a)7 (recodified as N.J.A.C. 7:26A-1.4(a)8) does not prohibit the consolidation of small volumes of Class B recyclable materials into larger volumes prior to transfer to a recycling center. While N.J.A.C. 7:26A-1.4(a)8ii does prohibit the processing of Class B recyclable material stored pursuat to this exemption, which includes the further separation of materials, the consolidation of recyclable materials is not considered to be a type of processing (see the defintion of "processing" at N.J.A.C. 7:26A-1.3). Therefore, consolidation of Class B recyclable materials is allowed as per this exemption.

61. COMMENT: N.J.A.C. 7:26A-1.4(a)7iii indicates that non-traditional recyclable materials stored pursuant to this subchapter must be transferred to a recycling center approved by the Department. This provision should address the potential for out-of-State transport of non-traditional (now Class B) recyclable materials from sites operating pursuant to this exemption. (12)

RESPONSE: The Department agrees that N.J.A.C. 7:26A-1.4(a)7iii (recodified as 7:26A-1.4(a)8iii) should be modified to permit the transfer of Class B recyclable materials from temporary storage to out-of-State facilities for recycling. The intent of N.J.A.C. 7:26A-1.4(a)8iii is to ensure that accumulated recyclable materials are transferred to a recycling facility and not to a disposal facility. However, by using the phrase "to a recycling center approved by this Department," the Department inadvertently prohibited the transfer of recyclable materials to recycling centers which are not approved by the Department (for example, out-of-State recycling facilities). To correct this oversight, the Department is deleting the phrase "by this Department" on adoption. Accordingly, source separated recyclable materials may be transferred from temporary storage pursuant to N.J.A.C. 7:26A-1.4(a)8 to any recycling center, in-State or out-of-State, approved to receive, store, process or transfer the material. The approval process established by this chapter will ensure that materials transferred to an in-State recycling center will indeed be recycled, while the record-keeping requirement in subparagraph iv of N.J.A.C. 7:26A-1.4(a)8 will provide the Department with an enforcement mechanism to ensure that materials transferred from temporary storage are recycled rather than disposed of as solid waste.

62. COMMENT: N.J.A.C. 7:26A-1.4(b)2 is too broadly defined. The provision may be interpreted as requiring mitigation beyond current regulations governing the noted environmental conditions. (29)

RESPONSE: The Department agrees that the phrase "measures shall be taken" in N.J.A.C. 7:26A-1.4(b)2 could be interpreted as requiring mitigation beyond current regulations governing the noted environmental conditions. The intent of this provision is not to require specific action beyond the scope of current regulations but to ensure that exempted activities are conducted in a manner which does not degrade the environment as noted in the provision. The provision has been reworded on adopton to clarify this intent. Furthermore, the phrase "consistent with

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applicable local, county, State and Federal law" has been added to the end of the provision to clarify that measures beyond the scope of current regulations are not required.

63. COMMENT: The language of the exemptions in the proposed rule sets forth criteria for recordkeeping, reporting and storage which, if fact, becomes a separate series of rules. (20)

RESPONSE: The Department agrees that the conditions and limitations for the exemptions at N.J.A.C. 7:26A-1.4 are substantial. However, they are necessary to satisfy N.J.S.A. 13:1E-99.16e, which requires an annual accounting of recycling activities originating in each municipality. Furthermore, the conditions on the storage of non-traditional recyclable materials is an important control over these exempt activities which ensures that these operations will be conducted in a manner which protects public health and the environment.

Reporting

64. COMMENT: N.J.A.C. 7:26A-1.4(b)4 should be revised to require that annual tonnage reports be submitted to all municipalities, rather than to the Department, because the provision as proposed is inconsistent with P.L. 1987, c.102. (2)

RESPONSE: The Department disagrees with the commenter's interpretation of information access and reporting requirements of the Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11b et seq. The reporting requirements of N.J.A.C. 7:26A-1.4(b)4 are applicable to facilities operating pursuant to an exemption. They are linked by reference to the tonnage grant reporting requirements of N.J.A.C. 7:26A-4.4(c). The information reporting requirements of the two provisions are designed to achieve two purposes. One purpose is to implement the goals of the tonnage grant program. Another is to ensure effective facility oversight and program monitoring/evaluation needs.

N.J.A.C. 7:26A-1.4(b)4 has two statutory bases. The basis for the reporting requirements to municipalities from which the recyclable material originated is N.J.S.A. 13:1E-96b(1). This requirement is designed to document recycling tonnage which is necessary to implement the tonnage grant program.

The statutory basis for the regulatory requirements of N.J.A.C. 7:26A-1.4(b)4 that tonnage reports be submitted to the Department is N.J.S.A. 13:1E-99.34(b). This is the statutory basis for Department review and approval of facilities that accept certain recyclable materials. The purpose of the regulatory requirement is to ensure effective oversight of facilities operating within the scope of an exemption and to establish a comprehensive recycling program database. The requirement serves as an important compliance monitoring and enforcement function by providing documentation of otherwise unregulated activities. This information allows the Department to determine whether, in fact, a facility is operating within the scope of an exemption, thereby allowing the Department to fulfill its approval mandate under N.J.S.A. 13:1E-99.34(b).

For these reasons, the Department disagrees with the commenter's interpretation. To clarify these requirements, the Department has modified N.J.A.C. 7:26A-1.4(b)4 on adoption to specify that the municipality in which the recyclable materials originated shall be the recipient of tonnage reports.

General comment on exemption section

65. COMMENT: The exemptions for certain recycling activities found in N.J.A.C. 7:26A-1.4 are vague. Are exempt facilities required to comply with county or local approval processes required for traditional recycling centers? (13)

RESPONSE: The general intent of N.J.A.C. 7:26A-1.4 is to list and identify those recycling activities which are exempt from the review and approval requirements of subchapter 3 to obtain Departmental approval prior to the receipt of certain materials for recycling. The exemptions set forth in this rule do not prohibit or restrict county or municipal jurisdictions from addressing these recycling activities. Therefore, exempt facilities must comply with all applicable county or local approval processes which may exist. To clarify this point, the Department has added the following provision at N.J.A.C. 7:26A-1.4(b)6 upon adoption: "Exemption from the requirement of a general or limited approval pursuant to (a) above shall not constitute an exemption from applicable county or local laws or regulations."

66. COMMENT: N.J.A.C. 7:26A-1.4 should expresssly exempt automobile and scrap metal recycling entirely from rules. (15)

RESPONSE: No exemption in N.J.A.C. 7:26A-1.4 for scrap metal processing is necessary. Pursuant to this rule, source separated auto and scrap metal is "metal" which is a material excluded from Departmental approval pursuant to N.J.S.A. 13:1E-99.34b. Metal is a Class A material and facilities which exclusively accept source separated metal for recycling need not obtain Departmental approval under N.J.A.C. 7:26A-3. However, such facilities are subject to the performance standards of N.J.A.C. 7:26A-4 as recycling centers for Class A materials.

67. COMMENT: The statutory exemption for recyclers of "traditional (now Class A) recyclable materials" at N.J.S.A. 13:1E-99.34(a) and (b) should be codified by adding a new subsection at proposed N.J.A.C. 7:26A-1.4 so as to clarify at the outset that recyclers of metals, glass, paper, plastic containers, corrugated and other cardboard are not subject to the approval requirements of proposed N.J.A.C. 7:26A-3 (15).

RESPONSE: The addition of an exemption at N.J.A.C. 7:26A-1.4 for Class A recyclable materials is not necessary. The distinction between Class A and Class B recyclable materials is clearly stated in these regulations. The approval requirements of subchapter 3 are clearly limited to recycling centers which receive, store, process or transfer materials other than metal, paper, glass, plastic containers or cardboard. The rules also explicitly indicate that the exemptions of N.J.A.C. 7:26A-1.4 are exemptions from having to obtain a general or limited approval, which is clearly applicable only to recycling centers for Class B recyclable materials. Lastly, these rules clearly indicate that the operational standards of subchapter 4 are the provisions of this chapter which are applicable to Class A recyclable materials, as well as to Class B recyclable materials.

68. COMMENT: The following exemption should be added to N.J.A.C. 7:26A-1.4: "Any intracompany, intrastate transportation, consolidation or processing of source separated non-traditional (now Class B) recyclable materials conducted to facilitate either subsequent transport to an in-State recycling center holding a general or limited approval pursuant to this subchapter or out-of-State transport in accordance with N.J.A.C. 7:26A-4.2." (40)

RESPONSE: The addition of the commenter's suggested exemption is not necessary because the existing exemption at N.J.A.C. 7:26A-1.4(a)8 already permits the temorary storage, including consolidation, of a Class B recyclable material prior to transferring such material to an in-State or out-of-State recycling center.

69. COMMENT: It is extremely important, in order to maximize the recycling of construction and demolition waste, to allow an exemption for recycling centers to operate for the processing of non-source separated commingled materials, as long as it can be demonstrated to the satisfaction of the Department that they are recycling at least 60 percent of the material brought to their facility for processing and that the residue goes to an approved disposal facility. (2, H)

RESPONSE: The Department agrees that maximizing the recycling of construction and demolition waste is a desirable goal. However, the Recycling Act limits recycling centers to the receipt, storage, processing or transfer of source separated recyclable materials. "Source separation recyclable materials" is defined by the Act as materials which are kept apart from solid waste and a "recycling center" is defined as a facility which receives solely "source separated" recyclable materials (see N.J.S.A. 13:1E-99.12). Accordingly, a facility which does not receive solely source separated recyclable material is not a recycling center pursuant to the Act. Therefore, the Department cannot create an exemption from the recycling center rules as suggested by the commenter. Facilities which receive solid waste mixed with recyclable materials, as in the commenter's example are not receiving solely source separated recyclable materials and are therefore not "recycling centers" for the purposes of the Act and this chapter. Such facilities are designated "materials recovery facilities" and are eligible for a solid waste facility permit pursuant to N.J.A.C. 7:26. The Department agrees with the commenter that it is extremely important to maximize the recycling of construction and demolition waste and believes this can be accomplished by utilizing a combination of materials recovery facilities and recycling centers.

Subchapter 2. Fees

70.COMMENT: The Department should give careful consideration to the proposed fee structure, with a goal of keeping it as low as possible. (D)

RESPONSE: The Department agrees with the theme of the comment and has re-evaluated the recycling center fee system. Since the proposal of these rules on October 1, 1990, the Governor issued Reorganization Plan No. 002-1991 on April 25, 1991. The plan consolidates and integrates solid waste economic, regulatory and enforcement functions formerly administered by the Board of Public Utilities with the Division

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of Solid Waste Management in the Department of Environmental Protection, creating the Department of Environmental Protection and Energy (Department). The Reorganization Plan as well as improvements in the Department's structure and operations have resulted in increased efficiencies in the merged Division of Solid Waste Management in the Department. These changes result in lower fees than those proposed.

The proposed fees were developed based upon a workload analysis for implementation of the rules. The workload analysis was translated into a program budget by use of staff, indirect and operating cost data. The Department reassessment of the fee structure results in three changes to the fee structure, all of which reduce the economic impact of the fees. First, improvement in Departmental efficiency of 28 percent as discussed above reduces the overall fee structure by approximately 28 percent across the board. Second, a differentiated fee strucure is established which reflects the lower cost of processing an application for limited approval relative to an application for general approval. Finally, the minimum fee structure in the proposal which provided for a pro-rata payment of the annual fee in the year in which approval was granted, has been eliminated.

Accordingly, the Department has reduced the application fee for general approvals from $3,530 to $2,500 and the annual fee from prorated equivalent of $8,820 to $6,400. The application fee for limited approval is reduced from $3,530 to $2,000 and the annual fee from $8,820 per year to $500.00 per month.

71. COMMENT: The Department should reconsider requiring small recycling businesses to pay exorbitant fees. The fees should be more fairly proportional to the size of the recycling center, the amount of effort required to review and process the applications, and the type of material being recycled. In addition, the Department should seek funding through general appropriations. (28, 37)

RESPONSE: The Department is sensitive to the impact of the proposed fees on small businesses and the regulated community as a whole. A management objective of all Department permit and fee based programs is to increase review productivity. Increased productivity will ensure that fees are as low as possible and that adequate cost containment measures are implemented. This productivity performance and increased efficiencies will be monitored by the annual reporting process as set forth in N.J.A.C. 7:26A-2.2.

Accordingly, the Department has reduced the fees as discussed in Comment No. 70 above. In addition, the Department has modified the fee structure between general and limited approvals. This modification clarifies the intent of the proposal and more appropriately reflects staff review in line with the new efficiencies developed as a result of the consolidation of the Board of Public Utilities and the Department of Environmental Protection as well as other operating and organizational improvements. This modification more clearly reflects the staff time that will be required to perform the associated regulatory functions.

The basis for calculating fees for small businesses is not specifically addressed in the statutory provision which authorizes the Department to collect fees. Fees must, by statute, be based upon the duration and complexity of regulatory services, N.J.S.A. 13:1E-18. Fee levels have not been established by the Department based upon the size of the business that is regulated because these criteria are not well correlated with or technically related to the duration and complexity of regulatory services provided by the Department. Criteria that are not linked to duration and complexity are outside the scope of the Department's statutory fee authority. Accordingly, inclusion of such criteria in the establishment of the fee schedule would be *ultra vires,* or otherwise not in accordance with law.

The Department recognizes that a greater number of staff hours may be expended by the Department in regulating a large recycling center which accepts numerous recyclable materials than will be expended in regulating a small recycling center which accepts only one or two recyclable materials. However, this may not always be the case. The Department has experience in actually expending more overall staff time in activities related to the fee with smaller sized facilities. Averaging of review functions of similar type is an equitable approach to the development of fees. The level of effort required by the Department to apportion with precision the true costs of review to each recycling center would create administrative burdens whose costs would be disproportionate to the results and benefits achieved. Therefore, the averaging method is a reasonably accurate, technically justifiable and fair methodology by which to calculate and apportion overall program costs to the regulated community.

Concerning the general appropriation mechanism to fund the recycling center approval program as opposed to the fee mechanism, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (Act), as amended by the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., and the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, authorizes the Department to collect fees for services rendered. The fees must be based upon the complexity and duration of services provided by the Department. It is the public policy of the Executive and Legislative branches of government that it is fairer to fund the costs of the Department's regulatory services through fees paid by the persons who cause that cost to be incurred, rather than through general appropriations paid by all New Jersey taxpayers.

Through the appropriations process and amendments to the Department's statutory fee authority, the Legislature and the Office of Management and Budget have determined that the costs of recycling center review services should not be paid from general appropriations when other funding sources, such as fees, are available. Consistent with this mandate, it is the policy of the Department to collect fees from the regulated community in order to recover costs incurred by the Department to operate regulatory programs. Fees are calculated based upon multiplying the salaried Department employee cost per hour (including fringe benefits, indirect costs, operating expenses and legal support service costs) by the time required to perform an activity. As such, fee levels are primarily a function of review time. Review time is determined by technical complexity, regulatory requirements and other technical factors that influence the complexity of regulatory review.

Given the reduction in the fees to reflect increased efficiencies, the Department finds no basis to determine that the fees are either exorbitant or that they create disproportionate or unreasonable impacts on the regulated community. The modifications to the fees discussed above reflect reasonable costs and will, in fact, supply more assistance to the small business element of the regulated community.

72. COMMENT: Fees make it even more difficult for legitimate recycling facilities to economically compete with illegal disposal methods. Excessively high fees will discourage recyclers from obtaining formal approval. (37, D, C, I)

RESPONSE: As discussed above, the consolidation of the Board of Public Utilities and the Department of Environmental Protection will allow for an increased efficiency in supplying technical assistance to legitimate recycling facilities. The fees required to obtain recycling center approval will be used, in part, to support a Statewide recycling industry program. Every legitimate participant in the State's recycling industry shares an economic interest in ensuring that substandard operators are eliminated from the industry. The effects of uniform technical performance standards of these rules will be to legitimize and thus enhance the State's recycling industry as a whole and to improve the competitive stature of the individual legitimate recycling operator.

Concerning the payment of fees by the individual operator, as with any governmental revenue collection program, there will be economic incentives for non-compliance with the fee provisions of the rules. Additionally, the non-complying firm could reduce capital and operating expenditures, and thus gain competitive advantage through non-compliance with the substantive operational performance standards of the rules. However, these incentives will be greatly exceeded by the economic and legal liabilities of detection and subsequent enforcement response, which could include fines of $50,000 per day per event, confiscation of equipment and capital assets and/or revocation of operating authority. The benefits of non-compliance are greatly exceeded by the potential costs of enforcement liability. The disparity between non-compliance costs and benefits to the individual firm will promote compliance and thus improve industry performance.

Therefore, the Department believes that legitimate recycling operators will gain, not lose, competitive advantage or market share to illegal operations as a result of the recycling center fee. Current illegal or unsound operations will be discouraged by the technical review and performance standards established by the fee based program. Considering compliance/enforcement and technical review effects, the legitimate operator's competitive status vis-á-vis the illegal operator will improve.

The Department recognizes that anything that increases the costs of market entry and participation will tend to a certain degree to inhibit entrants to that market. Regulatory fees may be categorized as an increase in cost of market entry and participation. However, the Department does not expect the impact on recycling businesses to be significant.

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73. COMMENT: The fee schedule will discourage the expansion of recycling, especially for small recycling operations. (45, I)

RESPONSE: The Department does not believe that the fees will discourage the expansion of recycling. Firstly, there is no application fee that is associated with the modification of an existing recycling facility approved in accordance with N.J.A.C. 7:26A. Secondly, the annual fee will in part greatly assist in the expansion of markets for approved facilities due to the ongoing market development and enforcement activities of the Department.

74. COMMENT: The permit fee should be reduced to cover the cost of registration only because $8,000 creates an undue hardship. (14, C)

RESPONSE: As discussed in previous responses, the Department in order to appropriately reflect efficiencies in this fee structure, has reduced the fees and has established differential application and annual fees for facilities depending on their status on general and limited approval.

The application fee will cover the costs of county and State plan consistency, site visits in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5. As discussed above, the application fees have been reduced due to the increased efficiencies as a result of the Department's reorganizations. The general and limited fees for application have been modified to reflect these increased efficiencies to $2,500 and $2,000 respectively. This modification has been made to clarify the original intent of the proposal.

While the Department has modified the fees and reduced the fees to reflect increased efficiencies, the Department cannot reduce the fee to reflect only the cost of registration, because the recycling center approval process includes a myriad of regulatory tasks in addition to registration, all of which are funded by the fee.

The Department has determined that an appropriate regulatory review of a recycling center must encompass more than a simple registration process. The substantive review criteria are presented in subchapter 3 of the rules. The fee level reflects the work load analysis required to conduct the technical review and prior approval process mandated by law.

For instance, in order to conduct prior approval of a recycling center to receive, store or process materials that furthers the recycling goals of the Act and is protective of the public health and environment, the Department must visit and understand the nature of the site, the land uses proximate to the site, the technologies used on site, the materials to be received, stored or processed on site, verification of end markets for recyclable material, and other important technical and regulatory compliance information. This information is required by the Department in order to implement the Act and address recycling goals and environmental protection objectives.

75. COMMENT: One hundred and fifty staff hours spent reviewing and monitoring each of 50 companies is far more than necessary to prevent the operation of illegal solid waste facilities. (17)

RESPONSE: As discussed above, the fees have been modified to reflect increased efficiencies as a result of the Department reorganization. The reduction in fees is in part a result of the consolidation of enforcement activities. This contributed to a 28 percent reduction in overall staff hours and fees. Prevention of the operation of illegal solid waste facilities is one of several objectives of the rules. The review process provided for by the rules will not be strictly limited to the "company" or corporate level. Corporate information disclosure is one component of the larger review process. The Department will review and evaluate the recycling center site, facility site plan, plot plan and USGS maps, processing technology, secondary market data and other strictly "non-company" or non-corporate information. The Department will generate additional data to evaluate these workload estimates in approving recycling centers. If that data show that actual staff time required to perform a service deviates from the estimate, the Department will propose adjusted fees for that service, in accordance with the modified methodology and procedure adopted at N.J.A.C. 7:26A-2.2. Based upon the nature, scope and detail of the aforementioned review functions, 150 hours is a reasonable average amount of time per recycling center.

76. COMMENT: The fees are excessive. Rosetto Recycling Center, Inc. would have to pay over $156,000 in permit fees, which would put Rosetto out of business. (22, D)

RESPONSE: As discussed above, the recycling center fees are not $156,000. It is the Department's opinion that the commenter has confused the solid waste facility permit application fees with the recycling center approval fees. The solid waste fees, which were proposed on the same day as the recycling rules, are not applicable to recycling centers regulated under N.J.A.C. 7:26A.

77. COMMENT: Subchapter 2 is described in the Summary as "proposed fees for the approval of recycling centers which receive, store, process or transfer non-traditional (now Class B) recyclable materials . . ." There is a concern that this is not clear in the actual body of the rules; therefore, this language should be clarified. (24).

RESPONSE: The Department agrees with the commenter that the language in both the header of Subchapter 2 and in N.J.A.C. 7:26A-2.1(a)1 is unclear with respect to limiting Departmental approval (and associated fees) to recycling centers that receive store process or transfer Class B recyclable material. The Department has therefore modified the subchapter title and N.J.A.C. 7:26A-2.1 throughout, with the exception of mobile recycling centers, by inserting "for Class B recyclable material" after "recycling center" in order to clearly indicate that only facilities that accept Class B materials are subject to approval by the Department and therefore pay the attendant fees.

78. COMMENT: Requiring approved facilities to resubmit information and pay the minimum fee is an unnecessary burden. (26)

RESPONSE: In accordance with N.J.A.C. 7:26A-3.15, recycling centers that received written approval from the Department for the receipt, storage, processing or transfer of Class B recyclable materials prior to the effective date of the rules (November 18, 1991) must submit information and comply with the substantive requirements of the rules. Such facilities remain authorized to operate pending Departmental review and approval pursuant to N.J.A.C. 7:26A-3. The application review fee as adopted is required to be submitted with the information.

Previously approved facilities must re-submit information and undergo technical review because the scope of the rules exceed the prior approval process. Changes in regulatory requirements, technologies, markets and/or site specific, recycling center operations warrant a re-review by the Department in order to ensure implementation of a uniform and fair regulatory approval process. This regulatory approval process is necessary to protect human health and environment and promote the objectives of the Act, as discussed in other comments. Regulatory review, including fees, are not an unnecessary burden. Fees represent each approved facility's contribution to supporting its associated regulatory structure, including important data management and market development functions. These regulatory services will benefit all approved recycling centers. Additionally, fees support the technical services necessary to review the information submission and make an approval determination. As discussed above, the reorganization of the Department has resulted in increased efficiencies in the overall program and reduced fees. Therefore, the Department concludes that requiring previously approved recycling centers to resubmit and comply with the substantive requirements of the rules are not unnecessary or a burden on the recycling center owner/operator.

79. COMMENT: The rules should include an incentive provision that allows fees for certain activities to be reduced to a half or a quarter until recycling/reprocessing has diverted a certain proportion like half or two thirds of this material from the landfill. (30)

RESPONSE: As noted in prior responses, Department fees must, by statute, be based upon the duration and complexity of review and the cost of providing services. Therefore, the Department lacks the statutory authority to promulgate a fee schedule which is based upon the incentive structure recommended by the commenter.

Exemption from fees

80. COMMENT: Exemptions should be provided for municipal or county owned, operated or funded facilities and for volunteer operated facilities. (2, 13, H)

RESPONSE: The Department lacks the statutory authority to exempt a facility from these rules based upon the identity of its owner, operator, or source of funding, as suggested by the commenter. In accordance with the statutory mandate of the mandatory Source Separation and Recycling Act, the Department has provided in N.J.A.C. 7:26A-1.4 for exemptions based only upon the nature of the facility's activities, the materials managed, and the associated potential environmental impacts.

81. COMMENT: The Ocean County tire recycling program, which operates in conjunction with the Department's Division of Fish, Game and Wildlife, converts used tires into artificial reef units. This program should not be subject to the fee schedule, operating requirements, or approval requirements of these regulations. Doing so could jeopardize

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the future operation of this project. The tire reef programs should be exempted under N.J.A.C. 7:26A-1.4. (32)

RESPONSE: The Department agrees that artificial tire reef projects that are approved by the Department should not be subject to the approval, operating and fee requirements of these rules. Review of these projects as recycling centers pursuant to these rules would duplicate other review functions of the Department. Potential environmental impacts and tire management issues associated with artificial tire reef projects are more appropriately managed under the Department's artificial reef project rather than under the recycling program.

It was not the specific intent of the Department to regulate artificial tire reefs. However, artificial tire reef projects are subject to the requirements of these rules, as adopted. In order to remedy this situation, the Department will propose an exemption from the requirements of these rules for artificial tire reef projects in a December 1991, issue of the New Jersey Register.

82. COMMENT: The costs of the fees would have to be absorbed through tipping fees which are, in turn, passed through to the taxpayers who are already overburdened by regressive and rising property taxes. Any increases above the 1991 CAP would translate into reductions in services in other areas. (44, 43, 26, 48, F)

RESPONSE: The Department recognizes that persons paying these fees may be able to pass fee costs through to their customers or ratepayers by an increase in their rates or prices to reflect the increased fees. In other instances where a public entity pays the fee, cost increases will be passed along to taxpayers. In both cases, those individuals paying the costs (users) are benefitting from the regulatory services rendered by the Department because regulatory approval is required as a legal condition of operation. The Legislature has adopted a user fee principle and the Department has implemented this approach through promulgation of this rule.

The Department recognizes that cap law restrictions make it more difficult for municipalities to budget for increases in recycling costs. The Department also understands that reductions in Federal aid exaggerate the budget difficulties which municipalities face. However, the Department expects that any increase in recycling costs incurred by municipalities as a result of these rules will be offset by a decrease in municipal solid waste disposal costs, as municipalities increase the percentage of solid waste they recycle in accordance with the recommendations of the Governor's Emergency Solid Waste Task Force. As discussed above, the Department has reassessed its fee proposal and has reduced it substantially, thereby reducing their impact on taxpayers.

Payment of fees

83. COMMENT: Small companies will find it a financial hardship to pay the not insignificant annual permit fee in a single lump sum. Several smaller payments during the year, perhaps on a quarterly basis, will minimize the impact. (9)

RESPONSE: The Department recognizes that payment of the annual fee in one lump sum may be burdensome to small recycling centers. However, the Department will not modify the rule to allow for installment payments because the cash flow benefits to the applicant would be exceeded by the administrative costs to the Department of implementing an installment payment program. These additional administrative costs would eventually have to be passed on to regulated entities through the fees, thus increasing the burden on small businesses. The Department determined that requiring a lump sum payment will pose less of a burden on the small business community than would the creation, implementation and monitoring of an installment program.

Calculation of fees

84. COMMENT: It appears from the analysis at 22 N.J.R. 3090-3092 that the total projected cost of this regulatory program, including Office of Recycling review of application submittals and Division of Law review of sufficiency of application submittals and review of letters of approval or denial, will be $450,000. It is therefore unclear why the Department will require an additional 40 percent of the total for preapproval activities, which, presumably, are those activities relating to reviewing applications and which costed out in the $450,000 total. It appears that the Department intends to raise $630,100 to cover a program it expects to cost $450,000. (35)

RESPONSE: The Department does not agree with the commenter's estimate of fee revenues. The annual fee for the operation of a recycling center is the average cost of implementing the total Statewide recycling center approval program.The average was based upon an estimate that 50 recycling centers would seek approval in the program year and require a total program operating cost of approximately $450,000, as described in more detail in the proposal. As discussed in response to Comment No. 70, the $450,000 total program operating cost estimated has been reduced to reflect efficiencies realized by the Department. These total program operating costs include regulatory services that exceed the scope of a specific facility, including administrative, data management, planning and enforcement service. The fees are designed to recover the cost of the service and will not provide an over recovery.

In order to validate the estimate of total program operating costs and the projection of the number of recycling centers seeking approval and to adjust the fees accordingly, the Department has modified the annual adjustment formula of N.J.A.C. 7:26A-2.2 to provide for accountability and cost containment measures as discussed below.

N.J.A.C. 7:26A-2.2 Out-of-State transport fees

85. COMMENT: The requirement for an approval fee for the transport of recyclables out-of-State is unwarranted and would discourage recycling. This appears unnecessary and possibly is an interference with interstate commerce. (2, 5, 13, 20, 24, 26, B)

RESPONSE: The out-of-State approval process initially proposed has been deleted from the adopted rules. Refer to the response to Comments Nos. 192-212 for a discussion of the Department's rationale for deleting this approval process. Accordingly, no fee will be required for this service, as it is no longer a part of the regulation.

N.J.A.C. 7:26A-2.3 Adjustment of fees

86. COMMENT: Annual fees for the operation of a recycling operation should be capped in the regulation or at least tied to the Consumer Price Index. If some companies drop out of the recycling business, the remaining firms should not be penalized with higher fees. (10)

RESPONSE: The Department appreciates the need to adjust the fees as conditions change. Accordingly, annual fees will be adjusted in accordance with modifications to the formula adopted at N.J.A.C. 7:26A-2.2. As discussed in prior responses, the Department will annually review the costs of providing regulatory services and adjust the fees to reflect the actual costs of the recycling center approval program.

Legislative requirements, as discussed earlier, mandate that fee levels be based upon the duration and complexity of regulatory services provided by the Department. The Consumer Price Index (CPI) is a measure of relative price changes of a defined basket of consumer goods. The Department rejected the CPI as an appropriate index because it is not directly linked to the cost variables that define duration and complexity or regulatory services provided by the Department. As noted in prior responses, an individual facility's annual fee will be determined by the average costs of administering the recycling center program.

87. COMMENT: The adjustment of fees should have an annual "not to exceed" so that the recycling industry can budget from year to year. (12)

RESPONSE: The Department appreciates the need for the recycling industry to have some reasonable ability to project costs for budgetary purposes. However, as with most elements of the industry's cost schedule, fee costs are not able to be forecasted with precision.

The Department will adjust the fees annually based upon changes in cost of services reflected by the duration and complexity of regulatory services required to implement the recycling center approval program and to reflect increase in Departmental efficiencies. The Department will strive to improve productivity and keep fees as low as possible. Any adjustments will not contain a "not to exceed" cap because, by law, fees must be based upon the complexity and duration of regulatory services provided. A cap is not consistent with these legislative criteria upon which the fees are based.

88. COMMENT: There is no definition for the adjustment rate or the adjustment of fees and there is no explanation for what would call for the annual adjustment. (28)

89. COMMENT: It is difficult to evaluate the fee adjustment proposal because it is almost impossible to tell how this provision would work. Although the Department's desire for the recycling approval program to be largely self-supporting is appreciated, this adjustment formula will unfairly tax some recyclers and discourage others from entering into this field. Moreover, the recyclers should not be forced to bear the entire economic burden of the Department's costs, because everyone in the State benefits to some extent by encouraging recycling. By placing the bulk of the economic burden on the recycling center, the result is likely to be fewer recycling operations which will act as a detriment to the public as a whole. (28)

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RESPONSE: The Department recognizes the need to clarify the adjustment of fees and has done so on adoption of these rules. The Department has modified the formula in order to provide that an analysis of actual costs will determine changes in the fee structure. Adjustments will be based upon the duration and complexity of services the Department provides to implement the recycling center approval program.

The Department agrees with the observation that the recycling center approval program should be self-supporting. This is the primary objective of the fee provisions of these rules. The Department disagrees, however, that by creating a self-supporting program it will deter recyclers from entering the market. As discussed in response to Comments Nos. 70 through 72, several factors, including the reduction in fees for recycling center approval and the gain in the market share for legitimate recyclers through fee-supported enforcement efforts, will work to encourage entry into the recycling market, not discourage it. Furthermore, recycling program fees will support market development and market expansion efforts by the Department, further enhancing the opportunity for profitable operation of recycling centers.

90. COMMENT: The Department anticipates 50 recycling center applicants, but what if the fees discourage some of these applicants? Will the Department then increase the base fee to cover its costs if only 40 applications are received? (35)

RESPONSE: The Department's estimate of 50 recycling center applicants was conservative. In fact, the Department's experience in the time since the proposal of these rules is that the actual number of approvals is signficantly more than 50. Approximately 85 persons have sought recycling center approval this year. In the event that the Department receives more or fewer than 50 applications, staffing requirements will increase or decrease accordingly. If fewer applications, then fewer staff hours will be required for the program. As discussed in prior responses, the Department will review these fees each year, based upon changes in the department's costs of implementing the recycling center approval program upon which the fee is based. Several factors may increase or decrease costs, including, but not limited to, the duration and complexity of review, staff productivity, changes in staff compensation, indirect and/or operating costs, and/or the number of facilities seeking recycling center approval. In the event of any deviation from the initial estimates, the Department will adjust the fees in accordance with the adjusted formula adopted at N.J.A.C. 7:26A-2.2, as discussed in response to comment below. Any fee adjustments will be publicly noticed in the New Jersey Register no later than April 30 of each year.

All Department fee programs are subject to external audit and control review. In order to document fee programs, the Department has implemented a time accounting system. The time accounting system will form the basis for documenting the fee programs and determining any necessary adjustments thereto.

The fees under the annually revised schedule will continue to be calculated as the number of hours required to provide the regulatory service, multiplied by an hourly rate. The time accounting system will form the basis for determining the number of hours required to provide the regulatory service. The hourly rate will be determined according to the modified formula, as discussed below and adopted at N.J.A.C. 7:26A-2.2.

91. COMMENT: The fee structure as described in the proposed rule and the preamble is difficult to understand. Does "number of approvals" in this rule mean the number of facilities which are granted approval, or does it count applications which are ultimately denied? Does it include each facility only once, or if a previously-approved facility sought approval for an additional activity would the new activity count? What means are provided for the regulated community to assure that the funds alleged by the Department to have been spent on this program were actually expended on these activities? Will there be audits or publicly-available statements and documents regarding the Department's costs? (28)

RESPONSE: The Department recognizes that the annual fee adjustment formula, as proposed, required clarification. The formula, as adopted, does not include "number of approvals" as a factor. Accordingly, the fees system has been restructured and reduced to more accurately reflect the cost of review leading to a determination on an application, as well as the annual cost of administering approved facilities.

Additionally, modifications require that the Department prepare an annual Recycling Center Program Fee Report. The Report will provide accountability to the regulated community concerning receipt and expenditure of fee revenues, as well as all costs incurred by the Recycling Center Program. The report will be based upon an auditable time accounting system, thus ensuring both accountability and provision of cost effective regulatory services. A public notice indicating that the report is available will be published in the New Jersey Register each year. The Department will provide a copy of the report to each person requesting a copy. The Department will also provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26A-2.1.

92. COMMENT: The fees include costs relating to enforcement. N.J.S.A. 13:1E-9 allows local and county Boards of Health to enforce regulations relating to solid waste. Therefore, the rules should address pass through of fee revenues to local and county Health Departments to reimburse costs incurred in joint or cooperative enforcement efforts. (47)

RESPONSE: The Department strongly supports coordinated and joint enforcement efforts with local and county health departments. However, the statutory authority for establishing fees requires that fees be based upon the Department's costs in providing regulatory services. Accordingly, cost sharing or reimbursement is beyond the scope of cost authorized by statute. The authority cited by the commenter (N.J.S.A. 13:1E-9) is applicable to inspection and enforcement powers. The Department's fee authority is set forth at N.J.S.A. 13:1E-18.

The concerns of the commenter are addressed by the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (Act). The Act authorizes a county board of chosen freeholders to levy a tax on solid waste disposal in order to generate revenues to fund implementation of a Department certified program. Solid waste facility and recycling center inspection and enforcement costs incurred may be funded through this mechanism. Other dedicated solid waste disposal tax revenues created by N.J.S.A. 13:1E-136 et seq. (commonly known as the "McEnroe Act") are also available to county agencies for these purposes. These funds include the solid waste services tax and resource recovery investment/importation tax revenues. Additionally, host community benefits for transfer stations, landfills and resource recovery facilities have been designed to offset program costs incurred by local governments. Lastly, in the broader context of cooperative compliance monitoring, inspection and enforcement program implementation, the Department is considering regulatory options for implementing amendments to the Act created by P.L. 1991, c.99, including development of criteria to determine appropriate revenue sharing to support permit and enforcement related functions carried out by local and county agencies (see invitation for public input published at 23 N.J.R. 2237(a), on August 5, 1991).

93. COMMENT: The application and annual fees for a general or limited approval to operate a recycling center are inconsistent with the policy behind the recycling loan program and recycling equipment tax credit program, as well as the thrust of the tire rebate program recommendation contained in the Tire Recycling Report recently submitted by the Department to the Governor and Legislature. (37)

RESPONSE: The Department disagrees with the comment that the fees are inconsistent with or will adversely effect the recycling loan program. This finding is based upon examination of the objectives and effects of the loan program, compared with the benefits and costs of the fees, as described below.

Fees are necessary to fund the recycling center approval program, whose goal is to ensure that the operating of recycling facilities is consistent with protection of human health and the environment. The recycling center approval program will provide benefits to legitimate recyclers by discouraging the competitive advantages that are gained by operating as illegal solid waste facilities, as discussed in response to Comment No. 72. Additionally, the information and reporting requirements of the rules will enable the Department to assist in market development efforts and thus promote the growth of the recycling industry. These objectives and anticipated effects of the recycling center approval program are shared by the loan and tax credit programs.

The Department does not agree with the comment that the fees are inconsistent with the tire surcharge program recommendation in the recent Tire Recycling Report. That report recommended, among other things, a $2.00 surcharge for passenger tires and a $5.00 surcharge for truck tires to be levied at the point of retail sale. New Jersey retail sales exceed nine million tires per year. Surcharge revenues were recommended to subsidize, among other things, tire recycling operations. Tire retail establishments are not subject to the fee requirements of this rule. Only a very small percentage of projected fee revenues will be derived from tire recyclers, further diluting the effects of the fees on tire recycling. Moreover, the services supported by the fees will ensure the soundness of the recycling operators in the State, thereby improving the overall

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recycling effort. Therefore, fees are not anticiapted to have a measurable effect on tire recycling operations.

94. COMMENT: The Department's Economic Impact Statement does not take into account the implementation of N.J.A.C. 7:26A-3.2. The commenter's member firms engaged in concrete, asphalt and stump recycling estimate that this cost will be $20,000 to $30,000. Particularly expensive is the detailed site plan map to be completed by a professional engineer. (19)

RESPONSE: Implementation costs were addressed by the Department in the Regulatory Flexibility Analysis (22 N.J.R. 3092-3093). Implementation costs were addressed in this section because the Department felt that small businesses would be the most impacted by the rules.

The Department has considered implementation costs of the rules and has determined that these costs are justified by the benefits created by the rules and that the rules are necessary to protect environmental, health, safety and public welfare concerns. Economic impacts was taken into account in the rules in conjunction with the economic and environmental benefits of the rules.

At N.J.A.C. 7:26A-1.4, certain concrete and asphalt recycling operations are granted exemptions from the approval requirements of N.J.A.C. 7:26A-3. Accordingly, there are no fees or additional implementation costs for the engineering site plan preparation as a result of these exemptions.

Assuming the commenter's estimate of stump recycling implementation costs is accurate, the Department believes that this compliance cost is justified by the benefits derived from Department oversight and site plan review of stump recycling operations. Site plan review will ensure that stump recycling is conducted in an environmentally sound fashion which is compatible with surrounding land uses and site environmental characteristics. Moreover, it should be noticed that a detailed site plan would be required for municipal and or county land use review, in the absence of the rules.

Subchapter 3

N.J.A.C. 7:26A-3.1 General requirements applicable to all recycling centers which receive, store, process or transfer non-traditional (now Class B) recyclable material

95. COMMENT: Language should be added to N.J.A.C. 7:26A-3.1 stating that a person who operates a recycling center without having first secured admission to the district plan is operating an unlicensed solid waste facility, subjecting that person to the penalties set forth in N.J.S.A. 13:1E-9 and N.J.A.C. 7:26A-5. (13)

RESPONSE: The Department believes that the rules already address the commenter's concern subject to the exception described below. N.J.A.C. 7:26A-3.2(a)15 requires an applicant for general approval to submit documentation establishing that the recycling center is included in the district solid waste management plan. In addition, N.J.A.C. 7:26A-4.2 generally prohibits a recycling center required to obtain Department approval from commencing operations until it is included in the applicable district solid waste management plan. If a recycling center required to obtain Department approval commences operations in violation of these requirements, under N.J.A.C. 7:26A-3.1(b) the operator of the center will be considered to be operating an unlicensed solid waste facility, and will be subject to penalties under N.J.S.A 13:1E-9 and N.J.A.C. 7:26-5.

N.J.A.C. 7:26A-3.7 and 4.2 provide an exception to this requirement, under which a recycling center can obtain limited approval allowing operations for a period no longer than 180 days, without being included in the district plan. However, the Department requires that the applicant seeking such limited approval must notify the applicable district solid waste or recycling coordinator and the host municipality of the application. Additionally, limited approvals are subject to the recordkeeping/reporting requirements of N.J.A.C. 7:26A-3.16, the operational performance standards of N.J.A.C. 7:26A-4, the denial criteria of N.J.A.C. 7:26A-3.11 and the revocation criteria of N.J.A.C. 7:26A-3.12. These provisions protect legitimate county planning functions for temporary recycling operations, and respond to the commenter's concerns.

96. COMMENT: It is unwise to subject the intra-State transportation of any type of recyclable material to the waste flow rules. This clearly establishes a dangerous precedent. The flow of recyclables should be driven solely by market conditions. Moreover, the proposed rule conflicts with existing waste flow rule, N.J.A.C. 7:26-6.3, which specifically exempts non-hazardous materials separated at the point of generation for sale or reuse from the waste flow rules. (13)

RESPONSE: Since "recyclable materials" are defined as materials that would "otherwise become solid waste," the Department must ensure that recyclable materials are in fact delivered to and processed by a recycling center. Otherwise, such materials assume solid waste status. While N.J.A.C. 7:26-6.3 exempts non-hazardous materials separated at the point of generation for sale or reuse from the waste flow rules, the Department cannot determine if, in fact, the materials are "sold or reused" unless they are delivered to, accepted and processed by an approved recycling center.

The waste flow rules at N.J.A.C. 7:26-6 define discrete origins, by municipality, and destinations, by facility, for control of the transportation and acceptance of solid waste. The provision at N.J.A.C. 7:26A-3.1(d) states that transport to, delivery to, or acceptance of source separated Class B recyclable materials at any location which has not received the prior approval of the Department shall constitute a violation of the waste flow rules. However, this provision does not address the origin, or point of generation, of recyclable materials and does not control the destination, or specific facility, for acceptance of recyclable materials, as directed by the waste flow rules. This control over the flow of the material is an important distinction between the solid waste flow rules at N.J.A.C. 7:26-6 and the regulatory requirements of N.J.A.C. 7:26A-3.1(d). The latter serves a compliance and enforcement purpose, not a mandatory flow purpose.

97. COMMENT: By attempting to regulate all aspects of recycling, the Department is instituting *de facto* waste flow rules on material that should not, in fact, be flow regulated. (D, 17)

RESPONSE: Pursuant to this rule, recyclable materials are not flow regulated to the degree represented by the waste flow rules for solid waste at N.J.A.C. 7:26-6. Solid waste is directed from the point of generation to specific disposal or transfer facilities established in N.J.A.C. 7:26-6. This rule does not designate facilities to which recyclable materials must be delivered. Recyclable materials may flow to any in-State recycling facility so long as they are source separated and so long as the facility is approved for the receipt of the specific material. Recyclable materials may go to any out-of-State recycling facility so long as they are source separated and so long as the material is actually recycled and not disposed of as solid waste. These minimal controls on the flow of recyclables are necessary to ensure that recyclable materials are not simply diverted from in-State recycling or disposal facilities for disposal out-of-State. Although these controls will contribute to the integrity of the State's waste flow system, they do not amount to a de facto waste flow as suggested by the commenter.

98. COMMENT: The Department cannot be, nor does it have the expertise to be, the final determiner of markets. (17)

RESPONSE: While the Department does require the submittal of end-market information by recycling center applicants, the Department does not function as the final determiner of markets through these rules. End-markets are neither specified nor restricted by these rules. The Department is requiring the submittal of end-market information as a condition of recycling center approval because the Department must be assured that an applicant has end-markets for the products generated from the recyclable materials to be received at the proposed facility. In the absence of such information, the Department has no basis for determining whether the facility will in fact function as a recycling center. By evaluating end-market information up front, the Department will be better able to intercede in those instances where a facility has no viable market for its material, thereby helping to prevent the operation of facilities which receive and stockpile large quantities of material for which no market is available. Such facilities may create an environmental, health or safety concern which can be detected and possibly cured early or with the help of information on end-markets.

99. COMMENT: It should be recognized that in order for recycling to expand and realize its full potential as a cost effective solid waste management method, its collection, processing and marketing phases need to remain unrestricted and unregulated relative to solid waste. The rules, as proposed, will slow the development of recycling and stifle innovation. In addition, certain aspects of the rules appear to attempt to improve waste flow compliance by closing the loophole of illegitimate recycling activities. To inflict retribution for HUB on the recycling industry by creating multiplying layers of industry regulation is both misguided and unfair. Finally, the Department would be better served by utilizing the roughly $500,000 needed to implement these rules to instead hire additional enforcement staff and provide them with a regulatory scheme that is clear enough to be readily enforced, strong

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enough to facilitate expansion and innovation in recycling. (23, A, B, C, D, E, F, H)

RESPONSE: The Department strongly supports the expansion of recycling and realization of the full potential of recycling as a cost-effective solid waste management method. The Department disagrees with the commenter that such expansion and realization of cost-effective implementation requires that recycling remain unrestricted and unregulated, relative to solid waste.

Environmental regulation of recycling centers by the Department is mandated by statute. Recycling operations present potential impacts to human health and environment, including potential land use and nuisance impacts such as noise, traffic and aesthetic concerns. These impacts may be controlled by the Department in furtherance of its mission to enhance, preserve and protect the human and environmental resources of the State.

These rules will subject recycling centers to uniform environmental regulation which will not impede the realization of the full potential of recycling. As discussed in other responses to comments, the fundamentals which determine recycling viability are economic and technical factors beyond the scope or influence of these rules.

100. COMMENT: N.J.A.C. 7:26A-3.1(d) is an important subsection which should be included in the final rules when adopted. (29)

RESPONSE: The Department agrees that N.J.A.C. 7:26A-3.1(d) is an important provision because it clarifies the relationship between the transport of Class B recyclable materials and the interdistrict and intradistrict solid waste flow rules set forth at N.J.A.C. 7:26-6.

N.J.A.C. 7:26A-3.2 Approval

101. COMMENT: The requirement of N.J.A.C. 7:26A-3.2(a)2 should be incorporated into the approval requirement for mobile recycling centers at N.J.A.C. 7:26A-3.3(a). The local municipality and the district should be notified and/or provided with a copy of the approval letters for such facilities. If mobile facilities are required to meet requirements of N.J.A.C. 7:26A-3.7, reference to that section should be included here as well. (29)

RESPONSE: The proposed rules did not incorporate the requirement of N.J.A.C. 7:26A-3.2(a)2, requiring a description of the geographical location of the recycling center, into the mobile recycling center approval requirements of N.J.A.C. 7:26A-3.3(a) because such operations are mobile and therefore do not operate from one location. The Department has eliminated the mobile recycling center approval requirement from these rules. Mobile recycling equipment will be required to conform to certain operations standards, however. The intent of this modification to the rules is to eliminate overlapping regulation. The Department has determined that the proposed mobile recycling center approval requirement overlaps with the general and limited approval processes established in these rules and is therefore unnecessary. Specifically, mobile recycling equipment will operate primarily at locations which are subject to general or limited approval. Therefore, county and municipal oversight, including notification of mobile recycling activities, will be provided for by these approval processes. Thus, the relationship of mobile recycling equipment to the recycling center approval requirements set forth at N.J.A.C. 7:26A-3.2 and N.J.A.C. 7:26A-3.7 is a close one. However, operation of mobile recycling equipment will not be required to obtain approval through these processes.

102. COMMENT: The description of the land surrounding the proposed recycling center should extend to a radius of 1/2 mile from the site's boundaries. (13)

RESPONSE: The descriptive information recommended for submittal by the commenter is already addressed by these rules. The application procedure for general approval to operate a recycling center for Class B recyclable material requires the submittal of information about the proposed recycling center site in both N.J.A.C. 7:26A-3.2 and 7:26A-3.10. Zoning and block and lot information are required in N.J.A.C. 7:26A-3.2, while USGS Quadrangle map is required by N.J.A.C. 7:26A-3.10. The boundary of the recycling center must be plotted on the USGS Quadrangle map. In addition, this map must delineate public access roads, streams, ponds and sensitive receptors within a 1/2 mile radius of the site.

103. COMMENT: The application submitted to the Department should also be sent to the municipality in which the facility is located. (13)

RESPONSE: The Department agrees with the commenter and has modified the rule in response to this and other comments received regarding submittal by the Department of the recycling center application to the municipality in which the proposed recycling center will be located. Specifically, N.J.A.C. 7:26A-3.2(d) has been modified to indicate the following: "The applicant shall also forward one copy of the information required pursuant to N.J.A.C. 7:26A-3.2(a) to the municipal clerk of the municipality in which the recycling center is located . . ."

104. COMMENT: The listing of intra-corporate relationships between recycling centers and any solid waste hauler or disposal operation hinders the opportunities of the solid waste industry to further expand within New Jersey. (17)

RESPONSE: The requirement in N.J.A.C. 7:26A-3.2(a)3 to list all persons owning 10 percent or more of corporation stock in a recycling center, or a listing of the general and limited partners where applicable, does not limit business relationship between recycling center operators and solid waste companies. If such a relationship does exist, that information must be made known to the Department as indicated at N.J.A.C. 7:26A-3.2(a)3. The proposed 10 percent stock ownership criteria has been modified on adoption to five percent in order to make reporting requirements conform to standardized corporate reporting rules of Federal securities law (see 15 U.S.C.A. 78M(d)1). This information enables the Department to understand the economic structure of the industry. The disclosure of recycling center ownership is also necessary so that the Department may know which parties bear responsibility for the submittal of information during the review process, and during operation.

105. COMMENT: The general approval requirements seem excessive and akin to the questions asked of an applicant for a solid waste permit. Most alarming is N.J.A.C. 7:26A-3.2(a)20 which requires inclusion in the county solid waste management plan prior to application review by the Department. This is alarming because recyclers have fought long and hard to be far removed from solid waste. (5, 22, A)

106. COMMENT: The requirement of solid waste management plan inclusion constitutes severe over regulation or private industry. The requirement of solid waste management plan inclusion would severely limit the development of new recycling facilities. Furthermore, it is municipalities that are best equipped, due to their diverse staff and expertise, to review local recycling center approval, with the State providing the necessary oversight. Counties are not the primary party of concern regarding recycling center approvals. Lastly, solid waste management plan inclusion requirements contradict the legislative intent to allow recycling centers to operate with a minimum of government interference. (E, D, F, K)

RESPONSE: The approval process established in these rules is much different than the permitting process for solid waste facilities. The permitting process for solid waste facilities requires the submittal of an application of much greater detail. For example, persons applying for a solid waste facility permit must submit an Environmental and Health Impact Statement and must obtain engineering design approval. Like solid waste facilities, however, recycling centers are required to be included in the relevant county solid waste management plan. The regulatory requirement for recycling center plan inclusion at N.J.A.C. 7:26A-3.2(a) implements the mandate of plan inclusion of the Solid Waste Management Act and the Recycling Act (see N.J.S.A. 13:1E-20 and 13:1E-99.13 which establish the plan inclusion requirements of the Solid Waste Management and Recycling Acts which are applicable to recycling facilities). Therefore, while recycling centers are not regulated as solid waste facilities, they are part of the broader solid waste management planning process and must, by statute, be included in the relevant district solid waste management plan.

107. COMMENT: The State of New Jersey's "Origin and Destination" Form for both solid waste and recyclables should not only specify the municipality of origin of the recyclable material but also the percentage of recyclable material from municipal as well as commercial sources. This is vital to better determine approximately how much recycling is occurring from municipal solid waste versus commercial solid waste. (2)

RESPONSE: The Recyclable Materials Receipt Form, required as part of the approval requirements of N.J.A.C. 7:26A-3.2, is not the equivalent of the Origin and Destination form completed by solid waste haulers. The Origin and Destination Form accomplishes verification of adherence to waste flow regulations which specify that solid waste generated within a geographic location be processed through predetermined solid waste facilities. The Recycle Materials Receipt Form is designed for verification of recycled material tonnage by municipality for the purpose of providing Tonnage Grant monies to the generating municipality. Notwithstanding these differences, recording the percentage of Class B recyclable material received from municipal and com-

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mercial sources per truckload on the Recyclable Materials Receipt Form is an impractical requirement. Such a requirement represents an administrative burden which will not yield information essential to Departmental programs, such as the Tonnage Grant Program.

108. COMMENT: It is not always possible for a receiving facility to identify a municipality of origin. It may very well occur that loads arriving at a facility have multiple points of generation. (17)

RESPONSE: The Department agrees that it may not always be possible for a receiving facility to identify a municipality of origin. This information is available to the transporter of the recyclable materials which are delivered to a recycling center. In order to address this concern, the Department had modified N.J.A.C. 7:26A-3.2(a)16 (proposed as (a)22) on adoption. Modifications require that the incoming materials specification sheet require the transporter to identify and certify the municipal of origin for all recyclable materials delivered to a recycling facility. This information is contained on the facility's Recyclable Materials Receipt form required by N.J.A.C. 7:26A-3.2(a)16iii.

The identification and certification requirements properly place the burden of reporting the municipality of origin of recyclable materials on the transporter of those materials. Municipality of origin data is necessary to implement the tonnage grant program established by N.J.S.A. 13:1E-92 et seq.

109. COMMENT: Is the recycling center required to indicate the municipality of origin for those loads delivered by private individuals who may be using the facility? (17)

RESPONSE: Yes.

110. COMMENT: What are the "allowable amounts of contaminants" in N.J.A.C. 7:26A-3.2(a)22vi(3), especially when the definition of contaminant specifies the use of the words "any substance." (2, 20, H)

RESPONSE: The Department has clarified this provision, codified on adoption at N.J.A.C. 7:26A-3.2(a)16ii(3), to identify allowable amounts of contaminants as the amount determined in the recycling center approval as per N.J.A.C. 7:26A-3.5(e)3i. Thus, the notice required by N.J.A.C. 7:26A-16ii(3) may specifically indicate the amount or level of contamination that is allowable for each recyclable material as that amount or level of contamination that is established for each recyclable material in the recycling center approval letter issued by the Department. Although the Department has not established specific residue levels in these rules, the Department will establish specific levels for each recyclable material to be received at the recycling center in the approval letter. These levels will be based upon collection and transportation methods, recyclable materials, processing technologies, end-market requirements and other information submitted to the Department for review pursuant to N.J.A.C. 7:26A-3.2.

111. COMMENT: End-market contracts should be submitted as evidence of potential markets; however, there should be some enforcement mechanism which oversees that these contracts are actually carried out. Agreements and letters of intent are relatively easy to come by; but documentation of actual sales are what should be required. It is anticipated that applicants will submit falsified letters of intent and agreements; and then merely landfill the recycled product. (5)

RESPONSE: Documentation of actual sales of recyclable materials is not necessary because approved recycling centers will be required to submit annual reports which contain verifiable end-market information. If it is alleged that a recycling center is not marketing its recyclable product, but landfilling the material, the Department has the right, as set forth in N.J.A.C. 7:26A-3.16(c), to require the filing of recycling reports at more frequent intervals. Therefore, the activities of the recycling center can also be scrutinized on a more frequent basis, if needed.

Disposal of recyclable materials in a landfill would constitute a solid waste management practice which requires a solid waste facility registration and permit. This activity, if conducted without obtaining a solid waste facility permit in accordance with N.J.A.C. 7:26-2, is prohibited pursuant to N.J.A.C. 7:26-2.8. Additionally, such covert disposal would violate the waste flow regulations of N.J.A.C. 7:26-6.

112. COMMENT: Departmental approval of recycling centers should automatically trigger plan inclusion in the respective district solid waste management plan. (40, 29)

RESPONSE: The automatic inclusion suggested by the commenter would be contrary to the Solid Waste Management Act, because it would exclude the county board of chosen freeholders from the process of including a facility in the plan. There is no statutory authority allowing for automatic plan inclusion following Departmental approval of a recycling center. The inclusion of recycling centers in district solid waste management plans is an important and necessary planning function of the counties, and is mandated under both the Solid Waste Management Act and the Recycling Act.

113. COMMENT: With respect to N.J.A.C. 7:26A-3.2(a)4, how can an operator determine the contaminants to be received, stored, processed or transferred in advance of receiving a shipment? In addition, with respect to N.J.A.C. 7:26A-3.2(a)5 and 6, how can the maximum amount of material, including amount of contaminants, to be received, as well as amount of residue, be determined prior to operation? Clearly the operator can provide acceptable maximums but that is the limit of predictive power. (17)

RESPONSE: In order for recycling centers to exercise control over incoming loads and to provide transporters with advanced notice concerning incoming load requirements, the Department has included an incoming materials specification sheet in the operations plan required by N.J.A.C. 7:26A-3.2(a)16ii. The incoming materials specification sheet will serve to advise transporters of incoming load requirements. Additionally, in order to determine incoming load composition, an operator is required to submit and implement an incoming materials inspection plan per N.J.A.C. 7:26A-3.2(a)16iv. This plan shall detail the manner in which all vehicles entering the facility with recyclable materials are inspected to determine their contents. These transporter notification and incoming load inspection requirements will assist the operator of a recycling center in controlling contamination of recyclable materials.

Concerning the requirements of N.J.A.C. 7:26A-3.2(a)5 and 6 discussed by the commenter, the Department recognizes that the submittal of information regarding the type and amount of recyclable material and contaminants to be received and the type and amount of recyclable product and residue to be generated by a proposed recycling center is limited by the predictive power of the applicant. However, it is necessary to request this information prior to approval in order to afford the Department an adequate opportunity to assess the proposed recycling center. The estimates made by applicants provide the Department with information about the proposed operation, as well as insight into any impact which may be associated with the proposed recycling center.

114. COMMENT: The safety plan required under N.J.A.C. 7:26A-3.2(a)22 is redundant because OSHA already regulates this area activity. (19)

RESPONSE: The Department agrees with the commenter. The requirement for submittal of a safety plan by recycling center applicants has been eliminated from this rule by the Department because it has been determined to be an activity under the jurisdiction of other regulatory agencies.

115. COMMENT: A personnel training manual is often not something small companies can generate nor is this an environmental issue but an occupational issued under the purview of OSHA. This is a further hindrance to the expansion of recycling. (17, 22)

RESPONSE: The Department agrees with the commenter. The requirement for submittal of a personnel training manual by recycling center has been eliminated from this rule by the Department because it has been determined to be an activity under the jurisdiction of other agencies.

116. COMMENT: N.J.A.C. 7:26A-3.2(a)13 should be deleted on the basis that the application procedure for general approval to operate a recycling center should not be burdened by additional intra-agency approvals and the time delays associated with securing such approvals. (40)

RESPONSE: The Department has not deleted N.J.A.C. 7:26A-3.2(a)13. The statutes and regulations governing air pollution control are applicable to recycling centers. The Department lacks the statutory authority to exempt recycling centers from those air pollution control requirements. In addition, it would be contrary to Department policy to allow the operation of a facility which is not in compliance with the Department's air pollution control requirements.

In order to address the concern of the commenter of delays in review, the Department has revised N.J.A.C. 7:26A-3.2(a)13 to require submission of a copy of the air permit application instead of the actual permit. Furthermore, the Department has deleted the requirement for a written determination by the Department that an air permit is not required. These changes will allow concurrent review of a permit applications and recycling center approvals, thus reducing procedural delays that could result from intra-agency approvals.

117. COMMENT: N.J.A.C. 7:26A-3.2(a)6 should also include other units of measurement which may result from operations, such as "gallons." Rinse water, which is exempted from the waste flow (N.J.A.C. 7:26-6.3), could be generated in hygiene control. If records of this are

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not required by the Department, then specifically exclude exempted items as per N.J.A.C. 7:26-6.3. (12)

RESPONSE: The Department agrees that the rule should include other units of measurement. In order to address this concern, the Department has modified upon adoption all measurement requirements throughout the rules to include the following phrase "cubic feet or gallons" after "tons or cubic yards." The modifications allows flexibility in reporting requirements to respond to liquids or gas recovery and recycling, in addition to the volume and weight measurement units proposed for solid materials.

118. COMMENT: Transport of recyclable materials is exempted from Department registration. Therefore, the statement found in proposed N.J.A.C. 7:26A-3.2(a)22vi(4) is confusing as it regards this exemption. This provision should be clarified in the rules and the phrase "and NJDEPE registration number, if applicable", should be omitted. (12)

RESPONSE: The Department agrees with the commenter. The Department has clarified this provision, now found at N.J.A.C. 7:26A-3.2(a)16iii(4), such that the NJDEPE registration number shall be recorded on the Recyclable Materials Receipt Form only if an NJDEPE registered vehicle is used.

119. COMMENT: The submittal of information regarding the equipment to be used at a recycling center is questionable. This requirement will reduce the flexibility to install improvements without a lengthy approval process and permit modification. (17, 20, H)

RESPONSE: Recycling center equipment information is necessary for the Department's use in assessing the recycling center operation as a whole. For example, submittal of information regarding the operating capacity of crushing or shredding equipment enables the Department to determine whether the equipment will be able to process the estimated daily amount of incoming material to be received at a recycling center. Such information is important in an assessment of a proposed recycling center because, among other reasons, it allows the Department to set reasonable limits on the amount of a given material received by the recycling center according to the ability of the equipment on-site to process that material. Furthermore, although modification of the recycling center approval is necessary prior to the installation of new or additional equipment at a recycling center site, the Department anticipates that it will approve or deny a complete modification request within 30 days.

120. COMMENT: It is unrealistic to require invoices indicating receipt of equipment prior to obtaining a permit. The language should be modified to require confirmation that the equipment is installed prior to receipt of recyclable materials. (29)

RESPONSE: The Department agrees in part with this comment and has modified N.J.A.C. 7:26A-3.2(a)8 accordingly. Specifically, the reference pertaining to the submittal of invoices has been deleted from this provision. In addition the following provision has been added: "Also, a written confirmation from the applicant indicating that no Class B recyclable material will be received, stored or transferred at the recycling center until the equipment identified above is installed or situated at the recycling center site." This modification allows the applicant to proceed with approval prior to installing all necessary equipment.

121. COMMENT: It is recommended that proposed N.J.A.C. 7:26A-3.2(a)21, which addresses the point of origin of recyclable materials, be deleted from the rule. Such information is not seen as useful to the Department's review of recycling center applications. (17)

RESPONSE: The Department agrees with this comment and has deleted this requirement from the recycling center application procedure set forth at N.J.A.C. 7:26A-3.2. This requirement was proposed in order to provide the Department with municipality-of-origin data on which to base the award of tonnage grant monies. A description of the types of commercial activities where the materials proposed to be received at the recycling facility are generated, and a listing of the lot and block where the materials were generated, is not required for the purpose of documenting municipality of generation of materials for the purpose of awarding tonnage grant monies. The Department is able to compile information necessary for the distribution of tonnage grant funds through the information submittal requirements and annual reporting contained in other provisions of the rules.

122. COMMENT: Clearly a company making a large monetary and capital investment will maintain its equipment. The commenter deems the requirement that the Department receive a maintenance plan to be onerous and unnecessary. (17)

RESPONSE: The Department agrees that a maintenance plan for recycling equipment is not necessary in order to achieve any greater level of environmental safety in cases of equipment failure. The Department has therefore deleted the requirement for a maintenance plan submittal and approval as detailed at N.J.A.C. 7:26A-3.2(a)22ii. If the equipment identified in the application as per the requirements at N.J.A.C. 7:26A-3.2(a)8 should fail to function, thus rendering the facility unable to process materials in accordance with an approval issued by the Deparment as per N.J.A.C. 7:26A-3.5, adequate environmental safeguards would still exist through the limitations on the storage of unprocessed recyclable materials that would be imposed pursuant to N.J.A.C. 7:26A-3.5.

123. COMMENT: The submittal of information required pursuant to proposed N.J.A.C. 7:26A-3.2(a)v22(2) and (3) represents the submittal of items that would be inherent in a business operation. Therefore, this requirement only generates additional paperwork. (17)

RESPONSE: The Department believes that the information required under the provision cited by the commenter, codified on adoption at N.J.A.C. 7:26A-3.2(a)16ii(2) and (3), is necessary to the Department and to persons planning to use recycling centers who may seek information from the Department. N.J.A.C. 7:26A-3.2(a)16ii(2) and (3) require the submittal of an Incoming Materials Specification Sheet which must indicate the materials received at the recycling center, the size, weight or other restrictions regarding the materials and a notice that vehicles delivering materials to the recycling center will be inspected. These requirements are necessary because they provide important information to those interested in utilizing recycling centers. In addition, the information required in this provision will reduce the potential for unwanted material being delivered to a recycling center.

124. COMMENT: The scale of the site plan map required pursuant to N.J.A.C. 7:26A-3.2(a)9 should be set at one inch equals 100 feet, or the State should indicate minimum and maximum range of desired scale. (29)

RESPONSE: The site plan map required at N.J.A.C. 7:26A-3.2(a)9 calls for a map drawn to a scale no larger than one inch equals 100 feet. The Department has not set the scale at one inch equals 100 feet exclusively because such a restriction would deprive the engineer preparing the site plan map of necessary flexibility in design. For instance, in some cases a site plan map of one inch equals 50 feet would be more appropriate given the nature of the recycling center. Therefore, this provision, which indicates the upper limit of the scale, will result in the submittal of the most appropriate site plan maps, which in turn will facilitate the review of recycling center applications by the Department. (29)

N.J.A.C. 7:26A-3.3 Application procedure for general approval to operate a mobile recycling center

125. COMMENT: There should be no regulation of mobile recycling facilities or short-term storage of recyclables. Registration and notification to the town and county should suffice. (20, H)

126. COMMENT: The definition of "mobile recycling center" found in N.J.A.C. 7:26A-13 is too broad and should be revised to reflect whether certain activities such as locating roll-off containers at construction sites are considered "mobile recycling centers." (13)

127. COMMENT: Who will monitor whether the mobile recycler has the proper approvals and has paid the necessary permit fees and is capable of and meeting all the rules? (9)

128. COMMENT: The requirement set forth at N.J.A.C. 7:26A-3.2(a) should be added to the information submittal requirements for mobile recycling center approval. (29)

RESPONSE: The Department agrees in part with the commenters, as discussed below. The Department originally proposed an approval process for mobile recycling centers at N.J.A.C. 7:26A-3.3. That process required Department approval prior to the operation of a mobile recycling center. Based upon these and other comments, however, the Department has found that the provisions proposed should be modified on adoption in order to more effectively regulate mobile recycling operations as discussed below. The original proposal was designed to ensure uniform regulation of all recycling operations, mobile and fixed, and to provide proper Department oversight of mobile recycling activities. Mobile operations present challenges to effective regulatory oversight and accountability because of their potential to operate outside the scope of technical review. The Department remains convinced that oversight of mobile recycling operations is necessary in order to implement the goals of the Act and protect human health and the environment. However, based upon this and other comments, the Department has determined that legitimte oversight objectives can be met more effective-

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ly and with less burden to the regulated community through a modification of the original proposal. Regulation of the site at which mobile recycling equipment operates would be more effective than regulation of the mobile recycling center originally proposed. The Department's oversight is designed to reduce or mitigate impacts associated with a discrete location. Mobile equipment can only operate at a discrete location. Therefore, the Department has modified N.J.A.C. 7:26A-3.3 and the definition of mobile recycling center in order to reflect a location based regulatory framework.

A location based approach is consistent with the objectives of the original proposal. Modifications also avoid duplication of regulatory oversight. As initially proposed, the mobile recycling center would have been required to submit information required for approval. Those requirements duplicated the information required to be submitted by the owner of the site utilizing mobile equipment per the operation of overlapping general or limited approval provisions.

Under the modified approach, mobile recycling equipment is prohibited from operating at a site that has not received general or limited approval pursuant to subchapter 3 of these rules, unless the equipment is operating within the scope of an exemption provided in subchapter 1. This is consistent with the original proposal, because under the original proposal, mobile recycling center approval duplicated general or limited approval, as noted above. Equipment at the site must be operated in accordance with all applicable requirements, including air pollution and noise code regulations. No prior approval is required to be received by the owner or operator of the mobile recycling equipment.

The site at which the mobile recycling equipment is intended to operate would require the prior approval of the Department pursuant to the general or limited approval provisions of subchapter 3 of these rules, unless the equipment is engaging in an exempted activity per N.J.A.C. 7:26A-1.4. General or limited approvals also require Department, county or municipal notification, respectively.

The initial proposal also has been modified by changes to the definition of "mobile recycling center." The word "center" has been deleted and replaced by "equipment" in order to achieve the foregoing purposes. These changes have been made throughout the rules for consistency. The new definition has been narrowed to include only that mobile equipment which processes Class B recyclable material, and no longer applies to a facility or equipment used to store recyclable materials. The revised definition is as follows: "'Mobile recycling equipment' is equipment which processes Class B recyclable materials and which does not operate from a permanent location but which consists of equipment that is capable of being transported from site to site for the purpose of processing Class B recyclable materials." Under the revised definition, a roll-off container clearly would not be mobile recycling equipment because it does not process recyclable materials, instead it only stores materials.

The Department has also modified N.J.A.C. 7:26A-3.3 to reflect the foregoing. The initial proposed section has been deleted in its entirety. New N.J.A.C. 7:26A-3.3(a) and (b) implement the foregoing approach.

Concerning the short-term storage of recyclables, the Department reviews short term storage of recyclables at recycling centers pursuant to subchapter 3 of these rules. Such oversight is one component of the technical review process for recycling centers per N.J.A.C. 7:26A-3.2.

129. COMMENT: It is unclear who approves storage of raw recyclable materials and finished product at a mobile recycling center site. Is this what a limited approval is for? (5)

RESPONSE: The Department agrees that clarification of this point is needed and has therefore modified the section of the rules which is applicable to mobile recycling centers, and has removed the application and approval requirement for such facilities. Mobile recycling equipment operating at an approved recycling center site must conform to the same operational standards as the recycling center, however. Accordingly, the stockpiling of unprocessed and processed recyclable material at a site to be serviced by mobile equipment will be approved as part of the limited approval provision, if such operation is for a limited period of time, as described in N.J.A.C. 7:26A-3.7, or as part of the general approval provision, if such operation is an on-going or permanent operation.

130. COMMENT: Mobile recycling facilities should be required to notify local officials of project plans; if no objections are received, or if the objections are unfounded, within a specified time period, they should be approved by DEP. (5)

131. COMMENT: Mobile recycling facilities should be required to receive local approvals and be in county plans; these requirements should be incorporated into the rules. (18)

RESPONSE: The owner or lessee of the recycling center at which mobile recycling equipment is operating must obtain local approval, not the mobile recycling equipment operator. Furthermore, in regard to the county approval needed in the form of inclusion in the solid waste management plan, for an operation which requires a general approval the owner or lessee of the recycling center at which mobile recycling equipment is operating must obtain county approval, not the mobile recycling equipment operator.

N.J.A.C. 7:26A-3.4 Supplemental requirements for a general approval

132. COMMENT: The provision of N.J.A.C. 7:26A-3.4(b) which addresses other applicable local, State or Federal permits or approvals is too vague. Additional information is needed. (5, 12, B)

RESPONSE: The Department agrees in part with the commenter that the provision requires clarification. The Department has modified the provision to require that prior to receipt of Class B recyclable materials and commencement of operations, the applicant must receive all other applicable approvals. The change allows concurrent intra-Department review.

Because all approvals that are required are highly case specific, N.J.A.C. 7:26A-3.4(b) alerts applicants that other required permits or approvals must be obtained prior to the issuance of a general approval to operate a recycling center. It is impractical to attempt to list all permits or approvals which may be required for a particular operation inasmuch as this information may vary depending on the applicable local ordinances and the precise nature of facility operations.

133. COMMENT: A preliminary approval from the Office of Recycling should be available and made contingent upon receiving other permits. (12)

RESPONSE: In order to address the concerns of the commenter, the Department has modified N.J.A.C. 7:26A-3.4(b) so that a recycling center approval may be issued prior to the receipt of other permits, and so that operation is conditioned on receipt of other permits. This modification accomplishes the goal of allowing concurrent reviews as would a preliminary approval process but it avoids the administrative burdens associated with a preliminary and final approval process.

134. COMMENT: The provision of N.J.A.C. 7:26A-3.4(a) concerning submittal of additional information by the applicant is too broad. This requirement should be narrowed in scope to control possible delays. (17, B)

RESPONSE: The Department agrees that the requirement for submittal of additional information should be narrowed in scope. Accordingly, the rule has been modified so that additional information will be sought only where necessary to address important environmental, health, safety or welfare concerns.

135. COMMENT: End-market information required by the Department is highly confidential and should not be required for disclosure for the purpose of determining whether a performance bond or letter of credit is needed, or determining the performance bond or letter of credit amount. (17)

RESPONSE: There may be instances where end-markets without an established history may be presented to the Department in a recycling center application. A recycling center providing materials to such an end-market may face greater risks and potential for having a large quantity of material on-site and no end-market for that material, thereby creating a potential environmental hazard. Therefore, an analysis of the viability of an end-market represents a rational measure for a determination of the need for and amount of a perforamnce bond or letter of credit. It should be noted that the Department has included a provision in the rules regarding confidentiality of records. Pursuant to N.J.A.C. 7:26A-3.16(e), end-market information will be kept confidential in accordance with the requirements of the Public Records law, N.J.S.A. 47:1-1 et seq., where such information is specified as confidential by the applicant and where there are no environmental, health or safety concerns, as determined by the Department, which require the release of this information.

136. COMMENT: The criteria to be utilized by the Department to determine if a performance bond or letter of credit is needed should be subject to negotiation. Furthermore, the criteria should allow for proposal to be scaled down to a point where no performance bond or letter of credit is required. (12)

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RESPONSE: The criteria for determining the need for and amount of a performance bond or letter of credit does not preclude negotiation. The current language of this provision allows for such flexibility. For example the criterion related to the amount of material to be received, stored, processed or transferred at a recycling center does not specify a non-negotiable amount of material that would trigger the need for a performance bond or letter of credit. In addition, the provision does not dictate the monetary amount of the performance bond or letter of credit associated with each criterion.

N.J.A.C. 7:26A-3.5 General approval

137. COMMENT: It is unclear if N.J.A.C. 7:26A-3.5(a)3iii would prohibit commingling of non-traditional (now Class B) materials. Such a limitation is inappropriate. (13)

138. COMMENT: A load of recyclables, traditional (now Class A) or non-traditional (now Class B), should be allowed to be commingled if the following criteria are met: 1) the load has been source separated prior to transportation (this source separation should be separating recyclables from non-recyclables); 2) the commingling of the source separated recyclables is for transportation purposes only; and 3) the source separated commingled load of recyclables is being transported to a recycling center which can process, on site, each of the recyclables in the load. (5)

RESPONSE: The intent of this section is not to prohibit the commingling of Class B recyclable materials, but rather to indicate that the general approval will specify the Class B recyclables materials which may be received in a commingled manner, if any, at the recycling center. This determination will be based upon the information submitted by the applicant pursuant to N.J.A.C. 7:26A-3.2(a), and will depend on the Department's assessment of whether the equipment on site is capable of handling the recyclable material in a commingled state.

139. COMMENT: How will the Department determine the amount of contaminants allowed in any truckload of source separated recyclable materials pursuant to the provisions set forth at N.J.A.C. 7:26A-3.5(a)3i. This should be left as a business decision for facility operators. (17)

RESPONSE: The Department's recycling center approval program is bound by the source separation criteria, set forth at N.J.S.A. 13:1E-99.11 et seq., which requires recycling centers to receive, store, process or transfer only those recyclable materials which have been separated at the point of generation. Nevertheless, the Department recognizes the fact that contaminants are received with loads of incoming recyclable material and that residue, requiring disposal, is generated by recycling centers during processing of recyclables. However, the Department must assure, through these regulations, that contaminants remain at the lowest possible levels and that residue generation be minimal. The Department will utilize the information regarding contaminants as provided by the applicant pursuant to N.J.A.C. 7:26A-3.2 in determining an acceptable level of contamination. Acceptable levels of contaminants will depend on the nature of the material, its possible sources, as well as other relevant information supplied by the applicant.

N.J.A.C. 7:26A-3.6 Application for renewal of a general approval to operate a recycling center or mobile recycling center

140. COMMENT: The application for renewal of a general approval, required pursuant to N.J.A.C. 7:26A-3.6(a), should be submitted to the county and host municipality for review and comment (13).

RESPONSE: The Department agrees with the commenter and has modified the rule to indicate that those persons applying for renewal of a general approval must submit a copy of the application for renewal to the municipal clerk of the municipality in which the recycling center is located and to the county solid waste or recycling coordinator for review and comment. The Department has made this revision to the rule because the county, through its district solid waste management plan, exercises approval authority over the operation of recycling centers which require a general approval. The Department has required the applicant to notify the host municipality to further the goal of inter-governmental cooperation.

N.J.A.C. 7:26A-3.7 Application procedure for limited approval to operate a recycling center for the receipt, storage, processing or transfer of non-traditional (now Class B) recyclable material

141. COMMENT: It is recommended that the proposed provisions of N.J.A.C. 7:26A-3.2(a)2, 10, 11, 12, 15, 16 and 18 be incorporated into the information submittal requirements for limited recycling center approval, set forth at N.J.A.C. 7:26A-3.7(a)1. (29)

RESPONSE: The Department has not required an applicant for a limited approval to submit to the Department all information required of an applicant for general approval. This decision was based upon the fact that limited approval sites are subject to a municipal approval process while general approval sites are not. Department review and approval of limited approval applications is designed to be coordinated with the municipal approval process. The information submission requirements for general approvals would duplicate municipal review and approval if extended to limited approval sites. Requiring an applicant for a limited approval to submit this information to the Department would be redundant. Specifically, the information required by N.J.A.C. 7:26A-3.2(a)2, for a description of the geographical location of the recycling center, including block and lot and zoning information; N.J.A.C. 7:26A-3.2(a)10, for the submittal of an USGS map for an assessment of the impact of the recycling center on sensitive receptors, N.J.A.C. 7:26A-3.2(a)11, for the deed or lease for the recycling center site; N.J.A.C. 7:26A-3.2(a)(2) for the design capacity of the recycling center site; N.J.A.C. 7:26A-3.2(a)15, for the methods of noise control to be utilized at the recycling center site; and N.J.A.C. 7:26A-3.2(a)16, for methods to be utilized at the recycling center site to control litter and mud-tracking, is information which is taken into consideration during the local review conducted as part of the municipal approval process. The requirement for information about the site access controls to be employed at the recycling center site, as per N.J.A.C. 7:26A-3.2(a)18, has been incorporated into the requirement which calls for the submittal of a site plan map, N.J.A.C. 7:26A-3.2(a)9. Because the information submittal requirements of the limited recycling center approval process require the submittal of a site plan map, pursuant to N.J.A.C. 7:26A-3.2(a)9, this information is therefore required in N.J.A.C. 7:26-3.7(a)1.

142. COMMENT: The phrase "where applicable" should be removed from proposed N.J.A.C. 7:26A-3.7(a)4. (16, 29)

RESPONSE: The phrase "where applicable" in N.J.A.C. 7:26A-3.7(a)4 (recodified on adoption as 7:26A-3.7(a)3), has been deleted and the phrase "planning board or from the board or adjustment," has been added to clarify that approval may come from either of these municipal bodies.

143. COMMENT: The Department should modify the language of proposed N.J.A.C. 7:26A-3.7(g) to state that "persons will take such measures as are necessary to ensure that illegal and unauthorized dumping will not occur" or "shall make every effort to prevent illegal and unauthorized dumping." (13, 17)

RESPONSE: The Department agrees that specific language as suggested by the commenter is needed in this provision, recodified on adoption as N.J.A.C. 7:26A-3.7(k). The Department has therefore modified this provision to include the phrase "shall take such measures as are necessary to" so that the recycling center operator must take affirmative action to prevent illegal and unauthorized dumping at the recycling center site. The latter suggestion was not utilized because it does not include a standard by which performance can be judged. (13, 17)

144. COMMENT: A copy of the application for limited recycling center approval should be submitted to the District as well as the Department. (13, 16, 29, 18)

RESPONSE: The Department has determined that it is appropriate to require such applicants to notify and report to the district solid waste office so that county officials can track recycling center operations within their jurisdictions. Therefore, the Department has modified N.J.A.C. 7:26A-3.7 to indicate that applicants for a limited recycling center approval must notify the applicable county solid waste or recycling coordinator of an application and must submit a copy of the final recycling tonnage report required of those issued a limited approval to the applicable county solid waste or recycling coordinator.

145. COMMENT: Prior to issuing an extension of a limited recycling center approval, the Department should be required to confer with the applicable solid waste management district. (13)

RESPONSE: The Department agrees that coordination with county and local officials is required. Therefore, the provision of proposed N.J.A.C. 7:26A-3.7(i) (recodified on adoption as 7:26A-3.7(m)) has been revised to indicate that the person applying for an extension will notify the applicable county solid waste or recycling coordinator, as well as applicable municipal planning board, of its request for an extension of a limited recycling center approval. The Department has determined that by providing such notification to the applicable county and local agencies, the agencies may comment to the Department on such extensions and their concerns may be addressed.

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N.J.A.C. 7:26A-3.8 Additional requirements for general or limited approval

146. COMMENT: The reference to "local fire marshal" in N.J.A.C. 7:26A-3.8(c) is not correct. The correct terminology is "fire official." (37)

RESPONSE: The Department agrees with the commenter. The Department has modified N.J.A.C. 7:26A-3.8(c) so that it refers to "fire official," the proper reference under the Uniform Fire Code.

N.J.A.C. 7:26A-3.9 Storage of non-traditional (now Class B) recyclable materials

147. COMMENT: A number of commenters indicated the following with respect to the storage of non-traditional (now Class B) materials: 1) that a person or recycling center should be able to petition the Department for an extension of the six-month storage limitation; 2) that there should be no six-month storage limitation; 3) that the limitation was overly stringent in the case of certain materials, such as leaves, and non-putrescible materials; and, 4) that the section should be clarified to indicate when the six-month storage period begins for processed and unprocessed material. (4, 5, 13, 17, 26, 28)

RESPONSE: The Department agrees that the six-month storage limitation is overly restrictive relative to the environmental protection to be gained through a storage limitation. The Department has therefore revised the provision regarding the storage of Class B recyclable material. The revised provision, set forth at N.J.A.C. 7:26A-3.9, indicates that unprocessed Class B recyclable material may be stored at recycling centers approved pursuant to these regulations for up to one year from the date of its receipt. In addition, the revised provision deletes the reference to processed Class B recyclable material found at N.J.A.C. 7:26A-3.9(b). As a result of this deletion, there will be no time limit imposed on the storage of processed Class B recyclable material. The Department has extended the allowable storage time for unprocessed Class B recyclable materials because most Class B recyclable materials are inert materials, such as concrete and asphalt, as well as non-putrescible materials, such as asphalt based roofing scrap and wood waste. Due to such characteristics, the Department has determined that the storage of these materials for a one year period does not pose any greater environmental threat or a health or safety concern than does the storage of these materials for a six month period. In addition, the extended storage allowance better reflects the seasonal fluctuations in market demand faced by recyclers of Class B recyclable materials. For example, the seasonal fluctuations of the road construction industry, a major end-market for recyclers of Class B recyclable materials, such as concrete, asphalt and tree stumps, has an impact upon the length of time unprocessed Class B recyclable materials stored at recycling centers prior to processing and marketing. Often, such fluctuations necessitate the storage of unprocessed Class B recyclable materials at recycling centers for as long as one year. The Department has removed the time limitation on the storage of processed material because the material is no longer a waste material once it has been processed into a product with an economic value. Therefore it should not be regulated as a waste.

Given the increased allowable storage time represented by these modifications, it will be unnecessary to further modify the rule to allow persons to petition the Department for longer storage time. While the Department has removed the six month storage limitation from this rule, it is important to include a storage time limitation of some duration. Without a time limitation, Class B recyclable materials could be stored indefinitely at a site, indicating that the materials are not being marketed and that the facility is not operating as a recycling center, but as an illegal solid waste facility.

For the storage of leaves, the revised definition of Class B recyclable material includes leaves, "provided that they are not composted." It is anticipated that the extended storage allowance of revised N.J.A.C. 7:26A-3.9 will not be pertinent to the storage of leaves at recycling centers since the storage of leaves for prolonged periods of time would cause the leaves to begin composting, even if windrow storage is not utilized.

N.J.A.C. 7:26A-3.10 Modifications of general or limited approvals

148. COMMENT: The rule should impose a specified timeframe for approval of modifications. (3, 10)

RESPONSE: The Department agrees that modification submissions should be reviewed and approval, as appropriate, on an expedited basis. However, introduction of an administrative completeness process into the modification procedures might actually slow approval of modifications by the substantial amount of extra paperwork necessary to generate completeness and incompleteness notices. In addition, established review timeframes are difficult to determine because some modifications may take only a few days to review (for example, a change in site access controls) while others may take several weeks (for example, receipt of a new material including new markets etc.) Accordingly, an administrative completeness procedure will not be used for modifications. Instead, the Department has addressed the concern for expediting the modification review process by revising N.J.A.C. 7:26A-3.10(d) to specify that the Department will notify the owner/operator in writing of additional information necessary to complete the review of the modification request no more than 30 days after receipt of a modification approval request.

149. COMMENT: The District should be notified of any requests to modify a general or limited approval, and consulted prior to the Department approving any such request. (13)

150. COMMENT: The municipality should be notified of any approval or denial of modifications. (3)

RESPONSE: The Department agrees that appropriate representatives of the applicable solid waste management district and municipality within which a recycling center is located should be notified of the approval or denial to modify a recycling center general or limited approval in a timely and efficient manner. Accordingly, the Department has modified N.J.A.C. 7:26-3.10(c) to require the applicant to notify the applicable county solid waste or recycling coordinator of a request to modify a general approval, or applicable municipal board to modify a limited approval. The Department has added N.J.A.C. 7:26A-3.10(g) to specify that the Department will notify the solid waste or recycling coordinator of the municipal planning board of determination with respect to approval or denial of modification to a limited approval.

151. COMMENT: In N.J.A.C. 7:26A-3.6(b), if the operation of an approved facility is planned to change significantly within the term of initial approval, District approval should be required prior to making the modifications. (13, 3)

RESPONSE: Significant changes which occur in a recycling center's operations during the approval term would trigger the modification requirements of N.J.A.C. 7:26A-3.10. The Department has modified N.J.A.C. 7:26A-3.10(c) to require an applicant to notify a solid waste management district of a request for modification approval. In the event that a proposed modification is deemed contrary to or inconsistent with the county plan by the county, the county could amend the solid waste management plan under the authority delegated to it by the Solid Waste Management Act, N.J.S.A. 13:1E-20.

The Department believes that the counties' existing statutory authority for overseeing facilities included in their district plans is an adequate basis for overseeing modifications to those facilities. An additional district approval process prior to Department approval as suggested by the commenter would only slow the modification process to the detriment of recycling center operations.

152. COMMENT: The modification rules referred to at N.J.A.C. 7:26A-3.10(c) are onerous and impractical. Changes in sources of supply and end-markets happen daily. The State should delineate what categories of end-markets are available and leave it to the operator to comply with those guidelines. (17, B)

RESPONSE: The Department agrees that it would be impractical and onerous to require pre-approval of all changes in end-market information or in sources of supply. The Department has determined that such submittal is overly burdensome to the recycling center operator inasmuch as the sources of recyclable material may be constantly changing. Accordingly, the Department had deleted the requirement of identifying the point of generation of recyclable materials from N.J.A.C. 7:26A-3.2(a)21 and, by reference, from the modification provisions in N.J.A.C. 7:26A-3.10. This information is provided to the Department after the fact, through the recordkeeping mechanism set up in N.J.A.C. 7:26A-3.16.

The Department had originally required that approval be obtained from the Department by the recycling center prior to its utilization of any end-market different than that specified in the original approval. As a result of this and other comments, the Department now recognizes that the proposed requirement of prior approval for changes in end-market was overly broad and could potentially inhibit the free market flow of recyclable materials.

Nonetheless, the Department continues to believe that end-market information is essential to the Department's ability to ensure that recyclable materials are being transferred from the recycling center to legitimate end-market uses and not simply disposed of as solid waste.

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Accordingly, the Department has added a new subsection (f) to N.J.A.C. 7:26A-3.10 on adoption which requires owners and operators of recycling centers to notify the Department in writing within one week of any change in end-market information. This new provision reasonably meets the Department's regulatory oversight needs while not inhibiting the free market flow of recyclable materials. Any recycling center that does not transfer material to legitimate end-markets or determined by the Department is subject to applicable penalties and action as an illegal solid waste facility.

N.J.A.C. 7:26A-3.11 Critera for denial of a general or limited approval to operate a recycling center or mobile recycling center and for denial of a renewal of a general approval

153. COMMENT: N.J.A.C. 7:26A-3.11 should be amended to include a provision allowing the Department to deny a general or limited approval, or renewal of same, for persistent violations of any environmental statutes. (2, 3)

RESPONSE: The Department agrees that compliance and enforcement criteria should be included in the recycling center approval/denial process. Due to an oversight in the proposal, however, compliance and enforcement history were specified as grounds for revocation of an approval but not for denial of an approval. To correct this oversight, the Department has modified the criteria initially proposed in N.J.A.C. 7:26A-3.11(b). The concerns of the commenter have been incorporated in modifications to the proposal, as discussed below.

The criteria for denial of an approval proposed at N.J.A.C. 7:26A-3.11 originally fell into two categories: failure to comply with the information and fee submittal requirements of subchapter 3 and past denial or revocation of a solid waste license for registration. The Department failed to include persistent violations of environmental laws as a ground for denial of a general or limited approval, although similar criteria were proposed in N.J.A.C. 7:26A-3.12 which contains the grounds for revocation of an approval. This oversight could lead to the anomalous situation of a person being granted an approval only to have it revoked under a different set of criteria. In order to cure this logic flow and to close this potential loophole, the Department has modified the denial criteria in N.J.A.C. 7:26A-3.11(b) by incorporation of the revocation criteria set forth at N.J.A.C. 7:26A-3.12 by reference. Compliance and enforcement performance are grounds for revocation of a general or limited approval pursuant to the original proposal at N.J.A.C. 7:26A-3.12(a). Linking denial and revocation criteria serves to make the rule internally consistent and responds to the commenter's concern.

154. COMMENT: Insert the word "municipal" in N.J.A.C. 7:26A-3.11(a)7, after the word "other," to ensure compliance with locally required permits or approvals. (2)

RESPONSE: The Department cannot make the change recommended by the commenter because N.J.A.C. 7:26A-3.11(a)7 has been deleted. The requirement to obtain approvals from any other agency is not a criteria for denial of the Department's approval because the Department has determined that issuance of a general or limited approval should not be conditioned on obtaining other necessary permits or approvals. Such other approvals are therefore no longer required prior to the Department's approval pursuant to a modification of N.J.A.C. 7:26A-3.11(a)7. Accordingly, N.J.A.C. 7:26A-3.4(b) was deleted for purposes of consistency with the modifications to N.J.A.C. 7:26A-3.4(b).

155. COMMENT: An appeal provision should be provided in section N.J.A.C. 7:26A-3.11(a)2 to allow a recycling center to appeal to the Department in the event that a county or district fails to act or rejects an application to construct and operate a recycling center. (2, D)

RESPONSE: The Department is not authorized by the Solid Waste Management or Recycling Acts to create an appeal process which allows a recycling center to appeal to the Department in the event that a county or district fails to act or rejects an application to construct and operate a recycling center. Such a generalized appeal process would undermine the independent statutory authority over planning issues given to the counties by the Acts.

Such issues are more effectively addressed in the planning process established by N.J.S.A. 13:1E-99.13.

Pursuant to N.J.S.A. 13:1E-99.13, counties are required to adopt a recycling plan as an amendment to their solid waste management plan. The contents of that plan, including the type and number of solid waste facilities contained in the plan, are primarily the responsibility of each individual county. The Department is delegated powers to supervise county solid waste planning. Although the Department may unilaterally amend a county plan upon a finding that a county has failed to fulfill its county planning obligations, including adoption of a recycling plan, the regulatory appeal procedure recommended by the commenter goes beyond this mandate and intrudes on the independent authority given to the counties. A regulatory procedure controlled solely by the Department would undermine the county solid waste planning process. Therefore, the Department will not modify the rules as recommended by the commenter, because it would be contrary to legislative intent and the State/county roles and responsibilities afffirmed by the Governor's acceptance of the Solid Waste Assessment Task Force Report.

156. COMMENT: In N.J.A.C. 7:26A-3.11(a)5, the Department should insert the phrase "or have been" after the words "will be" and before the word "received." (29)

RESPONSE: The Department disagrees with the commenter. The suggested change would establish a retroactive requirement which would unfairly deny entry into the recycling industry to any facility which in the past may have received mixed loads of recyclables and solid waste. For instance, a material recovery facility which had been permitted by the Department to receive unseparated solid waste for separation prior to recycling could not, pursuant to the commenter's suggested addition, obtain recycling center approval even if the facility sought to receive only source separated recyclable materials, because the facility had, in the past, received unseparated waste. The Department will not, therefore, deny recycling center approval on the basis of the nature of materials previously received at a facility, but will look instead to what materials the facility will be receiving as the basis for the Department's decision on whether to grant recycling center approval.

157. COMMENT: In N.J.A.C. 7:26A-3.11(c), the burden of clear and convincing evidence should not fall upon the applicant as this standard is far too stringent. The only standard that should apply in any form of a civil matter is a preponderance of the evidence. (17)

RESPONSE: The Department agrees that the standard of clear and convincing evidence exceeds that which is appropriate in the context of N.J.A.C. 7:26A-3.11(c). The Department has therefore modified this provision by substituting a "preponderance of evidence" standard which is the appropriate standard for most civil matters.

158. COMMENT: In N.J.A.C. 7:26A-3.11(a)2, the Department should state the circumstances under which district plan inclusion is required, rather than use the phrase "where applicable." (13)

RESPONSE: The Department agrees with the commenter that the use of the phrase "where applicable" is too vague. The use of the phrase as proposed was intended to distinguish between criteria for denial of general approvals and criteria for denial of limited approvals. All recycling centers operating pursuant to a general approval require plan inclusion per N.J.A.C. 7:26A-4.2(a) while recycling centers subject to limited approval do not require plan inclusion per N.J.A.C. 7:26A-3.7. Therefore, plan inclusion is not a requirement for limited approval. The language in the provision has been changed to reflect the applicability of plan inclusion requirements to the specific approval sought.

N.J.A.C. 7:26A-3.12 Procedures and criteria for revoking a general or limited approval

159. COMMENT: N.J.A.C. 7:26A-3.12 should be revised to reflect that the district, the local health department and the county health department have the authority to seek revocation of a permit through judicial proceeding. (13)

RESPONSE: N.J.A.C. 7:26A-3.12 details the grounds upon which the Department may revoke a recycling center approval. The purpose of this section is to put recycling centers on notice of the grounds upon which the Department may institute a revocation action. The section is not intended to restrict the ability of county and local health officials to seek revocation through other means. Specifically, N.J.S.A. 13:1E-9D authorizes county and local health officials to institute legal proceedings for injunctive or other relief in cases where a person has violated any provision of the Solid Waste Management Act or its implementing regulations, such as this chapter. This statutory authorization exists separately from the regulatory provision at N.J.A.C. 7:26A-3.12 and serves a broader purpose than simply identifying the grounds upon which the Department may seek approval revocation. Therefore, it is unnecessary to modify N.J.A.C. 7:26A-3.12 as recommended by the commenter.

160. COMMENT: The county should be notified of any revocation of an approval. (16, 29)

RESPONSE: The Department agrees that counties should be notified of any revocation of a recycling center approval. Counties are provided notice concerning recycling center approvals, modifications and renewals throughout the proposal. Extending this notice to revocations will be

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consistent with the entire proposal and enhance planning and program coordination. Accordingly, N.J.A.C. 7:26A-3.12(b) has been modified to require that the Department notify the appropriate county solid waste or recycling coordinator and municipal planning board, respectively of any revocation of a general or limited approval.

N.J.A.C. 7:26A-3.13 Appeal procedure

161. COMMENT: N.J.A.C. 7:26A-3.13 should be revised to state that any person aggrieved by a decision by the Department may challenge it. Approvals and conditional approvals should be subject to appeal. The time period should not be less than 30 days. (13, H)

RESPONSE: The appeal procedure established in N.J.A.C. 7:26A-3.13 is designed specifically to provide applicants for recycling center approval who are aggrieved by the denial, revocation or modification of a general or limited approval an opportunity for an administrative hearing to contest any of these three actions by the Department. In order to qualify for an administrative hearing under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., there must be a "contested case." A contested case is defined as "an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency hearing." See N.J.S.A. 52:14B-2 and N.J.A.C. 1:1-2.1. The appeal procedure in these rules is thus "designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties," that is, the Department and the applicant (see N.J.A.C. 1:1-2.1.)

Extending the administrative appeal right as suggested by the commenter to "any person" aggrieved by a decision by the Department is problematic in two repsects. First, the interests involved on appeal, for example, denial, revocation or modification of a recycling center approval, are interests that are unique to the recycling center applicant or operator. Appeals by "any" other person would not necessarily involve the "legal rights, duties," etc. of specific interested parties as mandated by the Administrative Procedure Act. Second, extending the administrative appeal right to such a broad, undefined class as "any person aggrieved" fails to satisfy the criteria of a contested case which determines the legal rights of specific parties with a defined interest. Instead, it would "provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people," which is specifically not the purpose of a contested case (see N.J.A.C. 1:1-2.1). For these reasons, the Department will not modify the rule to extend the right of administrative hearing to "any person aggrieved by a decision of the Department."

Finally, on this issue, the commenter should note that the administrative appeal procedure in N.J.A.C. 7:26A-3.13 in no way restricts any person who meets the jurisdictional criteria of the Superior Court from challenging an action of the Department in that forum.

On the issue of extending administrative appeal rights to recycling center approvals, it is unlikely that a recycling center applicant's or operator's appeal of the Department's approval of its requested action would constitute an "adversarial proceeding" in satisfaction of the critera for a contested case. Therefore, the Department will not modify the rule to extend the administrative appeal right to granted approvals.

On the issue of extending the time period for filing an administrative appeal to 30 days from the proposed 20 days, the commenter should note that the Solid Waste Management Act specifies that an administrative appeal of an action by the Department must be filed within 20 days from the receipt of notice of that action (see N.J.S.A. 13:1E-9c). This time period prescribed by statute, is "mandatory and jurisdictional" and can be enlarged only by the Legislature, not by the Department (see *Schaible Oil Co. v. DEP,* App. Div. Docket No. A-4980-88T1, decided February 14, 1991, and *Hess Oil & Chem. Corp. v. Doremus Sport Club,* 80 *N.J. Super.* 393, 396 (App. Div. 1963), certif. den. 41 *N.J.* 308 (1964)). Therefore, the Department can not modify the rule to extend the time for filing an appeal to 30 days.

162. COMMENT: The Office of Recycling should not be able to deny an appeal that is made as a matter of law. (H).

RESPONSE: N.J.A.C. 7:26A-3.13(g), which specifies that a hearing request will be denied where only issues of law are raised, is consistent with the purpose of an administrative hearing, which is to resolve disputed facts. See *Spalt v. DEP,* 237 *N.J. Super.* 206 (App. Div. 1989), certif. den. 122 *N.J.* 140), which held that an evidentiary hearing is mandated only when the administrative action is based on disputed adjudicatory facts. Where no disputed facts exist and the Department denies a hearing request because only issues of law are raised, that denial constitutes final agency action which may be appealed to the Superior Court, Appelate Division (see N.J.S.A. 52:14B-12 and New Jersey Court Rule 2:2-3(a)2). Accordingly, N.J.A.C. 7:26A-3.13(g) does not deprive an individual of all legal recourse where the contested case involves only issues of law, but simply directs the individual to the appropriate legal forum, that is, to the Superior Court. Therefore, no modification to the rule will be made.

N.J.A.C. 7:26A-3.14 Transfer of a general or limited approval to operate a recycling center

163. COMMENT: The District should be notified of requests to transfer general or limited approvals to operate prior to the Department's approval of the requests. (13)

RESPONSE: The Department agrees that a solid waste management district should be notified of requests to transfer a general or limited approval prior to the Department's approval of the request. District solid waste or recycling coordinators are provided notice of application, Department approval or denial, renewal and modification throughout the initial proposal. Notification of a request to transfer an approval is consistent with the objectives of the initial proposal and will enhance planning and program coordination. Accordingly, the Department has modified N.J.A.C. 7:26A-3.14 to require that the applicant requesting transfer of a general approval shall notify the applicable county recycling coordinator; requests to transfer a limited approval shall be accompanied by a notice to the appropriate municipal planning board. Additionally, the Department will notify county or municipal officials of determinations concerning the transfer of general or limited approvals.

N.J.A.C. 7:26A-3.15 Filing requirements for existing recycling centers which receive, store, process or transfer non-traditional (now Class B) recyclable material

164. COMMENT: Special provisions for recycling centers with existing municipal and/or county approval must be incorporated into the rules. Strict adherence to the current administrative requirements and these new rules would shut down most existing recycling facilities. (20, H)

RESPONSE: The Department has not included special provisions in the rules to accomodate recycling centers with prior municipal and county approvals. Such a provision could create an uneven, unfair, inconsistent and unworkable regulatory program due to potentially conflicting requirements of multiple jurisdictions (for example, solid waste management districts, regional land use agencies such as the H.M.D.C. or Pinelands Commission, and 567 municipalities). Recycling is a Statewide objective to be achieved in an orderly fashion. The Department, counties and municipalities share this objective. The regulatory structure established by these rules, including the requirement for a Department approval of recycling centers, supersedes existing county or municipal approvals, and reflects the policy established by the New Jersey Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq. (the Act). Under the Act, county and municipal governments and the Department have specific roles. The Department's approval is necessary before a recycling center can receive, store, process or transfer Class B recyclable material pursuant to N.J.S.A. 13:1E-99.34. Each county is required to prepare and adopt a district recycling plan pursuant to N.J.S.A. 13:1E-99.13. Each municipality is required to establish and implement a municipal recycling program providing for a collection system for recyclable materials, adopt an ordinance requiring source separation of specified recyclable materials, make necessary revisions to its master plan, and submit annual recycling tonnage reports pursuant to N.J.S.A. 13:1E-99.16.

Based upon the clear division of responsibilities under the Act, the Department has concluded that it reflects the legislative intent to provide no grandfathering process for facilities with prior county or municipal approval.

The Department has also determined that strict adherence to these rules will not cause existing recycling facilities to shut down. The Department recognizes that the rules provide for annual fees and impose recordkeeping, reporting and compliance requirements on the regulated community. However, as described in responses to comments Nos. 73 to 79 above, the Department has concluded that the economic effects of the rules are not significant when compared to market factors and other costs from sources unrelated to the Department.

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N.J.A.C. 7:26A-3.16 Recordkeeping and annual report; confidentiality of record.

165. COMMENT: N.J.A.C. 7:26A-3.16(c) requires recycling centers to submit information to the Office of Recycling. N.J.A.C. 7:26A-4.5 requires recycling centers to submit recycling tonnage information to all municipalities from which recyclable material is received. Do these sections conflict with each other, or are they different? (3)

RESPONSE: N.J.A.C. 7:26A-3.16(c) and N.J.A.C. 7:26A-4.5 are not in conflict. They are different in that N.J.A.C. 7:26A-3.16(c) specifically refers to the reporting requirements of those recycling centers which require Departmental approval, while N.J.A.C. 7:26A-4.5 pertains to all recycling centers. The information submittal requirements of the two reports differ as well.

166. COMMENT: Records maintained according to N.J.A.C. 7:26A-3.16(a)4 should also indicate the disposal facility used by the solid waste collector/hauler for the residue. Furthermore, N.J.A.C. 7:26A-3.16(e) should be revised so that access to this information is afforded to counties or municipalities, especially since the Department does not have sufficient personnel or incentive to investigate and review information regarding the disposal facility utilized by a recycling center as compared to county enforcement staff. (16, 29)

RESPONSE: The disposal facility used by the solid waste collector/hauler for residue generated by a recycling center recycling will not be made part of the recordkeeping process for recycling centers because this information can be determined via the waste flow rules at N.J.A.C. 7:26A-6. Residue which is a solid waste must be disposed of at the facility designated in the waste flow rules for disposal of solid waste for the particular location in which the recycling center is operating. Therefore it is not necessary to specify this information in the annual report pursuant to N.J.A.C. 7:26A-3.16(e) as suggested by the commenter.

167. COMMENT: N.J.A.C. 7:26A-3.1(e), which addresses confidentiality of records, should be modified so that counties have access to the information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7, 3.7(e)5 and 4.2(a). The provision for confidentiality should be deleted if this modification is not made. (20, 18)

RESPONSE: The purpose of requiring end-market information from recycling center applicants is to enable the Department to verify whether sound markets exist for the product which will be generated by the recycling center. Where no markets exist, or where market conditions are unstable, there is a greater likelihood that material transported to a recycling center will accumulate to levels which threaten public health, safety or the environment. Therefore, end-market information is a necessary element of the recycling center approval process. The Department has determined, however, the necessity for end market information must be weighed against the competitive concerns of recycling center operators in keeping this information confidential. This decision to allow for confidentiality of end-market information in no way precludes the counties from developing and requiring such information as necessary to insure the effectiveness of their planning process.

The Department included a provision in the proposal concerning confidentiality of end-market information because the end-market information is used solely for the Department's internal purpose in evaluating a recycling center approval application. The Department has determined that the interests of the applicant in preserving the confidentiality of end-market information outweigh the need to share end-market information with other governmental agencies such as the counties. Therefore, the Department will not modify N.J.A.C. 7:26A-3.2(a)7, 3.7(e)5 or 3.16 to provide access to confidential end-market information by counties. Nonetheless, the Department believes that the need to keep end-market information confidential diminishes significantly over time as the competitive value of this information diminishes. Accordingly, the Department has modified the provision to limit confidentiality of end-market information to two years. Thereafter, this information will be available to counties as well as the general public, for use in planning and other functions.

168. COMMENT: The reporting requirements are onerous; there is concern about the maximum number of reports required to be submitted to the Department (17, H).

RESPONSE: The Department has revised the reporting requirements of N.J.A.C. 7:26A-3.16(c) such that an annual report which contains monthly summary statements is required to be submitted, and not an annual report containing daily records. This revision will make the reporting requirements less onerous.

169. COMMENT: Daily logs should not be required. Permanent or mobile recycling centers are not required to report recycling tonnage and origin information to county governments on a periodic basis. Monthly reports to haulers delivering the recyclables and monthly or quarterly reports to the municipalities and counties by the recycling center and the hauler should be sufficient with annual reports to the state. (20, 18)

RESPONSE: The daily recordkeeping requirements are important because such records can be used by the Department to assess the compliance of recycling centers as it pertains to amounts and types of materials received, stored, processed or transferred. While the Department requires maintenance of daily records by approved recycling centers, submittal of daily records is not required. Such records also provide data for the annual report required of approved recycling centers. The information garnered from the annual reports is important for assessing recycling center compliance and Statewide recycling rates. The reporting requirement of N.J.A.C. 7:26A-3.16 is a condition of the approval granted by the Department which has been authorized to approve recycling centers for Class B recyclable materials by N.J.S.A. 13:1E-99.34. Municipalities shall receive a tonnage report from recycling centers for Class B recyclable materials, as per the tonnage reporting requirements of N.J.S.A. 13:1E-99.11 et seq. Counties may establish their own reporting requirements for recycling centers for Class B recyclable materials, including the requirement for frequent submittal of reports, through the plan amendment process.

170. COMMENT: An excessive amount of time is allotted for preparation of annual reports under N.J.A.C. 7:26A-3.16(c) and N.J.A.C. 7:26A-4.2(e). It would be more reasonable to require submittal of reports by March 1st, which would give them two months to format data which has already been collected. (32)

RESPONSE: The Department agrees that the proposed due date for the submittal of the annual report required pursuant to N.J.A.C. 7:26A-3.16 provides recycling center operators with more time than is necessary to prepare the annual report. Because the annual report requirement has been clarified such that monthly summary statements are to be submitted by approved recycling centers, and not daily records, less time will be necessary for report preparation. Furthermore, the Department has determined that the earlier receipt of this information will enable the Department to assess recycling rates for Class B recyclable materials in a more timely fashion. Therefore, the due date for the submittal of the annual report has been changed from July 1 to February 1 of each year.

Subchapter 4

N.J.A.C. 7:26A-4.1 Federal and local laws operational standards

171. COMMENT: The requirement to conform with all applicable Federal and State laws found at N.J.A.C. 7:26A-4.1(a)8 lacks specificity and should directly reference "operational activities" as a clarification to distinguish such conformity from siting and development activities. [(5, 6)]

RESPONSE: N.J.A.C. 7:26-4.1(a) clearly states that the requirements of the subsection are operational standards. The Department therefore feels that the rule adequately addresses the concern of the commenter that the provision not include siting and development activities. The purpose of N.J.A.C. 7:26A-4.1(a)8 is to alert recycling center operators that recycling centers are required to be in compliance with all applicable Federal, State and local laws and regulations. Although it is impractical to attempt to list all permits or approvals which may be required for a particular operation, inasmuch as this information may vary depending on the precise nature, scale and location of facility operations, the Department agrees that more clarity can be provided. Accordingly, the Department has modified N.J.A.C. 7:26A-4.1(a)8 (recodified on adoption as N.J.A.C. 7:26A-4.1(a)7) to list some of the other state laws and regulations that a recycling center operator will most likely have to comply with. These other laws and regulations include the noise control regulations, air pollution control regulations, stream encroachment regulations, NJPDES regulations, the Soil Erosion and Sediment Control Act, and local fire and safety codes.

172. COMMENT: Proposed N.J.A.C. 7:26-4.1(a)8 indicates that the operation and related activities of a recycling center shall be in conformance with all applicable Federal, State and local laws and regulations, including, but not limited to, nuisance codes. Does this provision mean that recycling centers no longer have to conform to county law? (41)

RESPONSE: The term "local" as used in N.J.A.C. 7:26A-4.1(a)8 (recodified as 7:26A-4.1(a)7) was intended to mean both county and municipal. The Department agrees, however, that the term "local" is

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vague and has therefore revised N.J.A.C. 7:26A-4.1(a)7 to require recycling center operation to be in conformance with all applicable "federal, State, **county, municipal,** and other local laws," (emphasis added).

Residual storage

173. COMMENT: The requirement to store residue would demand the placement of any residue in "roll-off" type or similar containers. Such a required procedure would be impractical for auto shredders due to the high volume of residual material generated, create operational difficulties due to the required double handling of such materials, and would be financially burdensome. (7, 15, 24, K)

RESPONSE: The Department agrees that the requirement of proposed N.J.A.C. 7:26A-4.1(a)4, which called for all residue from recycling centers to be stored in roll-off containers or similar containers dedicated for residue storage, would have placed an operational and economic burden on recycling centers which outweighs the benefits which would be obtained from this provision, that is, more orderly recycling center sites. Therefore, the Department has deleted this provision from the rule. The Department continues to be concerned that residue be stored in an environmentally sound manner, however. Accordingly, the Department has replaced paragraph (a)4 with the requirement that residue be stored "in a manner which prevents run-off leakage or seepage from the residue storage area into, on or around the soil of the residue storage area." While this new provision is designed to protect the environment from improperly handled residue as originally intended in proposed paragraph (a)4, it provides the recycling center with greater flexibility in residue storage options.

174. COMMENT: County or local authority over residue storage, as per N.J.A.C. 7:26A-4.1(a)2, is inconsistent with a number of court rulings which held that N.J.S.A. 13:1E-1 et seq. preempts local regulation of solid waste. (15)

RESPONSE: The Department agrees that residue storage requirements at recycling center sites warrant a consistent Statewide approach because the potential for 567 separate municipal residue storage policies would have resulted under the residue storage requirements, as proposed. Such a development would make enforcement of residue storage very difficult and does not provide the recycling industry with a consistent Statewide policy. Therefore, the Department has modified N.J.A.C. 7:26A-4.1(a)2 such that the reference to county or local health and safety ordinances has been deleted. The result of the deletion is to impose a uniform six month limitation on storage. By making this modification, the Department has also ensured that this provision is consistent with court decisions regarding the preemption of local regulation by N.J.S.A. 13:E-1 et seq., such as *Ocean County Utilities Authority v. Township of Berkeley,* 221 N.J. Super. 621 (Law Div. 1987).

175. COMMENT: The rule should be revised to recognize the authority of districts to direct disposal of residues generated by recycling centers which accept out-of-county materials. (13)

RESPONSE: The amount of residue from a recycling center operating in accordance with this chapter will be de minimis and, for the purposes of disposal, considered to have been generated at the recycling center. The waste flow rules at N.J.A.C. 7:26-6 detail the manner by which solid waste is directed for disposal.

176. COMMENT: Proposed N.J.A.C. 7:26A-4.1(a)3 creates a problem where a county solid waste management plan may authorize waste flow not yet codified in NJDEP's solid waste flow rules due to time required in review of the county plan by the Department. This rule should be revised to allow movement of residue according to a waste flow plan adopted by a county subject to over-ruling by the Department through rejection of the county plan or entry of a superseding waste flow order by the Department. (15)

RESPONSE: N.J.A.C. 7:26A-4.1(a)3 indicates that all residue shall be removed from the recycling center site in accordance with the Department's interdistrict and intradistrict solid waste flow rules at N.J.A.C. 7:26-6. In the event that a district deems it necessary to implement a new waste flow directive in an expedited manner, the provision of N.J.A.C. 7:26-6.7, which details the procedure for emergency waste flow directives, may be utilized. Therefore, the citation to the waste flow rules contained in N.J.A.C. 7:26-4.1(a)3 is adequate to address situations in which a district redirects solid waste on an emergency basis pursuant to N.J.A.C. 7:26-6.7.

Capacitors

177. COMMENT: The proposed rules wrongly places the responsibility for capacitor removal, and hence the attendant liability, on the auto shredding industry. A more comprehensive approach would be to mandate white goods recycling Statewide and ban the transport and disposal of those capacitors containing PCBs. (7, K)

178. COMMENT: The proposed rules will serve to prevent the shredding of bulky appliances by responsible recycling centers and thereby recreate the problem of improper disposal. (21)

179. COMMENT: The proposed rules should seek to establish a definable standard regarding the prohibition set forth at N.J.A.C. 7:26A-4.1(a)7 by referencing the hazardous characteristic of PCBs in the provision. (40)

RESPONSE: The Department recognizes that N.J.A.C. 7:26A-4.1(a)7 (recodified as 7:26A-4.1(a)6), which prohibits the shredding, shearing or baling of capacitors or electronic components containing polychlorinated biphenyls (PCBs), does not provide a comprehensive approach to the management of capacitors and electronic components which contain PCB's. Development of a comprehensive PCB regulatory scheme was not the objective of the provision. A comprehensive PCB regulatory scheme is currently in effect at the Federal level pursuant to the Toxic Substances Control Act (TCSA) 15 U.S.C.A. 2601 et seq. and regulations promulgated thereunder at 40 C.F.R. part 761. The prohibition is consistent with existing Federal regulations at 40 C.F.R. part 761. The prohibition set forth in the rule will reinforce the State hazardous waste management regulations, including the regulatory exemption for intact PCB capacitors provided in the State hazardous waste regulations at N.J.A.C. 7:26-8.2(a)24.

The handling of PCB contaminated materials by recycling centers poses unique and potentially significant risks due to the fact that recyclable materials, by definition, are reintroduced into commerce as raw materials or products. Thus PCBs at unknown levels could contaminate materials and consumer products in uncontrolled end uses. The documented human health and environmental risks that are associated with PCBs warrant close oversight of the handling of PCB contaminated materials, particularly when such materials may be introduced into unknown end uses that pose risks of exposure through direct human contact. The prohibition of shredding, baling or shearing of known PCB containing equipment is designed to reduce the risks of practices which may cause the inadvertent PCB contamination of materials in commerce.

Concerning liability for proper PCB handling, in light of Federal regulatory requirements promulgated pursuant to TSCA, the provisions of N.J.A.C. 7:26A-4.1(a)7 do not shift liability to the auto shredding industry. The requirements prohibit a process which has been demonstrated to cause the release of PCB fluids which create the potential for adverse risks to human health and environment. Removal, transport, disposal and other handling requirements for equipment that contains PCB's remain regulated by Federal law.

Concerning the comment that the rule will serve to prevent the shredding of bulky appliances by recycling centers and thereby create disposal problems, the Department understands the relationship between regulatory requirements and the willingness of the private sector to engage in regulated activities. The Department finds that the risks posed by PCB contaminated materials in electronic equipment are potentially significant and require that the Department prohibit equipment handling practices that have been shown to cause uncontrolled release and dispersal of PCB's. Stringent PCB disposal requirements, acting in concert with stringent PCB equipment handling and recycling requirements, will serve to create incentives for proper equipment handling practices.

In consideration of the above, the Department does not find it necessary, as the commenter recommends, for the recycling center rule to incorporate by reference stand alone Federal and State PCB handling and disposal requirements adopted pursuant to TSCA, the Resource Conservation and Recovery Act (42 U.S.C.A. 6901 et seq.) and the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), respectively. Objective and scientifically valid standards are in effect pursuant to these laws. State hazardous waste regulations control PCB handling and disposal. The hazardous waste regulations provide an exemption for small capacitors that are intact. The prohibition on shredding, baling or shearing is consistent with the intent of keeping capacitors and electronic equipment intact (see N.J.A.C. 7:26-8.2(a)24).

180. COMMENT: The requirements for "traditional" (now Class A) recycling centers to "minimize negative impacts . . ." will result in subjective interpretations by local governments which could unduly constrain legitimate recycling operation which were in full compliance with local codes and ordinances. As such, this section should be deleted in its entirety. (8, 15)

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RESPONSE: The Department agrees with the commenter, and has deleted this provision. Based upon comments, the Department has determined that the provision proposed at N.J.A.C. 7:26A-4.1(b) is unclear and unnecessary because it fails to inform recycling centers of specific standards that must be met, thereby creating the potential for subjective determinations. Specifically, the requirement that measures be taken by recycling centers to minimize negative impacts implies that affirmative action must be taken by recycling centers. However, as proposed, the provision did not provide standards for such affirmative action. In addition, this provision is not necessary because N.J.A.C. 7:26A-4.1(a) already informs recycling center operators that they must conform to other laws and regulations, including other environmental laws and regulations. Among these laws and regulations are noise and nuisance codes and litter ordinances. Compliance with these other requirements should ensure that the impacts on the environment from Class A recycling centers are minimized as originally intended in N.J.A.C. 7:26A-4.1(b). Duplication of performance standards of subsection (a) at subsection (b) would be redundant.

Plastic bags

181. COMMENT: Use of plastic bags as a method of collecting recyclable materials (specifically leaves and soils) should not be restricted and requirements for the recycling of such bags should be phased in over time. This provision is the epitome of overkill. The goal of such a restriction is not clear. (D, F, H)

182. COMMENT: The inclusion of N.J.A.C. 7:26A-4.1(a)5 which regards the use of plastic bags as a method of collecting recyclable materials, is appreciated. (27)

183. COMMENT: N.J.A.C. 7:26A-4.1(a)5 should be revised such that the provision indicates that no recyclable material shall be received, stored, processed or transferred which are contained in plastic bags unless the bags themselves are being processed at that recycling center or are being shipped to another recycling center for processing. (39)

RESPONSE: After considering these comments the Department has determined that the provision proposed at N.J.A.C. 7:26A-4.1(a)5, which indicates that recycling centers may not receive, store, process or transfer recyclable materials which are contained in plastic bags unless evidence of an end-market for the plastic bags has been demonstrated to the Department, places too great of a restriction on local recycling program collection methods. While the benefit to be gained by such a provision, that is, a reduction in the amount of waste requiring disposal from recycling centers, is noteworthy, the negative impact that this provision would have upon municipal programs which rely on a collection method which employs plastic bags, is too great. For example, many municipal programs would need to purchase recyclables storage buckets for residents and possibly new recycling collection equipment because of this provision. Therefore this provision has been deleted.

As a result of this deletion, the requirements to secure end-markets for plastic bags is no longer applicable. Additionally, the recommendations regarding on-site and off-site processing of plastic bags is no longer applicable. It should be noted, however that this proposed provision was a specific operational standard for recycling centers and not leaf composting facilities. Therefore, this provision would not have affected programs where leaves are collected in plastic bags and transported to leaf composting facilities. Additionally, this provision would not have affected soils because plastic bags are typically not used for contaminated soil storage and collection. Such soil is stored on or under plastic material for containment purposes, however. Therefore, this provision would probably not have had a great impact upon the transport of soils.

Hazardous waste

184. COMMENT: Since the NJDEP, Bureau of Hazardous Waste Classification, allows the recycling of hazardous waste out-of-State N.J.A.C. 7:26A-4.1(a)6 should be amended to reference adherence to departmental guidelines, thereby providing for consistency. (12)

RESPONSE: This chapter is not applicable to the management of hazardous waste as set forth in N.J.A.C. 7:26A-1.1. Therefore, the recycling of hazardous waste is not impacted by this rule because the chapter regulates the recycling of only non-hazardous materials. N.J.A.C. 7:26A-4.1(a)6 merely informs owners and operators of New Jersey based recycling centers for Class A and Class B recyclable materials that hazardous waste shall not be received, stored, processed or transferred at recycling centers subject to these rules. If hazardous waste were to be inadvertently delivered to a recycling center, the recycling center operator or owner would be required to notify the Department. N.J.A.C. 7:26A-4.1(a)6 does not restrict or regulate the out-of-State recycling of hazardous waste in any way. Therefore, because N.J.A.C. 7:26A-4.1(a)6 is unrelated to out-of-State hazardous waste recycling, the Department has not made the suggested change.

Use of the term "recycling"

185. COMMENT: Proposed N.J.A.C. 7:26A-4.1(c) is in violation of free speech, lacks any compelling State interest in regulating the use of terms identifying recycling operations, and should be stricken in its entirety. (15)

RESPONSE: The Department has deleted the provision for reasons other than those suggested by the commenter. The Department is not convinced that N.J.A.C. 7:26A-4.1(c), by restricting use of the terms "recycling center" and "recycling," violates free speech as suggested by the commenter. N.J.A.C. 7:26A-4.1(c) was incorporated into these rules in order to clarify to the regulated community that only those facilities which meet the criteria of Chapter 26A are considered to be legitimate recycling centers. The Department believes that such clarification is beneficial given the history of environmental problems surrounding the use of the term "recycling" by illegal solid waste facilities. Nevertheless, the Department agrees that the restriction on the use of the term "recycling center" is not the most efficacious means by which to achieve these goals. Additonally, the potential benefit from N.J.A.C. 7:26A-4.1(c) is outweighed by the administrative burden and enforcement difficulties which the Department would face as a result of this provision.

Construction codes

186. COMMENT: In regard to the Uniform Construction Code, N.J.A.C. 7:26A-4.1(d) should distinguish between "new" and existing recycling centers. (15)

RESPONSE: N.J.A.C. 7:26A-4.1(d) (recodified on adoption as 7:26A-4.1(b)) requires that recycling centers be constructed in conformance with the "State Uniform Construction Code Act" (Code) (N.J.S.A. 52:27D-119 at seq.) and regulations promulgated thereunder. The provision does not expand the scope of requirements established pursuant to the Code. Recycling centers are subject to the Code with or without the operation of N.J.A.C. 7:26A-4.1(b). The Department feels that this provision is an appropriate means of notifying recycling centers of the need to comply with the code.

Litter

187. COMMENT: Proposed N.J.A.C. 7:26A-4.1(a)10 should be amended to specify that litter and debris which is subject to regulation is only that which is "a by-product of the recycling process." (39)

RESPONSE: The Department has determined that the revision suggested by the commenter is not warranted because N.J.A.C. 7:26A-4.1(a)10 (recodified on adoption as 7:26A-4.1(a)8) does not impose a burdensome requirement upon recycling center owners and operators, but merely requires the upkeep of the facility as it regards litter and mud tracking. The benefit of this requirement is that the appearance of recycling centers will improve. This in turn will improve the image of the recycling industry. Ultimately, such a requirement may help make it easier to site new recycling centers. The benefits gained by requiring the recycling center to be kept clear of all debris and mud would be greatly reduced if this provision referred solely to the litter generated by the recycling process itself. Thus, the benefits gained by this provision outweigh any costs associated with this requirement, such as personnel costs for litter pick-up.

Adoption of operational standards

188. COMMENT: The current Recycling Act (N.J.S.A. 13:1E-99.34) prohibits the NJDEP from adopting specific operational standards for "traditional" (now Class A) recycling centers. (15)

189. COMMENT: The operational standards established in subchapter 4 are really approval criteria, and are the same as those found in subchapter 3. (E, H)

RESPONSE: The statutory provision cited by the commenter (N.J.S.A. 13:1E-99.34(b)) prohibits the Department from requiring that recycling centers which receive source separated glass, metal, paper, plastic containers and cardboard (Class A recyclable materials) obtain approval of a registration statement, engineering design, and environmental and health impact statement prior to commencement of operations. The rules adopted by the Department in chapter 26A maintain this statutory distinction. The operational criteria of subchapter 4 which apply to recycling centers which receive Class A as well as Class B recyclable materials are clearly consistent with the objectives of N.J.S.A. 13:1E-99.34(b). One such objective is to distinguish recycling centers and

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solid waste facilities and to exempt recycling centers from the solid waste facility permitting process, as discussed below.

The operating performance standards of N.J.A.C. 7:26A-4.1 are designed to ensure that recycling centers are aware of and operate in a manner consistent with existing environmental, land use, transportation, safety and nuisance requirements. N.J.A.C. 7:26A-4.1 creates no new stand alone design or performance requirements or review and approval procedures for recycling centers. Rather, N.J.A.C. 7:26A-4.1 serves as self-implementing mechanism which operates independent of any Department review and approval process.

For example, N.J.A.C. 7:26A-4.1(a)8 mandates that a recycling center be operated in such a manner that the property is maintained free of litter and debris. This establishes an enforceable performance standard. However, the Department conducts no review of the site, equipment, mitigation measures or other management practices that the recycling center would use to achieve this performance standard prior to their operation.

The Department believes that the Legislature intended to exempt recycling centers from the lengthy and costly solid waste facility permit process, not to exempt such facilities from basic environmental, land use, safety and transportation performance requirements. The Legislature clearly stated its intention to create an exemption of limited scope in N.J.S.A. 13:1E-99.34(a), which provides that exempted facilities shall not "be required by the Department to obtain a registration statement, engineering design approval, or approval of an environmental and health impact statement prior to the commencement of operations."

Registration statement, engineering design and environmental and health impact statement approvals are complex technical review functions conducted by the Department at solid waste facilities prior to issuance of a solid waste facility permit. These technical and procedural requirements are the object of the statutory exemption, not the operational performance standards of N.J.A.C. 7:26A-4.1.

190. COMMENT: While the operational standards for all recycling centers contained in the rules are supported, the application and approval process as is proposed is burdensome, represents regulatory overkill and will serve to discourage the fostering of recycling in New Jersey. (E)

191. COMMENT: The overall concept of these rules is much needed in New Jersey's recycling industry. (32)

RESPONSE: The Department strongly supports the expansion of the New Jersey recycling industry but recognizes that the rules as proposed may have created perceptions which could have the effect of discouraging such expansion. In response to this and other comments, the Department has streamlined the application and approval process and increased the accountability of the Department in providing timely and efficient review procedures.

Application requirements of N.J.A.C. 7:26A-3.2 have been made simpler and more responsive to the recycling industry. For example, information submission requirements, such as a description of current land use, equipment invoice documents, copies of air permit applications, stream encroachment permit documentation and written descriptions of noise control, litter control, source separation, soil erosion and site access control methods have been deleted. The Department has also deleted application requirements for maintenance plan, safety plan, personnel training manual and incoming materials inspection plan submission requirements initially proposed in that section. Those deletions have been made because the Department has determined that the items are not necessary to the Department's oversight of recycling centers and that they create more of an administrative burden to recycling center applicants than is justified by the relatively small benefit to the Department by obtaining this information. Many of these requirements have instead been recast as performance-oriented standards and incorporated in subchapter 4.

Procedurally, the Department has modified the proposed rules to establish review timeframes for application completeness, technical review and approval or denial determinations. The rule provides for 30 day completeness determination and 90 day technical review approval or denial determination.

The application information and approval changes will allow for the Department to achieve the original regulatory oversight objectives and intentions of the rules, while increasing flexibility, responsiveness and accountability to the recycling industry. Such actions by the Department should dismiss any "regulatory overkill" perceptions created by the initial proposal that could serve to discourage the expansion of the recycling industry. The rules will also provide a uniform and consistent approach to the regulation of recycling centers, discourage illegal or unsound recycling operations, and provide for the achievement of recycling goals while preserving environmental quality.

N.J.A.C. 7:26A-4.2 Approval of out-of-State transport

Several commenters objected to the out-of-State transport requirements of the proposed new rules.

192. COMMENT: The prior approval of out-of-State facilities will act to discourage private recycling initiatives. (10)

193. COMMENT: State approval for out-of-State transport of recyclables violates free interstate trade agreements. (D)

194. COMMENT: Tracking material across state lines is impractical. (H)

195. COMMENT: The regulation of out-of-State transport of recyclables is beyond the scope of authority of the Department. (15)

196. COMMENT: The section on out-of-State transport of recyclables should be limited to an annual review only to substantiate the viability of out-of-State markets. (20)

197. COMMENT: The criteria to be met for approval of out-of-State transport is non-specific and, as such, no challenge can be mounted against this criteria. (15)

198. COMMENT: The NJDEP should opt to enhance its enforcement efforts rather than enact a restrictive regulatory scheme which inhibits the out-of-State transport of recyclables. (23)

199. COMMENT: With respect to out-of-State transport, a copy of the NJDEP approval letter of this activity should be kept on-site where loading activities occur, rather than in the vehicle. (12)

200. COMMENT: The State should grant no exemptions regarding out-of-State transport. (29)

201. COMMENT: The out-of-State transport fees could create interference with interstate commerce. (H)

202. COMMENT: The fee for out-of-State transport should be waived. The allowance to direct commingled and non-commingled recyclables to out-of-State manufacturers should be broadened to specify that non-commingled recyclables can be directed to out-of-State recycling centers, processing facilities, etc. without imposing a State fee. (15)

203. COMMENT: Is it the Department's concern that source separated recyclable materials be transported to an out-of-State facility? Clearly, source separated recyclable materials are outside of the State's jurisdiction in regard to any flow control arrangements. In addition, the movement of any recyclable material across state lines is desirable in the expansion of markets for those materials. (13, 17)

204. COMMENT: The Department will hinder expansion of recycling opportunities due to inherent delays necessary in granting opportunities to out-of-State approvals. (17)

205. COMMENT: What are the enforcement procedures and penalties for the transport of Class B recyclable materials to out-of-State facilities not in conformance with proposed N.J.A.C. 7:26A-4.2? (9)

206. COMMENT: The approval letter sent by the DEP with respect to proposed N.J.A.C. 7:26A-4.2 should also be sent to the county. (16, 29)

207. COMMENT: A copy of the annual report required under N.J.A.C. 7:26A-4.2(e) should also be provided to the county where the materials were generated or at the very least, the county should have access to the annual reports. Furthermore, the report should be submitted by March 1, not July 1. (16, 29)

208. COMMENT: It is ironic that fees for transporting recyclable materials to an out-of-State location are substantially lower than are fees for in-State recycling. Thus, these regulations encourage out-of-State shipments. (28)

209. COMMENT: The Department should indicate in N.J.A.C. 7:26A-4.2(c) that approval for out-of-State transport will be issued within 60 days of a determination that the information submitted pursuant to N.J.A.C. 7:26A-4.2(a) and (b) is complete. (40)

210. COMMENT: The out-of-State approval requirements are confusing. For example, what constitutes the requirement for an application? (12)

211. COMMENT: Requests for approval of out-of-State transport of contaminated soils will prove the Department's estimates for manpower and budget to be too conservative. (12, G)

212. COMMENT: The placement of the section pertaining to approval for out-of-State transport of recyclable materials in subchapter 4 is confusing. This provision has nothing to do with the operational standards of subchapter 4. It belongs with the approval criteria provisions of subchapter 3. (9)

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RESPONSE: The Department has determined from comments received that proposed N.J.A.C. 7:26A-4.2, which would have required Departmental approval for the out-of-State transport of recyclable materials, would have created a tracking system which would have entailed a burdensome administrative process, resulting in substantial delays in moving recyclable materials to market. Therefore, this provision, as well as the associated fee for out-of-State transport of recyclable material proposed at N.J.A.C. 7:26A-2.3, have been deleted from these rules.

The Department's goal in proposing N.J.A.C. 7:26A-4.2 was to ensure that recyclable material is transported to legitimate recyclers, and not to disposal facilities operating under the guise of recycling. Based upon comments objecting to the provision, the Department has determined that it can accomplish this goal without the administrative burden and delay which were likely to occur under the rule. Ultimately, such delays could have discouraged recycling. The establishment of a sixty day review period for approval of out-of-State transport by the Department, as recommended by one commenter, would not remedy this problem, because inordinate delays due to workload and administration would still result.

Additionally, the Department has determined that the proposed out-of-State transport program is not readily enforceable, as it would be difficult to verify the sources and destinations of the recyclable material. A transporter would be able to obtain as approval for a legitimate out-of-State recycler, for example, and carry the approval letter in its vehicle, while continuing to utilize out-of-State disposal locations, instead of the facility listed on the approval letter. Therefore, the proposed program will not produce the desired result of ensuring that recyclable materials are transported out-of-State for legitimate recycling purposes.

It has been suggested that the Department modify N.J.A.C. 7:26A-4.2 such that the Department would be required, on an annual basis, to substantiate the viability of out-of-State markets. Since the intent of the proposed provision is to ensure that recyclable materials are transported out-of-State for legitimate recycling purposes, a market verification by the Department would not suffice because loads of materials may still be transported out-of-State for illegal disposal, under the guise of recycling. Therefore, such a modification does not provide assurance to county solid waste and recycling offices that legitimate recycling activities have taken place and does not provide the county with an appropriate level of control over waste flow matters. Thus, the Department has deleted the proposed program for prior approval of out-of-State transport of recyclable materials.

213. COMMENT: All existing recycling centers should be "grandfathered" so as to eliminate formal county solid waste management plan inclusion procedures. (15)

214. COMMENT: Counties should be required to list all recycling operations in their respective solid waste management plan. (17)

RESPONSE: Counties are vested with independent statutory authority to determine the content of their solid waste management plans (see N.J.S.A. 13:1E-20). The Department lacks statutory authority to determine the contents of a county plan in the first instance and may only approve, reject or modify a county plan once it is submitted to the Department for certification (see N.J.S.A. 13:1E-24). Accordingly, the Department cannot, through regulations, usurp the statutory planning authority of the counties by authorizing blanket inclusion in the county plans for all recycling centers which operated prior to the effective date of this chapter (November 18, 1991). Individual counties may, however, exercise this authority where they deem so appropriate.

215. COMMENT: All local government approvals can be issued as "conditional" upon State agency approval. NJDEP, Office of Recycling, should also "condition" approvals upon county solid waste management plan inclusion to expedite the approval process. (20, 40)

RESPONSE: The issuance of conditional approvals by the Department prior to county plan inclusion is inconsistent with the independent statutory authority of counties to establish district solid waste mnagement and recycling plans and to determine the contents of those plans (see N.J.S.A. 13:1E-20). The Solid Waste Management Act of N.J.S.A. 13:1E-4b prohibits the Department from issuing any approval which does not conform to the solid waste management plan of the solid waste district in which the facility is located. By issuing a "conditional" approval prior to county action, the Department would be acting contrary to the Solid Waste Management Act. Furthermore, because the Department cannot issue a final approval which does not conform to the county plan, it is not efficient, from a resource allocation standpoint for the Department to review a facility application until the county has acted to include the facility in its plan.

216. COMMENT: Notification of mobile recycling center activity should be required prior to mobilization to new sites. (29)

RESPONSE: The Department has eliminated the requirement for mobile recycling center approval and has replaced it with general mobile recycling equipment operational requirements. However, recycling centers which intend to utilize mobile recycling equipment are required to identify that equipment, as per N.J.A.C. 7:26A-3.2(a)8. Therefore, with the exception of mobile recycling equipment operating at sites which are exempt from approval, the activity of mobile recycling equipment will be accounted for by the general and limited approval process.

217. COMMENT: Any limitation on the district's role in approving recycling facilities, as well as the failure to require district plan inclusion as a condition to operate, is strongly opposed. Moreover, adherence to the district planning process should be required as part of the limited and mobile recycling center approval process. The adoption of blanket approval policies by districts is recommended as a means of expediting the district planning process. (13)

RESPONSE: The Department agrees that adherence to the district planning process is essential to the development of the recycling industry. However, the statutory authority to provide prior written approval to certain recycling centers, granted the Department at N.J.S.A. 13:1E-99.34b, will necessarily establish limitations on the district's role in approving recycling facilities. This general adherence is reflected in N.J..C. 7:26A-4.2(a) (proposed as 4.31a), which indicates that no recycling center, with the exception of those operating pursuant to N.J.A.C. 7:26A-3.7, shall commence operations unless and until it is included in the applicable district solid waste management plan. This provision provides an exception for those operating pursuant to N.J.A.C. 7:26A-3.7, limited approval process, because such recycling centers are temporary operations which are not integral to the district's long term planning. Recycling centers operating pursuant to N.J.A.C. 7:26A-3.7 are required, however, to obtain approval from the applicable municipal governing agency. Therefore, these recycling centers are subject to public scrutiny. N.J.A.C. 7:26A-4.2(a) no longer refers to N.J.A.C. 7:26A-3.3 because the proposed approval requirements for mobile recycling centers have been deleted in favor of an approach which addresses the role of mobile recycling equipment. Therefore, the recommendation that the district planning process be extended to mobile recycling centers is no longer applicable.

County site plan approval

218. COMMENT: Proposed N.J.A.C. 7:26A-4.3(c) should require approval by each solid waste management district. (13)

RESPONSE: Proposed N.J.A.C. 7:26A-4.3(c), which would have required county governing bodies to issue site plan approval for recycling centers not subject to Departmental approval, has been deleted on adoption because the Department has determined that site plan approval of a recycling center is generally not accomplished by county governing bodies as they do not have the resources or expertise to provide such service. The deletion of this proposed requirement in no way precludes or restricts the counties in developing such a site plan approval process pursuant to N.J.S.A. 40:550-1 et seq. or other applicable law if they so require (see N.J.S.A. 40:55D-1 et seq.).

219. COMMENT: N.J.A.C. 7:26A-4.3(c) imposes a new requirement for site plan approval of certain recycling centers. Recycling Centers, which are not subject to the Department's approval and are processing traditional (now Class A) materials, must obtain site plan approval from the governing body of the county wherein the recycling center is located. In the alternate, the Department should require, with respect to publicly owned, operated or financed recycling centers, site plan review by the local government. Site plan approval at the local level should not be required because it will discourage the development of recycling centers at precisely the time when State policy will be stressing their importance. (J)

220. COMMENT: Requiring approval of "traditional" (now Class A) recycling centers by a county or municipality is not appropriate and conflicts with the Municipal Land Use Law that specifies county and local planning or zoning board approvals. (H, J)

RESPONSE: The Department agrees in part with the commenter that site plan review and approval responsibilities for Class A recycling centers which are not subject to Department review prior to operation should not be imposed upon county governments by this rule. Accordingly, proposed N.J.A.C. 7:26A-4.3(c) has been deleted upon adoption. The Department notes that proposed N.J.A.C. 7:26A-4.3 has been codified at N.J.A.C. 7:26A-4.2 upon adoption.

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County governments retain authority in the planning process established pursuant to N.J.S.A. 40:55D-1 et seq. to specify the site plan review and approval responsibilities of county and municipal governments for recycling centers which accept Class A recyclable materials. In many cases, counties do not have the resources or expertise to conduct the site plan review and approval process as proposed in N.J.A.C. 7:26A-4.3(c). In the alternate, as noted by the commenter, mandatory municipal site plan review and approval could frustrate the intent of the Recycling Act by discouraging the development of much needed recycling centers which handle Class A recyclable materials.

The Department believes that a balanced and workable regulatory approach is to allow counties to establish site plan review and approval responsibilities that are consistent with county needs and capabilities.

Site plan review and approval responsibilities have not been specified by the Department based upon the identity of the owner or operator of the recycling center or its funding source because those criteria are not specified in the statute which governs recycling center approval (N.J.S.A. 13:1E-99.34). Therefore, the Department has not modified proposed N.J.A.C. 7:26A-4.3(c) to mandate municipal site plan review for publicly owned, operated or financed facilities, as recommended by the commenter.

221. COMMENT: The prohibition on designated recyclable materials being disposed of as solid waste in the absence of county solid waste management plan approval is totally unworkable. (23, 12, D)

RESPONSE: Proposed N.J.A.C. 7:26A-4.3(b), which indicated that no designated recyclable material may be disposed of at an authorized solid waste facility unless the adopted district recycling plan as approved by the Department is amended therefore, has been deleted. The Department has determined that this provision is not integral to these rules as it pertains to solid waste disposal facilities and not recycling centers. In addition, it has been determined that such a provision may be problematic for those infrequent, but possible, situations wherein a load of designated recyclable material becomes so contaminated that it is not acceptable to any end-market and therefore is in need of disposal.

N.J.A.C. 7:26A-4.3 Right of entry

222. COMMENT: The proposed right of entry provisions are overly broad and should be limited to those instances involving probable cause for inspection, such as a complaint. (7, 15, 24, D, K)

RESPONSE: Environmentally hazardous conditions can and often do develop at solid waste facilities and recycling centers without the knowledge of the facility's neighbors and, therefore, without complaints being filed. Also, unannounced inspections have proven to be very effective at ensuring consistent, continuing facility compliance with environmental laws and regulations. Therefore, the Department has reserved broad entry and inspection rights, as provided by statute at N.J.S.A. 13:1E-9a to determine compliance with this rule or the recycling center approval issued pursuant to N.J.A.C. 7:26A-3.5.

223. COMMENT: The right of entry "at any time" should be limited to normal business hours. (11, 17, 39, B)

RESPONSE: The Department agrees in part with the commenter that some functions specified in the right of entry provision at N.J.A.C. 7:26A-4.3 (proposed as 4.4) do not require access "at any time" but may be accomplished during normal operational hours. Specifically, entry to conduct routine records checks should occur during the hours when a facility is operating and when facility personnel are on-site to provide guidance as to the location of applicable records. Accordingly, the Department has modified N.J.A.C. 7:26A-4.3 to specify that entry for the purpose of reviewing and copying applicable records will be limited to normal operating hours of the subject facility.

With regard to entry for the purpose of determining compliance with the environmental laws and regulations, the Department will make every effort to conduct inspections of recycling centers during normal business hours. Restricting entry and inspection to business hours will handicap the Department's ability to effectively enforce environmental laws. For instance, emergency conditions which threaten environmental harm, such as fires, may arise at any time and require Department entry to a recycling center. Furthermore, the Department is often confronted with a situation where a recycling center is operating beyond the hours authorized in its approval. In such a situation, the Department obviously would need to enter and inspect the recycling center after normal business hours in order to verify a violation. Therefore, because the Department must preserve its ability to protect public health and the environment, the Department reserves the right to enter and inspect a recycling center for compliance investigation purposes at any time.

224. COMMENT: Any removal of records or material sampling from a recycling center should be limited only to instances of serious violation of State law. Strict confidentiality should be maintained. (15, 27, 39)

RESPONSE: Any removal of records from a recycling center will be done by the Department in accordance with the provisions of N.J.A.C. 7:26A-3.16. This section requires handling of records to ensure confidentiality in accordance with the Public Records Law, N.J.S.A. 47:1-1 et seq.

Sampling and analysis of materials present at a recycling center site will be conducted by the Department in accordance with Departmental scientific protocols concerning environmental sampling. Sampling cannot be limited to only serious violations of state law because the very purpose of environmental sampling is to determine, among other things, the presence, nature and precise extent of environmental contamination. Any data resulting from the analysis of sampling episodes conducted at a recycling center site by or on behalf of the Department will be handled as public records, subject to enforcement discretion regarding public availability and release. A recycling center owner or operator is provided an opportunity to request confidentiality of this data pursuant to N.J.A.C. 7:26A-3.16.

225. COMMENT: Site access should be limited to actual NJDEP personnel only. (39, B)

226. COMMENT: The right of entry provision should be revised to reflect county and local health agency's right to enter recycling facilities for purposes of inspection and enforcement. (13)

RESPONSE: The Department does not agree that this rule should only regard the right of entry for Department personnel. The County Environmental Health Act (Act) authorizes Department approved county and local health agencies to enforce the solid waste and recycling regulations of the Department. Under that act, certified local health agencies are authorized representatives of the Department. Therefore N.J.A.C. 7:26A-4.3(a) has been modified so the county and local officials also have access to recycling centers.

227. COMMENT: Pursuant to the Solid Waste Management Act, the Department's right of entry is restricted to solid waste facilities. Recycling centers are not subject to the rules governing solid waste facilities. Therefore, the Department cannot rely on the inspection rights for solid waste facilities under the Solid Waste Management Act to enter recycling centers. (15)

RESPONSE: The Department's right to enter and inspect is not restricted to solid waste disposal facilities because the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., supplements and amends the Soid Waste Management Act, thus expanding the scope of that act to recycling facilities. Thus, the Department's right to enter and inspect recycling centers is provided for under the right of entry for inspection provisions of the Solid Waste Management Act. The Department also has general statutory inspection authority at N.J.S.A. 13:1D-9(d).

N.J.A.C. 7:26A-4.4 Tonnage reporting requirements

228. COMMENT: Municipal tonnage reporting by date and amount should be amended to provide aggregate annual figures. (8, 27)

RESPONSE: The Department agrees that the initially proposed municipal tonnage reporting requirements require revision. The Department proposed that daily records be maintained by recycling centers of all materials received, stored, processed or transferred, per 7:26A-3.16(a). Daily records must be kept of materials by date and amount, among other things. The Department initially proposed that these daily records be submitted annually to the Department, per N.J.A.C. 7:26A-3.16(c). In order to clarify the initial requirement, the Department has N.J.A.C. 7:26A-3.16(c) to specify that the Department does not require submission of actual daily records for each operating day. N.J.A.C. 7:26A-3.16(c) has been modified to clarify that an annual report with monthly summaries of daily records shall be submitted to the Department on or before February 1 of each year. Accordingly, materials received, stored, processed or transferred must be recorded and records maintained on a daily basis. However, all this information need not be submitted to the Department in a form which identifies daily activity. Similarly, data concerning the amount of materials need not be reported to the Department in a daily format, but must be maintained on a daily basis at the recycling center.

The Department also agrees with the commenter concerning annual aggregation of daily data. As discussed above, N.J.A.C. 7:26A-3.16(c) has been modified to require submission of an annual report. The annual report is to be compiled based upon aggregate monthly reports, which monthly reports shall be an aggregate of daily activity.

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229. COMMENT: Proposed N.J.A.C. 7:26A-4.5 must guarantee the confidentiality of tonnage reporting to discrete municipalities. (7, 15, 24, K)

RESPONSE: The Department will restrict access to recycling center records pertaining to the municipality of origin of recyclable materials for a period of two years where specified as confidential by the applicant and where there are no environmental, health or safety concerns as determined by the Department which require the release of the information. The Department has modified N.J.A.C. 7:26A-3.16 based upon this need for confidentiality.

230. COMMENT: A clarification is requested as to whether sections N.J.A.C. 7:26A-3.16(c) and N.J.A.C. 7:26A-4.5 contain conflicting requirements. (3)

RESPONSE: The recordkeeping and data reporting requirements of N.J.A.C. 7:26A-3.16(c) apply to recycling centers that manage Class B recyclable materials. The information that must be maintained pursuant to these requirements is aggregated into an annual report and submitted to the Department. The recordkeeping and reporting requirements of this section serve important compliance and performance assessment purposes. In contrast, the tonnage reporting requirements of N.J.A.C. 7:26A-4.4 (proposed as 4.5) apply to all recycling centers, including those that handle Class A recyclable materials that are not subject to the requirement of subchapter 3. Additionally, transporters are required to provide tonnage reports pursuant to N.J.A.C. 7:26A-4.4. These tonnage reports, as opposed to the reports required by N.J.A.C. 7:26A-3.16(c), are not provided to the Department but to the municipality within which the recyclable material originated. The tonnage reporting requirements of N.J.A.C. 7:26A-4.4 are required in order to implement the tonnage grant program of N.J.S.A. 13:1E-99.11 et seq.

For the foregoing reasons, N.J.A.C. 7:26A-3.16(c) and 4.4 do not contain conflicting requirements or establish conflicting objectives.

231. COMMENT: All recycling centers exempt from the approval process should nonetheless be required to report tonnage data to respective municipalities and counties. (18)

232. COMMENT: The tonnage report required at N.J.A.C. 7:26A-4.5 should also be provided to respective counties. (26, 29)

RESPONSE: The existing reporting requirements of N.J.A.C. 7:26A-4.5(c) require those persons operating pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4 to provide recycling tonnage reports to applicable municipalities. The Department agrees that recycling centers should also submit a copy of the recycling tonnage report to the county in the interest of inter-governmental coordination in the regulation of recycling centers. N.J.A.C. 7:26A-4.5(c) (recodified as 7:26A-4.4(c)) has been modified accordingly.

233. COMMENT: Clarification is needed as to who is responsible for notifying haulers that the reporting of tonnage data to municipalities is required in such instances where markets will not provide such data. (35)

RESPONSE: Reporting of tonnage data is required of recycling centers and transporters pursuant to N.J.A.C. 7:26A-4.4. The rule does not establish formal notification requirements concerning who will be responsible for notifying haulers that reporting to municipalities is required in instances where markets will not provide such data.

It is a general obligation of a responsible transporter to be aware of regulatory requirements. The public notice, comment and hearing procedures mandated by the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) followed by this rule serve as one formal means of notifying haulers of their regulatory obligation. Informal networks, such as industry or trade associations, serve as another means to disseminate such information. Additionally, municipalities share an interest in notifying transporters of reporting obligations. Moreover, the Department will communicate these requirements to the industry.

234. COMMENT: Reporting requirements at N.J.A.C. 7:26A-4.5 should be amended to read "each **type** of source separated recyclable material" as it would virtually be impossible to separate plastic bottle weights by resin category. (39)

RESPONSE: The Department appreciates the difficulty in reporting plastics separately for each resin category. However, the State's recycling goals, as set forth in the Emergency Solid Waste Assessment Task Force Report, are very material specific, that is, each material has its own recycling goal set by the Governor's Solid Waste Task Force Report. Therefore, to change this provision as recommended could create a policy which makes assessment of recyclable materal recycling rates difficult. Nevertheless, the Department recognizes that it may not always be possible for a recycler to report plastics separately by resin category. The Department will therefore accept reporting classifications by type of material in those instances when it is not possible to distinguish the separate weight of each source separated recyclable material received at a recycling center.

Subchapter 5

235. COMMENT: It is unclear whether the requirements of subchapter 5 apply to air conditioners, including automobile air conditioners. (B)

RESPONSE: The Department agrees that the applicability of subchapter 5 (operational requirements for refrigerant reprocessing and facilities) to household, commercial, industrial and automobile air conditioners requires clarification and additional detail. In addition, as discussed below, recent changes to Federal law make other changes in subchapter 5 necessary.

Since the proposal of this rule on October 1, 1990, the Federal Clean Air Act has undergone substantial amendment. Title VI of the Clean Air Act Amendments of 1990 Stratospheric Ozone Protection establishes controls over the production, use, recovery and disposal of ozone depleting substances. These Federal requirements mandate that the United States Environmental Protection Agency (USEPA) promulgate regulations to, among other things, implement a production and consumption phase out of ozone depleting chemicals; establish a national recycling and emission reduction program; publish lists of ozone depleting chemicals; and establish standards for the safe disposal of equipment containing chlorofluorocarbons (CFCs), as well as the increased recovery and recycling of refrigerant gases. Effective July 1, 1992, the knowing atmospheric release of ozone depleting chemicals listed by the Act is prohibited by law.

New Jersey will be required to adopt regulations that are at least equivalent to Federal requirements. Additionally, a mangement framework to control the accelerated recovery, recycling and disposal of CFC containing equipment will need to be established. Accordingly, to address these legal and technical concerns, the Department will be proposing amendments to subchapter 5.

In order to make subchapter 5 consistent with the new Federal Clean Air Act CFC provisions, the rule has been modified on adoption to specifically apply to all appliances which contain refrigerant fluid, including home and automobile air conditioners. This modification does not expand the scope of regulatory control beyond that which is mandated by the Clean Air Act and therefore provides necessary clarity to individuals engaged in CFC handling operations. Furthermore, the modification is consistent with the intent of the proposal to prevent actions which would cause release of CFC producing refrigerant fluids. This modification is necessary because the Federal CFC requirements are not limited in applicability to only refrigerators and freezers. Failure to include applicances other than refrigerators and freezers within the regulatory scope of subchapter 5 could potentially mislead the regulated community with regard to the Federal requirements. Because subchapter 5 essentially tracks the Clean Air Act amendments referenced above, it is important that it not provide potentially inconsistent regulatory guidance. Also, because the Federal requirements exist independently of subchapter 5, the modification of this rule to apply to all appliances which contain refrigerant fluid does not establish new regulatory requirements beyond what is already required at the Federal level.

236. COMMENT: The requirements of subchapter 5 should be imposed at the point where the appliance is discarded or disposed of and not at the point where recyclable metals are recovered from it. N.J.A.C. 7:26A-5.1(a) should be modified to state that "no person may dispose of, discard or deliver for recycling any refrigerators or freezers without having removed and captured the refrigerant fluids contained therein." (15)

RESPONSE: The Department agrees that the removal and capture of refrigerant fluids from appliances prior to disposal or discarding is an important issue. The Department believes that it can take action on this issue within the scope of these rules. The specific prohibition suggested by the commenter is beyond the scope of these rules, however. The Department agrees that more specific prohibitions are required to implement Title VI of the Clean Air Act Amendments of 1990. Accordingly, the Department will propose amendments to these rules to more fully implement Title VI of the Clean Air Act Amendments of 1990. The regulatory requirements of subchapter 5 will not place the burden of capturing refrigerant fluid solely on the metal recycler; the metal recycler could require that all materials delivered to its facility be free of refrigerant fluid. This approach will be consistent with Federal law,

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and will provide the Department and the regulated community with the flexibility to adapt to evolving conditions.

237. COMMENT: The rule fails to regulate CFCs found in the insulation foam material of discarded refrigerators and freezers. (2)

RESPONSE: At this time, there is no commercial collection of CFCs from foam insulation in the United States. Furthermore, the atmospheric release of CFCs from tiny cells in foam is a slow process. This release is not likely to significantly contribute to total CFC release or raise peak chlorine loading in the stratosphere because production of CFCs will have ended long before most of the CFCs trapped in foam have escaped. Therefore, for environmental, technical feasibility and cost effectiveness reasons, the Department will not at this time prescribe by regulation capture of CFCs from foam insulation, as suggested.

238. COMMENT: The reprocessing of CFCs is a good idea that should be addressed by regulation. However, the provision of subchapter 5 that mandates that captured CFC must be sent to a reprocessing facility is unreasonable. The number of such facilities is small and their reprocessing capacity is limited. (H)

RESPONSE: The Department agrees in part with the commenter, and has modified the rule on adoption to address concerns raised regarding the reasonability of the rule, as discussed below.

The Department agrees that CFC recovery and reprocessing are necessary to reduce stratospheric ozone depletion. This rule will assist in the transition towards implementation of the production and consumption phase out of ozone depleting substances and other mandates of Title VI of the Clean Air Act Amendments of 1990.

The Department agrees that proposed N.J.A.C. 7:26A-5.1(c), which would mandate that recaptured refrigerant fluid by delivered to a reprocessing facility, lacked sufficient flexibility. In certain cases, reprocessing capacity may not be available or the recaptured fluid may not be suitable for reprocessing.

In order to respond to these concerns, the Department has modified N.J.A.C. 7:26A-5.1(c) on adoption to specify that if arrangements cannot be made with a reprocessing facility to accept recovered refrigerants, or if the refrigerants cannot otherwise be made suitable for reuse, then the person who recovered the refrigerant fluid shall store or dispose of the material in accordance with applicable laws and regulations. The Department believes that markets will rapidly evolve to develop the infrastructure and reprocessing capacity necessary to manage recovered refrigerants to meet the Title VI objectives and mandates.

Subchapter 6

Several commenters objected to the provisions of subchapter 6, governing the reuse and treatment of source separated I.D. 27 soils.

239. COMMENT: This chapter does not deal with recycling activities and should not be incorporated in the recycling rules. (12)

240. COMMENT: Waste classification is the generator's responsibility and does not require departmental approval. A business may choose to consult with the Department regarding the classification of a waste, but this consultation is not required. (B, G)

241. COMMENT: If there is to be a fee assessed by the Bureau of (Hazardous) Waste Classification for their services, notification of such fees should be set forth within the regulations. (4)

242. COMMENT: One central agency is needed to review, approve, and track uses if ID 27 soil. (H)

243. COMMENT: The Department will not be able to maintain adequate staff to review which ID 27 soil reuse proposal in a timely fashion, as proposed in N.J.A.C. 7:26A-6.3. (38)

244. COMMENT: The definition of "no contaminants" needs to be further defined, as some contaminants are commonly present under regulatory guidelines and not prohibitive to an ID 27 classification. (G)

245. COMMENT: ID 27 classification could be confirmed by DEP on materials having up to three percent hydrocarbons. By allowing this activity, the Office of Recycling would be potentially "air stripping" these contaminants or allowing them to seep into the ground waters. This is totally opposite to most other bureau and office rules and should be omitted. (12)

246. COMMENT: The regulation allowing use of ID 27 soil as unconsolidated additive in asphalt production should be clarified with contingencies that the receiving asphalt plant has received the appropriate permits for air emissions and or a general recycling facility approval as per subchapter 3 of these proposed rules. (G)

247. COMMENT: The method of testing total petroleum hydrocarbons (TPH) should be defined in order to allow for consistent review. For instance, tested by a New Jersey certified lab using method 418.1 as modified for solids. For under 5,000 TPH reuse at a cement plant should be subject to the cement plant meeting all air regulations and may take months. (12)

248. COMMENT: Reporting to the county of activity (including excavation site, time frame, reuse/utilization site and local/State approvals at site of utilization or reuse) should be required as an aid to recycling documentation and waste flow control for activity under this section and N.J.A.C. 7:26A-6.3. (29)

249. COMMENT: N.J.A.C. 7:26A-6.3 is inconsistent with N.J.A.C. 7:26A-6.2 where any ID 27 soil (up to 30,000 ppm) can be used in asphalt (2) and road construction (1) yet above 5,000 ppm in this section requires approval. (12)

250. COMMENT: In order to insure uniform and consistent interpretation of recycling initiatives, applicants for approval of source separated ID 27 soil reuse plans should submit the required information to the NJDEP, Division of Solid Waste Management, Bureau of Landfill Engineering, CN 414, Ewing, NJ, 08628. (40)

251. COMMENT: Storage of ID 27 soil in roll-off boxes with liners and covers should be specifically allowed. (4)

252. COMMENT: A provision for Departmental approval of storage extensions for ID 27 soil (beyond six months) should be considered. (4)

253. COMMENT: The definition of "source separated ID 27 soils" is too limiting. The rules should also include N.J.A.C. 7:26-2.13(i)12. In addition, these rules should clarify a policy regarding spills from USTS of motor fuel or virgin petroleum fuels into soil at less than three percent (30,000 ppm). Also, the method of analysis for this should be addressed such as EPA method 418.1 as modified by NJDEP. (12)

254. COMMENT: The definition of "treatment" is too broad as it regards N.J.A.C. 7:26A-6.4. This area would be better managed in a department with a large technical staff. (12)

255. COMMENT: The definition of "use and reuse" is too vague. This area would be better managed in a department with a large technical staff (12).

256. COMMENT: Are asphalt plants exempt if they are receiving contaminated soils? (12)

257. COMMENT: Is it the intent of the rules to prohibit the use of ID 27 soils contaminated by base neutrals? (B)

258. COMMENT: The ECRA cleanup requirements should be amended to be consistent with the rules and requirements specified in these recycling rules. (B, G)

259. COMMENT: The use of contaminated soil as landfill cover should be assessed. (H)

RESPOSNE: Upon review of these comments and pursuant to the Department's own reevaluation of the regulation of I.D. 27 soil, the Department has determined that the recycling center rule is not the most appropriate vehicle in which to address I.D. 27 soils. Accordingly, subchapter 6 has been deleted in its entirety on adoption. The Department will propose a more comprehensive and appropriate I.D. soil reuse and treatment rule or a preproposal within the next year.

Miscellaneous Comments

260. COMMENT: The Department should cooperate with the New Jersey Department of Community Affairs to have the Uniform Construction Code amended to require reporting, on all construction and demolition applications, as to where the debris resulting from site work will be sent. Copies of all disposal receipts should be required to be filed with all local construction officials. This practice would determine how such waste was being disposed of and would reduce illegal dumping. (2, 6, 9)

RESPONSE: The Department agrees with the commenter and supports a system which would require applicants for construction, demolition or road opening project permits to indicate the repository of the construction and demolition waste which will be generated by the project. However, due to the comprehensive nature of such a system, as well as the substantive requirements which would need to be developed for such a program, the Department has determined that such a system cannot be instituted in these rules. The Department maintains that such a program should be addressed through legislation in the first instance.

261. COMMENT: The scope of N.J.A.C. 7:26A does not appear to call for action which will reduce the illegal bypassing of recycling centers. Forceful, effective and immediate enforcement policies need to be designed and implemented. Enforcement should be adequately funded by the Department. (6, 9, 20, F)

RESPONSE: By instituting a comprehensive program for the approval of recycling centers, the Department has in fact taken the most important

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step in reducing the illegal bypass of recycling centers. Without such a comprehensive program there would be no standards for determining what is and what is not a legitimate recycling activity. By making the distinction between solid waste and recycling activities clear, the Department has established a rational regulatory system which will benefit not only the Department's enforcement programs, but also those at the county and municipal level. Nonetheless, the Department recognizes that adequate enforcement is integral to the successful administration of the recycling program and will have additional enforcement personnel available to the recycling program due to the recent merger of elements of the New Jersey Board of Public Utilities with the Department. All enforcement activities will remain centralized within the Department's enforcement elements.

262. COMMENT: N.J.A.C. 7:26A blurs the distinction between solid waste and recyclable commodities with inherent value to such a point as to discourage legitimate recycling activities. (15, F, H)

RESPONSE: To clarify the distinction between solid waste and recycling activities, the Department has revised the definition of recyclable material. The revised definition, which is consistent with the Recycling Act, is as follows: " 'Recyclable material' means those materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products." By including the phrase "which would otherwise become solid waste," the Department is clarifying that recyclable materials are distinct as a class from solid waste. Given this revision, the Department does not agree generally with the statement that the rules blur the distinction between solid waste and recycling. The rules pertaining to solid waste are significantly different than these rules pertaining to recycling. The submittal requirements for facilities which require a solid waste facility permit are different than the submittal requirements for facilities which require a recycling center approval. For example, facilities which require a recycling center approval are not required to submit a registration statement, engineering design approval and environmental and health impact statement, whereas facilities which require a solid waste facility permit are required to submit such information. In general, however, it is clear that recycling is an integral component of solid waste management and cannot be considered to be an unrelated field.

263. COMMENT: Please address the issue of household hazardous waste days carried out at recycling centers. If these activities are exempt from the proposed rules, please indicate by footnote or inclusion. (4)

RESPONSE: These rules do not specifically address the issues of management of "household hazardous waste." The Department agrees that a lack of clarity exists with respect to the regulatory requirements and technical standards that currently apply to the handling, transportation, transfer, storage, treatment and disposal of wastes generated by households that exhibit hazardous or toxic characteristics. The Department also believes that this waste stream presents potential risks to human health and environment when not properly managed. Given the lack of clarity and degree of potential risks posed by the material, the significance of this issue warrants individualized attention. Accordingly, these rules are not adequate to or appropriate for addressing the management of "household hazardous waste."

The Department's policy regarding household hazardous waste was enunciated by the Governor's Solid Waste Assessment Task Force Report. That report recognized that it is essential to reduce toxic and hazardous constituents in the solid waste stream. The Department's ultimate goal is to encourage removal of toxic constituents from products prior to use and disposal. An interim phase towards that goal is the segregation of household hazardous waste from the solid waste stream and the establishment of permanent household hazardous waste management programs. Recycling and proper management, including household hazardous waste collection programs, also play an important role. These programs will reduce toxic loadings to the air, land and waters of the State and improve the quality of recyclable materials and compost. The Department issued policy guidelines to the counties in June of this year concerning implementation of the Task Force recommendations. As stated in those guidelines, the Department is committed to proposing rules for permanent household hazardous waste permit requirements in the near future. Upon adoption of these rules, the Department will issue a technical guidance document to counties, municipalities and interested private sector program sponsors. The rules, in concert with the technical guidance document, should clarify regulatory and technical uncertainties and ensure proper management of household hazardous waste. Such clarification will encourage the implementation of permanent household hazardous waste management programs and facilities.

264. COMMENT: The general category of "source separated construction/demolition debris," as listed in the Social Impact section of the proposed rules, does not exist. This type of error plays into the hands of haulers who wish to manipulate the interpretation of waste types and recyclable materials categories to divert waste from designated facilities. This term should be defined in the definitions section at N.J.A.C. 7:26A-1.3. (16, 29)

RESPONSE: The reference to "source separated construction/demolition debris," which was included in the Social Impact statement of the proposal, was meant to imply source separated components of the construction and demolition waste stream. In order to clarify this position, the Department has replaced this phrase with references to specific materials and a reference to "other recyclable components of the construction/demolition waste stream" in the definition of Class B recyclable material. This modification will clarify that the Department does not consider "construction/demolition debris" to be a source separated material.

265. COMMENT: The proposed rules should specify a time period within which a completeness determination and final approvals from the Department for recycling activities would be made. A 30 to 90 day permit rule should apply. (20, H)

RESPONSE: In order to provide accountability to the regulated community, the Department has modified N.J.A.C. 7:26A-3.5 and N.J.A.C. 7:26A-3.7 to require that the Department issue to the applicant a letter confirming the administrative completeness of the recycling center application. The modification of N.J.A.C. 7:26A-3.5 requires that the Department issue either a letter of denial or a general approval within 90 days of the date of the letter of administrative completeness, while the modification of N.J.A.C. 7:26A-3.7 requires that the Department issue either a letter of denial or a limited approval within 60 days of the date of the letter of administrative completeness. Failure by the Department to meet these deadlines, however, will not result in the automatic granting of approval to operate as a recycling center.

266. COMMENT: "Letters of approval" from the NJDEP, Office of Recycling, to the recycling center are not acceptable. A standard permit format with common conditions (such as that used for compost sites) is preferable. (20, H)

RESPONSE: Pursuant to N.J.S.A. 13:1E-99.34, certain recycling centers require "the prior approval of the Department." Therefore, the reference to "letters of approval" for recycling centers is based in the statute's reference to "approval." The term "permit" is not utilized because recycling centers are not required to obtain solid waste facility permits. A solid waste permit involves such requirements as an engineering design and environmental and health impact statement which are not applicable to recycling centers. Furthermore, letters of approval issued by the Department have and will continue to have a standard format containing common conditions of approval. Therefore, letters of approval are similar to solid waste facility permits in that respect.

267. COMMENT: The NJDEP, Office of Recycling, needs to devote its resources toward preparation of a detailed technical guidance document describing the procedures and acceptable operational practices at recycling centers. (20)

RESPONSE: The Department has structured the proposed rules to enumerate clear and explicit procedures for recycling center approval as well as operational standards for recycling centers. These procedures and standards should provide adequate guidance to the regulated community. Subsequent to adoption, the Department will prepare a technical guidance document for the regulated community. The Department will also provide technical assistance to individual recycling centers concerning the application process and operational compliance matters.

268. COMMENT: A distinct definition for "scrap metal processing facilities" should be created, thus eliminating unnecessary government regulation while allowing NJDEP right of entry to ensure compliance with environmental statutes. (7, K)

269. COMMENT: Scrap processing facilities (for metals) are different from recycling centers. They do not receive material they process from municipal waste streams. They purchase the materials they process, and after processing they sell the materials in markets nationwide and worldwide. The materials they process have never been solid waste. They are not source separated from residential or institutional garbage. They are purchased from suppliers. The unique nature of the scrap processing business makes it essential they be treated differently from recycling

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centers. They should not be subject to county solid waste management plan inclusion. (42)

270. COMMENT: Scrap metal processing facilities would not be able to provide data sought at N.J.A.C. 7:26A-4.5 because the municipality or origin cannot be determined for materials purchased from vendors. As such, scrap metal processing facilities should be excluded at section N.J.A.C. 7:26A-4.5. (15)

RESPONSE: To the extent that a scrap metal processing facility receives, stores, processes and transfers source separated metal for the purpose of recycling, it is a recycling center for a Class A recyclable material and therefore not subject to the approval requirements of subchapter 3, but subject to the performance criteria of subchapter 4. Nonetheless, the Department recognizes that some scrap metal processing facilities only receive material which has previously been separated at other locations into metal grades and therefore engage in a more advanced level of processing which may be closer to a manufacturing operation than a recycling center operation. Such facilities would be subject to neither the approval criteria of subchapter 3 nor the performance criteria of subchapter 4. Because "scrap metal processing facility" is a general term which potentially encompasses both recycling center operations and manufacturing-like operations, the Department recognizes the need to adopt specific rules regarding scrap metal processing facilities which provide clear regulatory guidance. However, such guidance exceeds the scope of changes that can be made to these recycling rules on adoption. Accordingly, the Department will issue a proposal within two months which clarifies the regulatory status of scrap metal processing facilities vis-á-vis the State's solid waste and recycling regulations. Until that time, only those facilities which fall squarely within the definition of a recycling center by virtue of their receipt, storage, processing and transfer of source separated metal for recycling will be subject to the regulatory standards of subchapter 4. In addition, because it is necessary to verify whether scrap metal processing facilities are engaging in a recycling activity or in a more advanced degree of processing, the right to enter and inspect scrap metal processing facilities in accordance with N.J.A.C. 7:26A-4.3 (proposed as N.J.A.C. 7:26A-4.4) has been adopted by the Department in these rules.

270. COMMENT: The rules proposed make no provisions for existing scrapyards seeking entry into other recycling businesses. Many haulers and recyclers have also investigated use of transfer stations to accept bulky waste—recyclable concrete and wood could be removed, with residual waste shipped to the landfill. Both of these approaches represent a growing trend that permits greater recovery of recyclable materials, and must be addressed in new recycling rules. Otherwise, such innovation will be discouraged, or loopholes will permit avoidance of certain needed requirements. Presently, confusion between traditional scrap operations and newly proposed recycling facilities has led to delays in reviewing and approving recycling centers separate from, but located adjacent to, older auto and metal scrapyards. (20)

RESPONSE: As stated by the commenter, the rules do not specifically address "scrapyards." Future amendments to the rules will clarify the status of "scrapyards." Until that time, such facilities will be regulated as recycling centers. Any "scrapyard" engaging in activities which meets that definition of a recycling center will be considered to be a recycling center.

The Department recognizes that existing solid waste haulers and solid waste facilities can make significant contributions to recycling and that integration of such operations and facilities should be encouraged. However, because there are greater environmental concerns associated with facilities which handle both solid waste and recyclable materials, such facilities are required to obtain a solid waste facility permit rather than a recycling center approval which is reserved for those facilities which receive solely source separated recyclable materials. Existing solid waste facilities that engage in recycling activities are required to obtain a solid waste facility permit modification in accordance with the requirements of N.J.A.C. 7:26-2.6. New entrants to the recycling industry that plan to receive and handle both solid waste and recyclable materials or mixed waste and recyclable loads are required to obtain a solid waste facility permit in accordance with N.J.A.C. 7:26-2. Such a facility would be regulated as a "material recovery facility" (MRF). A MRF permit would authorize a transfer station or other solid waste facility to accept materials such as bulky waste, construction/demolition debris, wood, and concrete for recycling. A solid waste facility permit is required for such operations due to the greater potential for environmental harm associated with such operations. Recycling center approvals are reserved for those facilities which receive source separated recyclable materials.

Based upon the requirements of the Solid Waste Management Act and the Mandatory Recycling Act, the Department has chosen not to include the integrated solid waste and recycling operations described above in the recycling center rules for the foregoing reasons. This approach will not discourage innovation or create loopholes that create confusion or environmental problems. Solid waste operations are properly regulated pursuant to the requirements of N.J.A.C. 7:26.

Concerning innovation in the waste management and recycling field, the Department is evaluating options for amendment to existing solid waste regulations to address, among other things, alternative or innovative technology research, demonstration and development projects. Amendments are contemplated to encourage such activities and remove regulatory impediments to implementation. A public notice regarding this anticipated rulemaking appeared in the August 19, 1991 New Jersey Register at 23 N.J.R. 2458(a).

272. COMMENT: A three month extension to the comment period, efforts to reach to the counties and municipalities, as well as the regulated community, and rethinking on the scope and goals of these rules are requested. The relationship of recycling activities to the Municipal Land Use Law should be considered. The possibility of seeking new and more specific authorizing legislation for these regulations should be considered. (20)

RESPONSE: The Department supports the greatest possible public participation in rulemaking. In the case of these rules, the Department not only published the proposal in the New Jersey Register as required by law, but also published a notice summarizing the proposal in newspapers throughout the state. In addition, in an effort to reach county and municipal recycling officials, the Department mailed the full proposal to over 21 individuals or offices at the county and municipal level.

The comment period for the rule was scheduled for a full 60 days. In addition, a public hearing was held on November 14, 1990 at which 11 individuals appeared and offered testimony on behalf of municipal, county, public and private sector interests. During the comment period, numerous written public comments were received from various groups including county and municipal officials, reycling industry trade groups, recycling business operators, solid waste facility operators, and solid waste industry trade organizations. Therefore, the Department has determined that a three month extension of the comment period is not warranted. All comments have been considered and appropriate modifications made to the rules. The Department feels that the public participation process for these rules has been sufficient and highly responsive.

The Department's authority to approve recycling centers set out at N.J.S.A. 13:1E-99.34(b) supercedes local land use ordinances adopted pursuant to the MLUL. The rules rely on the land use regulatory scheme provided for under the MLUL with respect to county and municipal site plan review conducted pursuant to Articles 2, 6, 7, 8, 9, 10 of the MLUL. Areas of conflict between these rules and the MLUL are resolved in favor of the rules, as required by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.,) as amended by the New Jersey mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

Concerning the need for more specific authorizing legislation for these rules, the Department feels that the statutory delegation of authority to approve certain recycling centers (N.J.S.A. 13:1E-99.34(b)) was accompanied by appropriate standards to guide and constrain the Department's discretion. Therefore, additional enabling legislation is not required in order to promulgate these rules. It is also noted that, as an element of the rulemaking process, the Office of Administrative Law (OAL) sent a copy of the proposal to the Legislature in accordance with N.J.S.A. 52:14B-4(a).

273. COMMENT: The term "source separated" should follow any reference to "non-traditional" (now Class B) and proceed any reference to "recyclable" throughout the proposed rules for consistency. (16, 29)

RESPONSE: The changes suggested are not necessary because the definition of Class B recyclable material specifically refers to source separated recyclable materials.

274. COMMENT: The utilization of Energy Specialist titles for the new positions created by these rules seems inappropriate. Environmental Specialist titles seem more appropriate for these positions. (H)

RESPONSE: The utilization of Energy Specialist titles for the new positions created by these rules is more appropriate than the utilization of Environmental Specialist titles because the definitions of the Energy Specialist titles, as provided by the Department of Personnel, include references to recycling related tasks, whereas the definitions of Environmental Specialist titles do not. For example, the definition of an

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Energy Specialist I includes the following: "develops, implements, reviews and analyzes recycling programs; insures adherence to regulations and laws concerning recycling."

275. COMMENT: Food waste recycling should be addressed in these rules. (H)

RESPONSE: The regulation of food waste recycling in an important issue, especially as it relates to public health. However, food waste is not addressed in these rules for two reasons. First, the solid waste rules, specifically N.J.A.C. 7:26-1.1(a)3, already address food waste. Secondly, these recycling rules regard solely nonputrescible recyclable materials, with the exception of leaves, as dictated by statute (see N.J.S.A. 13:1E-99.11).

276. COMMENT: Do these proposed rules address facilities for processing leaves and grass clippings? (10)

RESPONSE: These rules do address the receipt of leaves at recycling centers, as authorized by P.L. 1989, c.151. Specifically, the revised definition of Class B recyclable material includes leaves, provided that they are not composted. As a result of the revised definition, recycling operations processing uncomposted leaves are subject to the requirements of approval as a recycling center. The receipt of grass clippings at recycling centers is not provided for in these rules because such composting operations pose potential environmental impacts that require technical review as solid waste facilities pursuant to N.J.A.C. 7:26-2. Facilities receiving grass clippings will be regulated as solid waste facilities under N.J.A.C. 7:26. Rules covering grass clippings can be found at N.J.A.C. 7:26.

Coal Ash

277. COMMENT: The Department's proposed recycling rules, together with the Department's current regulatory approach to coal ash utilization, represent inappropriate regulation of coal ash. Labeling these commodities as "solid wastes" creates institutional barriers to their utilization, and represents a severe disincentive to increased recycling. (42)

278. COMMENT: For all uses other than structural fill, the Department should exempt coal ash utilization from the solid waste disposal regulations, the proposed recycling regulations (with limited exception), and the solid waste flow rules. (42)

279. COMMENT: The proposed rules, as applied to coal ash utilization, are contrary to the laws and policies of the U.S. Congress, EPA, the States of Maryland and Pennsylvania, and Governor Florio's Emergency Solid Waste Assessment Task Force, the Solid Waste Management Act, and the Department's own stated objective of encouraging recycling. (42)

280. COMMENT: The Department's narrow interpretation of N.J.A.C. 7:26-1.1(a)1 has severely limited PSE&G's ability to market its coal ash. (42)

281. COMMENT: As the rules are currently drafted, it is quite unclear how, if at all, they would apply to coal ash utilization activities. (42)

282. COMMENT: The Department should create a separate section of the recycling rules addressing coal ash utilization, as the Department has proposed for I.D. 27 soils and for clean fill. (42)

283. COMMENT: Use of coal ash as structural fill material should be subject to modified requirements, similar to the provisions proposed for clean fill material, but without a requirement for a formal "approval." (42)

284. COMMENT: A definition of "coal combustion by-products" should be added to these rules as follows: " 'coal combustion by-products' means fly ash, bottom ash or boiler slag generated primarily from the combustion of coal, or when utilized as a product, as an ingredient thereof, or as a raw material, when handled, transported or stockpiled for such utilization." (42)

RESPONSE: Although the management of coal ash is not specifically addressed by these rules, certain coal ash utilization applications could fall within the definition of a Class B recyclable material. The applicability of the definition to coal ash utilization would depend upon specific coal ash utilization proposed and whether the proposed utilization constitutes "recycling" as defined at N.J.A.C. 7:26A-1.3. The Department agrees with the comments that this issue is significant and it warrants specific regulatory attention. However, due to the unique nature of coal ash and the importance and complexity of this issue, the Department feels that the current recycling center rules are not the appropriate regulatory vehicle to address the issue of coal ash management. Therefore, the Department will propose separate coal ash management rules in the near future.

The Department is currently assessing technical and regulatory options for coal ash management. At this time, the Department's regulatory strategy is not final. The Department is considering proposing a pre-proposal in the New Jersey Register which outlines broad options and approaches to coal ash management. This strategy would enable the broadest possible input and expertise in order to structure a coal ash management regulatory framework. Such an approach, however, would entail considerable procedural delay.

In the alternate, the Department is considering proposing coal ash rules which forego the options analysis and provide a specific framework for public comment.

Summary of Hearing Officer's Recommendation and Agency Responses:

Guy J. Watson, of the Division of Solid Waste Management in the Department, served as Hearing Officer at the public hearing. The hearing was held on November 14, 1990 at the Trenton War Memorial, Warren Street, Trenton, New Jersey. The hearing was held to provide interested persons the opportunity to present oral and or written comment on the proposed rules.

After reviewing the comments offered at the public hearing, Mr. Watson found that the Department's responses adequately addressed the concerns raised by the public. These responses to oral and written comments are set forth in the Summary of Public Comments and Agency Responses for this rule adoption. Mr. Watson recommends that the Department carefully examine the rules in light of the public comments received at the hearing, and to make changes to the rules as necessary to address the public's concerns.

A copy of the record of the public hearing, which includes the Hearing Officer's Report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esquire
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

The Department accepts the recommendations of the Hearing Officer. In addition, based upon written comments which the Department received and its internal review of the rules, the Department has made the following changes from the proposal. For changes to the rules on adoption made in response to public comments, cross references to the comment and response portion of this document are provided. Agency initiated changes to the rules on adoption are explained in this portion of the document.

Subchapter 1

N.J.A.C. 7:26A-1.1(a): The Department has deleted the phrase "approval to operate as a" and included the phrase "operation of." In addition, the reference to recycling center has been made plural. These modifications are made because the rules regard not only the approval process for recycling centers, but also the operational standards for recycling centers, among other things.

N.J.A.C. 7:26A-1.1(b): The Department has added the following provision: "This chapter shall not apply to hazardous waste. See N.J.A.C. 7:26-1, 7, 8, 9, 10, 11, 12 and 13." This addition clarifies that hazardous waste is not a material which may be received, stored, processed or transferred at recycling centers regulated pursuant to 7:26A. Specific references to "non-hazardous" have been deleted throughout the rules in light of this general clarification.

N.J.A.C. 7:26A-1.3: The word "following" has been deleted prior to the word "meanings" and the colon after the word "meanings" has been deleted. The following has been added after the phrase "meanings set forth below": "All terms which are used in this chapter and which are not defined herein but which are defined in N.J.A.C. 7:26 shall have the same meanings as in that chapter." This change is necessary to indicate that in those sections of N.J.A.C. 7:26A which refer to provisions in N.J.A.C. 7:26, the relevant definitions in N.J.A.C. 7:26 are applicable.

N.J.A.C. 7:26A-1.3 "Applicant": The Department has added the following definition of applicant in order to clarify the term as it is used throughout the rules: "Applicant, means a person seeking a general or limited approval to operate a recycling center."

N.J.A.C. 7:26A-1.3 "Brush": The Department has added the following definition for "brush": " 'Brush' means branches, woody plants and other

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like vegetative material. Leaves and grass do not constitute brush." The definition of brush is necessary because the definition of Class B recyclable material has been clarified to specifically referenced brush as a type of Class B recyclable material.

N.J.A.C. 7:26A-1.3 "Class A recyclable material": The Department has deleted the definition of "traditional recyclable material" and replaced it, with certain modifications, with the term "Class A recyclable material" for the reasons discussed at the beginning of the Summary of Public Comments and Agency Responses. The revised definition is as follows: "a source separated non-putrescible recyclable material specifically excluded from Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, which material currently includes source separated non-putrescible metal, glass, paper, plastic containers, and corrugated and other cardboard." This modification does not alter the scope of the definition or what materials it comprehends, but mererly provides a cross-reference back to the Recycling Act to reinforce the fact that Class A recyclable materials are only those which the Legislature specifically determines are excluded from Department approval prior to receipt at a recycling center. Furthermore, the word "or" has been deleted prior to the word "plastic." For a justification of this modification, please refer to the response to Comment No. 45 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Class B recyclable material": The Department has deleted the definition of "non-traditional recyclable material" and replaced it, with certain modifications, with the term "Class B recyclable material" for the reasons discussed at the beginning of the Summary of Public Comments and Agency Responses. The revised definition is as follows: "a source separated non-putrescible recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, the following:

1. Source separated, non-putrescible, waste concrete, asphalt, brick, block, asphalt-based roofing scrap and wood waste;
2. Source separated, non-putrescible, waste materials other than metal, glass, paper, plastic containers, corrugated and other cardboard resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures;
3. Source separated whole trees, tree trunks, tree parts, tree stumps, brush and leaves, provided that they are not composted;
4. Source separated scrap tires;
5. Source separated petroleum contaminated soil that is delivered to a non-mobile in-state asphalt plant, concrete production plant or brick making facility for incorporation as a raw material in its production process; and
6. Source separated petroleum contaminated soil which is processed at its point of generation by mobile recycling equipment which produces asphalt, concrete or bricks by incorporating source separated non-hazardous petroleum contaminated soil as a raw material in its mobile production process."

The Department has made these modifications in order to define more clearly the types of materials covered by the definition. The only material specified as a Class B recyclable material which had not been specified by reference or implication in the rules is source separated petroleum contaminated soil. The Department had proposed subchapter 6 which was to specifically address the recycling of petroleum contaminated soil. As described in the Comment-Response document, subchapter 6 will not be adopted due to technical flaws. However, the Class B recyclable material definition has been worded to clarify the fact that certain limited recycling uses for petroleum contaminated soils are being preserved on adoption. The incorporation of petroleum contaminated soil in the definition of Class B recyclable material is a minor technical change which does not significantly enlarge or curtail the scope of the rules.

N.J.A.C. 7:26A-1.3 "Clean fill": The Department has deleted the definition of "clean fill" at N.J.A.C. 7:26A-1.3. In addition, the associated clean fill approval requirements, as proposed at N.J.A.C. 7:26A-3.17, have been deleted. For a justification of these changes, please refer to the response to Comments Nos. 1-15 in the Comment-Response portion of notice of adoption.

N.J.A.C. 7:26A-1.3 "Commingled source separated traditional recyclable materials": This definition has been deleted because it does not provide flexibility for the combining of paper products with metal, glass or plastic containers and may therefore be detrimental to cost effective or efficient recycling.

N.J.A.C. 7:26A-1.3 "Commingled": The Department has added the following definition: " 'Commingled' means a combining of non-putrescible source separated recyclable materials for the purpose of recycling." This definition clarifies that recyclable material may be combined for the purpose of recycling without restriction. However, it should be noted that recycling centers approved to receive Class B recyclable materials as per N.J.A.C. 7:26A-3.5 may have certain restrictions imposed on commingling of Class B recyclable materials due to limitations of their equipment's ability to process certain materials in a commingled form.

N.J.A.C. 7:26A-1.3 "Contaminant": The phrase "any substance, matter or material" has been deleted and the words "solid waste" have been added. For a justification of this change, please refer to the response to Comment No. 17 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Department": The phrases "or NJDEPE" and "Energy" have been added to conform to the recent merger of the Department of Environmental Protection and certain functions of the Board of Public Utilities.

N.J.A.C. 7:26A-1.3 "Disposition": This definition has been deleted. For a justification of this deletion, please refer to the response to Comment No. 18 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "End-market": The words "or source separated commingled" have been deleted. Source separated commingled recyclable materials are a subset of source separated recyclable materials. Therefore, the reference to "source separated commingled" is not needed in this definition.

N.J.A.C. 7:26A-1.3 "Manufacturer": The Department has added the phrase "derived from plastic containers" after the phrase "plastic products" to clarify that, because only plastic containers and not other plastics are a Class A recyclable-material, a manufacturer can produce plastic products using plastic containers only, and not other plastics.

N.J.A.C. 7:26A-1.3 "Mobile recycling center": The Department has changed the definition of "mobile recycling center" to "mobile recycling equipment." For a justification of the changes to this definition, please refer to the response to Comments Nos. 125 and 128 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Non-traditional recyclable material": This definition has been deleted and recodified as Class B recyclable material.

N.J.A.C. 7:26A-1.3 "Processing": The words "so that they" located prior to the word "conform" have been deleted and the word "to" has been added. The Department has made this change for grammatical reasons so that the definition is clearer and more concise.

N.J.A.C. 7:26A-1.3 "Product": The word "the" has been added prior to the word "good" to clarify that a material and good are two separate things. Furthermore, the phrase "or commingled source separated recyclable materials" has been deleted. Source separated commingled recyclable materials are a subset of source separated recyclable materials. Therefore, the reference to "commingled source separated recyclable materials" is not needed in this definition.

N.J.A.C. 7:26A-1.3 "Recover": The following definition of recover has been added to the rule because this term is used in subchapter 5: " 'Recover' means to remove refrigerant fluid in any condition from a refrigerator, freezer, air conditioner, chiller, or similar appliance and store it in an external container without necessarily testing or processing it in any way."

N.J.A.C. 7:26A-1.3 "Recyclable material": The word "that" has been deleted and replaced with "those" after the word "means." In addition, the word "material," which follows the word "those," has been made plural. Lastly, the phrase "would otherwise become solid waste and which" has been added after the phrase "materials which." These changes make the definition consistent with the Recycling Act (please refer to the response to Comment No. 32 in the Comment-Response portion of this notice of adoption).

N.J.A.C. 7:26A-1.3 "Recycling": The phrase "which would otherwise become solid waste" has been added prior to the words "are collected" to make the definition identical to the Recycling Act. Please refer to the response to Comment No. 32 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Recycling center": The phrase "or commingled source separated recyclable materials" located prior to the word "except" has been deleted. Source separated commingled recyclable materials are a subset of source separated recyclable materials. Therefore, the reference to "or commingled source separated recyclable materials" is not needed in this definition. Also, for grammatical purposes, the quotation

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marks have been removed from the terms recyclable center and manufacturer.

N.J.A.C. 7:26A-1.3 "Refrigerant fluids": The following, located after the word "means," has been deleted: "chlorofluorocarbon, fluorocarbon, bromofluorocarbon or hydrochlorofluorocarbon chemical used as refrigerant in a refrigerator, freezer, air conditioner, chiller or similar device. These chemicals include, but are not limited to refrigerants 11, 12, 500, 502, and 22 (ASHRAE Standards 34-57 and 34-78)." The following has been added to this definition after the word "means": "the following class I or class II substance as defined by section 602 of Title VI of the Clean Air Act Amendments of 1990 (42 U.S.C. 7671) and additional substances that are listed by the United States Environmental Protection Agency that are used as a refrigerant in any appliance including any personal, household, commercial or industrial air conditioner, refrigerator, chiller, freezer or similar appliance:". Following the colon is a list of all the Class I and Class II substances contained at 42 U.S.C. 7671. The revised definition adds greater clarity by setting out specifically all regulated substances, and is consistent with the Federal Clean Air Act, Section 602, Title VI (please refer to the response to Comment No. 235 of the Comment-Response portion of this notice of adoption).

N.J.A.C. 7:26A-1.3 "Solid waste": The following definition has been added to the rule to cross-reference the definition of solid waste in N.J.A.C. 7:26: " 'solid waste' means that which is defined as solid waste in N.J.A.C. 7:26-1.6."

N.J.A.C. 7:26A-1.3 "Source separated I.D. 27 soils": This definition has been deleted. For a justification of this deletion, please refer to the response to Comments Nos. 239-259 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Source separation" or "source separated": The word "recyclable" has been substituted for the words "solid waste", located prior to the word "materials." In addition, the phrase "by the generation thereof" has been inserted after the word "generation." The phrase "into discrete classes of materials which are kept separate and apart from residential, commerical and institutional," located prior to the words "solid waste," has also been deleted, while the word "from" has been inserted prior to the words "solid waste." The phrase "by the generator thereof," which followed the words "solid waste," has been deleted. Lastly, the words, "collection, disposition and" have been deleted prior to the word "recycling," the final word of the definition. For a justification of these changes, please refer to the response to Comment No. 40 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Traditional recyclable material": This definition has been deleted and recodified as "Class A recyclable material."

N.J.A.C. 7:26A-1.3 "Treat" or "treatment": The definition has been deleted. For a justification of this deletion, please refer to the response to Comments No. 239-259 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.3 "Use" or "reuse": The definition has been deleted. For a justification of this deletion, please refer to the response to Comments Nos. 239-259 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)1: The Department has modified the exemption for manufacturers at N.J.A.C. 7:26A-1.4(a)1. The word "only," located after the word "receive," has been deleted and replaced with the word "solely" for grammatical purposes. In addition, the word "milled," located prior to the word "asphalt," has been deleted and the phrase "which has been processed (milled) to raw material specification at the point of generation and which is further reprocessed prior to introduction into the manufacturing process," located after the word "asphalt," has been deleted. Finally, the word "asphalt" has been added prior to the phrase "manufacturing process" for clarity. For a justification of these modifications, please refer to the response to Comment No. 48 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)2: The Department has modified the exemption for on-site reuse of recyclable materials. The words "as a product" have been added after the word "reused." Furthermore, the phrase "where all applicable county and municipal approvals have been obtained for that activity" has been added after the word "generation." Also, the following sentence has been deleted: "In no event shall source separated recyclable materials be stored at the point of generation for more than six months." In the final sentence, the phrase "source separated petroleum contaminated soils and leaves, and the receipt, storage, processing, or transfer of" has been added. For a justification of these modifications, please refer to the response to Comment No. 50 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)3ii: The words "six months" have been deleted after the word "exceed" and replaced by the words "one year." This modification has been made to render the allowable storage timeframe of this exemption consistent with the allowable storage timeframe for unprocessed material, as indicated in N.J.A.C. 7:26A-3.9. For a justification of the expanded storage timeframe, please refer to the response to Comment No. 147 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)4i: The word "one" located prior to the word "month" has been replaced with the word "two." Therefore, the amount of material that a tire retreader and remolder may store on-site has been expanded to that amount of material which the equipment on-site is capable of processing within a two month period. This modification will afford tire retreaders and remolders greater flexibility in conducting their recycling activities. For example, the United States Army generates large quantities of specialized retreaded tires. Shipments of scrap tires from the Army are typically so large that a tire retreader or remolder may not be able to process the tires within a one month period. However, data provided to the Department by tire recyclers indicates that such large shipments can be processed by tire retreaders and remolders in a two month period. Furthermore, there is no greater environmental risk or health or safety concern associated with the storage of that amount of tires which the equipment on-site is capable of processing within a two month period than by that amount of tires which the equipment on-site is capable of processing within a one month period because both the site access controls and container storage requirements significantly reduce the environmetnal hazards associated with tire storage.

N.J.A.C. 7:26A-1.4(a)4ii: The words "six months" have been deleted and replaced with the words "one year." This modification has been made to render the allowable storage timeframe for unprocessed Class B recyclable material, consistent with the allowable storage timeframe for unprocessed material as indicated in N.J.A.C. 7:26A-3.9. For a justification of this change, please refer to the response to Comment No. 147 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)5: The reference to "1,000" scrap tires per month has been deleted and replaced with "5,000" scrap tires per month. For a justification of this change, please refer to the response to Comment No. 55 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)5ii: The words "a totally enclosed structure" have been added prior to "roll-off containers or trailers" to clarify that tires may be stored in a building. This addition provides greater flexibility in storage options for tire recyclers while remaining consistent with the rules in requiring that tires be stored in an enclosed structure, be it a trailer or building.

N.J.A.C. 7:26A-1.4(a)5iv: The following has been added as a condition to the exemption for tire storage centers at N.J.A.C. 7:26A-1.4(a)5iv: "The tires are transferred to an end-market or to a recycling center approved to receive, store, process or transfer scrap tires, or to a tire facility herein exempted." The Department has added N.J.A.C. 7:26A-1.4(a)5iv because it clarifies the Department's intent that those scrap tires which are stored pursuant to this subchapter must be recycled, and not disposed of as solid waste.

N.J.A.C. 7:26A-1.4(a)6: The Department has reserved this paragraph because it anticipates adding an exemption in a future proposal for Department approved projects which use scrap tires for artificial reefs.

N.J.A.C. 7:26A-1.4(a)7 (recodified as 7:26A-1.4(a)8): The words "leaves and petroleum contaminated soil" have been added after "scrap tires" as two additional types of Class B recyclable materials which are not eligible for this exemption. This oversight has been corrected to ensure that leaves, which will certainly decompose witin two months, and petroleum contaminated soils, which may require special storage criteria, are excluded from the temporary storage exemption. The word "one" located prior to the word "month" has been deleted and replaced with the word "two." In addition, the word "month" has been made plural. Due to processing and storage restrictions as well as the local controls placed on the temporary storage of Class B recyclable materials, as per N.J.A.C. 7:26A-1.4(a)8, the Department has determined that storage of these materials for a two month period does not pose any greater environmental threat or a health of safety concern than does the storage of these materials for a one month period. Furthermore, most Class B recyclable materials are inert and nonputrescible, thereby, lessening the concern over storage of these materials for a two month period. This change will allow greater flexibility in the siting and operation of recycling

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support facilities such as temporary storage centers. This greater flexibility will enhance the efficiency of operation for approved recycling centers.

N.J.A.C. 7:26A-1.4(a)7i (recodified as 7:26A-1.4(a)8i): The condition "All source separated non-traditional recyclable material shall be stored in containers dedicated for the exclusive storage of non-traditional recyclable material" has been deleted. The new provision is as follows: "Materials shall be stored in a manner which prevents run-off, leakage or seepage from the storage area into, on or around the soil of the storage area, and shall be stored in accordance with all applicable county and municipal laws and regulations." For a justification of this change, please refer to the response to Comment No. 57 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(a)7ii (recodified as 7:26A-1.4(a)8ii): The phrase "prior to the transfer of material to a recycling center approved by the Department to receive, store, process or transfer the non-traditional recyclable material" has been deleted. The deleted phrase is already included in N.J.A.C. 7:26A-1.4(a)8iii.

N.J.A.C. 7:26A-1.4(a)7iii (recodified as 7:26A-1.4(a)8iii): The word "only" has been moved from before to after the phrase "be transferred" for grammatical purposes.

N.J.A.C. 7:26A-1.4(a)7iv (recodified as 7:26A-1.4(a)8iv): The words "including the name and address of the recycling center to which the materials are transferred" have been added to clarify what is meant by the requirement that records be kept of the daily amounts of recyclable materials "transferred." As proposed, the rule provided no guidance on this point.

N.J.A.C. 7:26A-1.4(a)9: The following exemption has been added: "Those generators of source separated petroleum contaminated soil who arrange for mobile recycling equipment to process source separated petroleum contaminated soil at its point of generation and whose mobile recycling equipment produces asphalt, concrete or bricks by incorporating source separated petroleum contaminated soil as a raw material in its mobile production process." This exemption clarifies that generators of petroleum contaminated soil are not required to obtain a general or limited approval to operate a recycling center. The generators of source separated petroleum contaminated soil are often gasoline service stations and other businesses which have replaced their old leaking tanks with new tanks. If required to comply with the information submittal requirements of subchapter 3, as well as the fee submittal requirements of subchapter 2, these generators will elect not to recycle the material through the operators of mobile recycling equipment. Therefore, such a requirement could discourage the recycling of source separated petroleum contaminated soil. In addition, without this exemption, the Department could potentially receive recycling center applications from approximately 5,000 gasoline service stations, for example. The Department lacks the staff resources to review such an amount of recycling center applications, nor has it factored this possibility into the fee schedule of these rules. The Department had not intended in the proposal that such generators should be regulated as recycling centers, and therefore, has included the exemption of N.J.A.C. 7:26A-1.4(a)9 to provide appropriate regulatory guidelines.

N.J.A.C. 7:26A-1.4(b)2: The words "All persons operating pursuant to an exemption in (a) above shall ensure that the receipt, storage, processing or transfer of materials pursuant to the exemption is conducted in a manner which minimizes degradation of" have been added and "measures shall be taken to minimize any negative impacts of the receipt, storage, processing or transfer activities on" has been deleted to clarify that the responsibility for minimizing negative impacts of exempted activities is borne by the individual pursuing the exempted activity. In addition, in response to a comment, the phrase "consistent with applicable municipal, county, State and Federal law and regulations" has been added to clarify that no measures beyond the requirement of existing law are necessary to comply with this rule.

N.J.A.C. 7:26A-1.4(b)3: The word "subsections," located prior to the words "(a) above," has been deleted as unnecessary. The words "or subject to the" have been added and the words "or as a" have been deleted prior to the words "solid waste." Also, the word "rules" has been added after the words "solid waste." Lastly, the word "facility," located after the term "solid waste," has been deleted. The foregoing changes clarify that those persons violating the criteria for an exemption may be subject to the solid waste rules or to these rules.

N.J.A.C. 7:26A-1.4(b)4: The phrase "with the exception of the intra-state transport of source separated recyclable materials" has been added prior to the word "tonnage." This change clarifies that those persons operating pursuant to the exemption for the intra-state transport of source separated recyclable materials at N.J.A.C. 7:26A-1.4(a)7 do not have to provide tonnage reports in accordance with N.J.A.C. 7:26A-4.4(c). This modification is necessary because in-State recycling centers already are required to submit such tonnage information. Therefore, this modification eliminates the potential for duplicative tonnage reporting. In addition, the phrase "to the municipality from which the exempted material originated" has been added in response to a public comment. For a justification of requiring the submittal of tonnage reports from exempted activities to the applicable municipality as well as the Department, please see response to Comment No. 64 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-1.4(b)5: The following provision has been added: "All persons operating pursuant to an exemption in (a) above shall provide a written notice of such operation to the Department, the host municipality and host county prior to the commencement of operations." Although this provision creates a new substantive requirement, its impact is minor and does not significantly expand the scope of the rule. Furthermore, the requirement of notification is consistent with and necessary to effectuate N.J.A.C. 7:26A-1.4(b)3 which requires that exempted activities which exceed the scope of the exemption shall be subject to regulation under the solid waste or recycling center rules. Without notice of exempted activities, the Department could not effectively enforce this provision.

N.J.A.C. 7:26A-1.4(b)6: The following provision has been added: "Exemption from the requirement of a general or limited approval shall not constitute an exemption from applicable county or municipal laws or regulations." Although this provision was implicit in the rule as proposed, the Department believes that this additional clarification will benefit county and municipal governments as well as regulated businesses.

Subchapter 2

The title header of subchapter 2 has been revised by adding the term "for Class B recyclable material" to clarify that fees in subchapter 2 are applicable to recycling centers which receive Class B recyclable materials only, as was explained in the proposal Summary. Also, "or mobile recycling center; fee for persons seeking approval to transport source separated recyclable materials out-of-State" has been deleted. The deletions of references to "mobile recycling center" and "out-of-State approval" are carried through the entire subchapter in order to reflect the deletion of those respective provisions. No fees will be assessed for these activities because Department approvals for these activities have been deleted from the rules. The addition of the phrase "for Class B recyclable materials" after "recycling center" has been carried through the entire subchapter for clarity.

N.J.A.C. 7:26A-2.1: The Department has deleted the proposed section which established the fees for general and limited approval and substituted a new section which establishes these fees. This change has been made for two reasons. First, since the proposal, the Department and the former Board of Public Utilities have been merged by executive order. This merger has resulted in certain operational efficiencies which will allow the Department to reduce the fees in this rule. Fee reductions are discussed in response to Comment No. 71. Second, the Department has determined from comments received and from its own internal review that the proposed section did not clearly delineate between the application portion of the fee and the annual portion. The use of the term "minimum" fee, and the prorata method of reducing the annual fee by the amount of the minimum fee, has been determined to be a potentially confusing method of establishing application and annual fees. Thus, the revised 7:26A-2.1 reflects the reduction in fees and has been rewritten to more clearly define the application fee and the annual fee. The new section is as follows:

"(a) The following apply to the application fee for general or limited approval:

1. All applicants for a general approval to operate a recycling center for Class B recyclable material shall submit an application fee of $2,500 at the time of application.

i. The application fee for general approval will cover the Department's costs of conducting county and Statewide recycling plan consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

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2. All applicants for a limited approval to operate a recycling center for Class B recyclable material shall submit an application fee for limited approval of $2,000 at the time of application.

i. The application fee will cover the Department's costs of conducting municipal law consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.4, 3.7 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

(b) The following apply to the annual fee for general approval and the monthly fee for limited approval:

1. All persons who possess a general approval to operate a recycling center for Class B recyclable material shall submit an annual fee of $6,400 on May 1 for each fiscal year beginning on July 1 and ending on June 30. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

i. The annual fee for general approval will cover the Department's costs of reviewing modification submittals and issuing letters of approval or denial of modifications, advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, routine program correspondence, review and analysis of annaul report data and other technical analyses required to implement the recycling program, legislative development and analysis, and recycling program staff training and development activities.

2. All persons who possess a limited approval to operate a recycling center for Class B recyclable material shall submit a fee of $500.00 per month for each month of operation authorized by the limited approval. The fee for the total number of months of authorized operation is due 60 days from the date of issuance of the limited approval.

i. The monthly fee for limited approval will cover the Department's costs of reviewing modification submittals and issuing letters of approval or denial of modifications, advising recycling center owners on technical compliance matters, conducting market research, analysis and development activities, routine program correspondence, review and analysis of final report data and other technical analysis, and recycling program staff training and development activities.

(c) All fees in (a) and (b) above are for the base fiscal year ending on June 30, 1991. Thereafter, the fees will be adjusted annually in accordance with N.J.A.C. 7:26A-2.2.

N.J.A.C. 7:26A-2.2: "Fee for approval of out-of-State transport of recyclable material" has been deleted and changed to "adjustment of fees." The out-of-State approval fee rule has been elminated in response to comments. An explanation of the removal can be found in response to Comment No. 85 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-2.3 (recodified as 7:26A-2.2): This section has been substantively changed in response to Comments Nos. 67 and 68. A full explanation of the changes is provided in response to these comments in the Comment-Response portion of this notice of adoption.

Subchapter 3

The proposed heading, "Recycling Center Approval," has been deleted and replaced with the following heading: "Approval of Recycling Centers for Class B Recyclable Materials." This modification clarifies that subchapter 3 pertains only to recycling centers which receive Class B recyclable material, and not to recycling centers which receive Class A recyclable material.

N.J.A.C. 7:26A-3.1(a): The reference to N.J.A.C. 7:26A-3.3 has been deleted because this section no longer details procedures for obtaining approval. N.J.A.C. 7:26A-3.3, which originally set forth the approval procedures for mobile recycling centers, now regards mobile recycling equipment. For a justification of the modification to N.J.A.C. 7:26A-3.3, please refer to response to Comments Nos. 125 to 128 in the Comment-Response portion of this notice of adoption. Furthermore, the following sentence has been added at the end of this provision: "All persons issued a general or limited approval to operate a recycling center for Class B recyclable material pursuant to this subchapter shall comply with all conditions of the approval." This new paragraph emphasizes that recycling center owners or operators must operate in accordance with Departmental requirements and standards even after general or limited approval has been granted.

N.J.A.C. 7:26A-3.1(a)1: This paragraph has been deleted because the revised definition of "Class B recyclable material" at N.J.A.C. 7:26A-1.3 specifically identifies which putrescible materials are Class B recyclable materials which may be received at recycling centers. Therefore, N.J.A.C. 7:26A-3.1(a)1 is redundant.

N.J.A.C. 7:26A-3.1(b): The following sentence has been added to the end of the paragraph to clarify that, in addition to penalties under the Solid Waste Management Act and implementing regulations, other penalties may apply: "That person may also be subject to penalties for violations of any other Department rules and the statutes under which such rules are promulgated."

N.J.A.C. 7:26A-3.1(c): This provision has been modified by inserting the words "Class B" prior to the words "recyclable materials" to clarify that this provision regards solely Class B recyclable material, and not Class A recyclable material.

N.J.A.C. 7:26A-3.1(d): The words "recycling facility" have been replaced with the word "location." Furthermore, the phrase "to operate as a recycling center pursuant to N.J.A.C. 7:26A-3 or the transport and delivery of source separated recyclable materials to any out-of-State facility without the prior approval of the Department pursuant to N.J.A.C. 7:26A-4" has been deleted. The Department has made these modifications to clarify that the transport of Class B recyclable materials to any unapproved location in New Jersey, not simply to unapproved in-State recycling facilities, constitutes a violation of the inner-district and intra-district solid waste flow rules.

N.J.A.C. 7:26A-3.1(e) and (f): New subsections have been added on adoption which are as follows:

"Prior to filing an application with the Department for recycling center approval, and prior to filing for inclusion in the applicable district Solid Waste Management Plan, the applicant shall publish a notice in a newspaper of general circulation within the host municipality which indicates that the applicant will apply to the county for inclusion of a recycling center in the solid waste management plan of the district in which the recycling center will be located and will apply to the Department for recycling center approval. The notice shall include the following:

1. The name of the proposed recycling center, the name of the owner or operator of the proposed recycling center and the nature of the project;

2. The generally recognized address of the proposed recycling center, as well as the block and lot of the proposed recycling center;

3. An indication that a copy of the application for county plan inclusion may be examined at the office of the solid waste or recycling coordinator of the county in which recycling center is located or at the applicable municipal clerk's office; and

4. An indication that comments regarding the application for county plan inclusion can be made at the public hearing which shall be held by the Board of Chosen Freeholders, submitted to the county clerk's office or submitted to the office of the solid waste or recycling coordinator of the county in which the recycling center is located.

(f) The notice shall be published two times by the applicant with the second publication being no less than 15 days prior to the public hearing held by the applicable board of chosen freeholders.

The applicant shall forward a copy of the notice to the New Jersey Department of Environmental Protection and Energy, Division of Solid Waste Managment, Office of Recycling, and to the municipality in which the recycling center will be operating, upon its publication."

This addition has been made so that the public is fully aware of new recycling center proposals. This provision ensures that the public will be informed of their opportunity to review and comment on recycling center applications. By including this requirement, the Department will enhance the understanding of the public as it pertains to recycling centers and promote good relations between the recycling industry and the communities in which the industry operates, thereby promoting the growth of recycling in New Jersey. Furthermore, this requirement will result in better informed decision making at all levels of government. Although the provision establishes a new requirement for recycling center applicants, its impact is minor and it does not significantly expand the scope of the rule as proposed.

N.J.A.C. 7:26A-3.2(a)2: The words "description of" have been replaced by the words "zoning map showing" prior to the words "the current land use." This modification clarifies that a "zoning map" should be used to describe current land uses in and around the recycling center site.

N.J.A.C. 7:26A-3.2(a)3: The Department has modified the requirement that recycling center applicants list the name, address and telephone number of all persons owning 10 percent or more of corporation stock in the recycling center so that persons owning five percent or more of a corporation stock must now be listed. This modification makes the

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reporting requirement in N.J.A.C. 7:26A-3.2(a)3 conform to standardized corporation reporting rules of Federal securities law (see 15 U.S.C.A. 78m(d)1 and (g)). The five percent ownership reporting threshold should not pose a significantly greater burden on recycling center applicants and will align this rule with reporting rules in other State regulations patterned after Federal securities law.

N.J.A.C. 7:26A-3.2(a)4: The word "possible" has been replaced with the words "reasonably anticipated" to clarify that only those contaminants which are reasonably anticipated at the time of recycling center approval application must be identified to the Department. The proposed standard, requiring the identification of any "possible" contaminants, is unworkable since it may not always be possible to foresee all scenarios in which recycling loads may become contaminated with other materials. The revised standards provides more appropriate guidance to the applicant.

N.J.A.C. 7:26A-3.2(a)5: The words "cubic feet or gallons" have been added as two additional units of measurement which may be appropriate for identifying materials to be received at a recycling center. For a justification of this change please refer to the response to Comment No. 117 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)6: The words "cubic feet or gallons" have been added as two additional units of measurement which may be appropriate for identifying materials to be received at a recycling center. For a justification of this change please refer to the response to Comment No. 117 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)7: The word "all" has been replaced with the word "planned" to clarify that only those end-markets which are known at the time of application must be identified to the Department. The proposed standard, requiring the identification of "all" end-markets, is unworkable since it may not always be possible to foresee all end-markets which a recycling center may utilize in the future at the time of recycling center application. The revised standard provides more appropriate guidance to the applicant.

N.J.A.C. 7:26A-3.2(a)8: The words "and a dated and signed invoice indicating receipt and ownership or lease of all equipment described above;" have been deleted and replaced with the sentence "also, a written statement by the applicant that no Class B recyclable material will be received, stored or transferred at the recycling center site until the equipment identified by the applicant is installed or situated at the recycling center site." The effect of the change is not substantive. It removes an applicant's obligation to provide equipment purchase invoices to the Department and replaces this documentation and verification procedure by a self-certification requirement. For a justification of this modification please refer to the response to Comment No. 120 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)9: New subparagraphs vii and viii have been added, as follows:

"vii. Indicate the location and dimensions, in feet, of the unprocessed and processed material stockpile areas. Also, based on this information, the total cubic yards storage capacity of the unprocessed and processed materials stockpile areas shall be indicated; and

"viii. Indicate the site access controls to be employed at the recycling center;"

These are minor technical changes. Subparagraph vii is a site plan mapping requirement that clarifies that the original intent of the Department's site plan review was to evaluate the processing, inventory storage and other logistical aspects of recycling operations at the site. Subparagraph viii is similar in requiring that the site plan delineate site access controls such as fences, gates or landscaping. This requirement is a basic site plan component and is consistent with the site plan review objectives of the proposal.

N.J.A.C. 7:26A-3.2(a)11: The word "notarized" prior to "legal agreement" has been deleted because the Department has determined that legal leases and other legal agreements may not always be notarized. This deletion does not alter the scope of the requirement but simply eliminates an unnecessary technical term.

N.J.A.C. 7:26A-3.2(a)13: This paragraph has been modified so that a copy of the New Jersey air pollution control permit "application," and not the actual permit, must be submitted to the Department "where applicable." This change has been made so that a recycling center applicant may concurrently pursue an air permit, and not have to obtain the actual permit before submitting a recycling center application. This modification will allow an applicant to more efficiently use her or his time in pursuit of all necessary DEPE permits. Because this provision as proposed was intended to ensure that recycling center applicants were made aware of the need for and did in fact apply for an air permit, submission of a permit application will satisfy this intent as well as submission of the actual permit. Therefore, the modification is a minor, technical change which does not enlarge or curtail the scope of the rule.

N.J.A.C. 7:26A-3.2(a)14: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with intent of the proposal. The proposed paragraph required the applicant to document the stream encroachment permit status of the recycling center site. The paragraph has been deleted because a substantive operational performance standard for compliance with stream encroachment permit requirements has been established in N.J.A.C. 7:26A-4.1(a)7. Deletion of the paragraph streamlines the application preparation and review process while the same performance standard is maintained. The change is therefore minor technical in nature.

N.J.A.C. 7:26A-3.2(a)15: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the intent of the proposal. The proposed paragraph required the applicant to describe the methods of noise control which would be utilized at the recycling center and provide a written demonstration of the ability to comply with the noise control code. The paragraph has been deleted because a substantive operational performance standard for compliance with the noise code has been established in N.J.A.C. 7:26A-4.1(a)7. Deletion of the paragraph streamlines the application preparation and review process while maintaining the same substantive performance standard.

N.J.A.C. 7:26A-3.2(a)16: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the intent of the proposal. The proposed paragraph required the applicant to describe the methods to be utilized to control litter and debris at the recycling center site. The paragraph has been deleted because a substantive operational performance standard for litter control has been established in N.J.A.C. 7:26A-4.1(a)8. Deletion of the paragraph streamlines the application preparation and review process while maintaining the same substantive performance standard.

N.J.A.C. 7:26A-3.2(a)17: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the intent of the proposal. The proposed paragraph required the applicant to describe the methods to be used for source separation at the recycling center, consistent with the district solid waste management plan. The paragraph has been deleted because a substantive operational performance standard for source separation and county plan consistency have been established in N.J.A.C. 7:26A-4.1(a)1 and N.J.A.C. 7:26A-4.2, respectively.

N.J.A.C. 7:26A-3.2(a)18: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the intent of the proposal. The proposed paragraph required the applicant to describe site access controls at the recycling center. The paragraph has been deleted because the Department has modified the site plan requirements at N.J.A.C. 7:26A-3.2(a)9viii to identify site access controls on the site plan. Therefore, in place of a narrative reference to site access controls, the rule establishes site access controls to be mapped.

N.J.A.C. 7:26A-3.2(a)19: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the proposal. The proposed paragraph required the applicant to document the soil erosion and sediment control approval status for the recycling center site. The paragraph has been deleted because a substantive operational performance standard which requires soil erosion and sediment control approval has been established in N.J.A.C. 7:26A-4.1(a)7. Deletion of the paragraph streamlines the application preparation and review process while maintaining the same performance standard.

N.J.A.C. 7:26A-3.2(a)14: This paragraph, added on adoption, requires submittal of narrative explanation of the recycling center operation as part of the recycling center application. A written narrative explanation will provide the Department with insight into the recycling center operation which may not be garnered through the other information submittal requirements of N.J.A.C. 7:26A-3.2(a). This information, therefore, will improve the Department's understanding of the proposal and will aid the Department in its review of the application, while not significantly increasing the burden on the applicant.

N.J.A.C. 7:26A-3.2(a)20: This paragraph has been recodifed as N.J.A.C. 7:26A-3.2(a)15.

N.J.A.C. 7:26A-3.2(a)21: This paragraph has been deleted. The effect of the deletion is not substantive and is consistent with the intent of the proposal. The paragraph proposed required the applicant to describe the point of generation and previous use of all materials received, stored, processed or transfererd. For a justification of this deletion, please refer

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to the response to Comment No. 121 in the Comment-Resposne portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)22 (recodified as N.J.A.C. 7:26A-3.2(a)16): The words "and maintenance (O and M)," which follow the word "operations," have been deleted. N.J.A.C. 7:26A-3.2(a)22ii, which required the submittal of a maintenance plan for the equipment identified in N.J.A.C. 7:26A-3.2(a)8, has also been deleted. For a justification of these modifications, please refer to the response to Comment No. 114 in the Comment-Response portion of this notice of adoption. In addition, N.J.A.C. 7:26A-3.2(a)22iii which required the submittal of a safety plan by the recycling center applicant has been deleted. For a justification of this modification, please refer to Comment No. 89 in the Comment-Response portion of this notice of adoption. N.J.A.C. 7:26A-3.2(a)22iv which required the submittal of a personnel training manual by the recycling center applicant has been deleted. For a justification of this modification, please refer to Comment No. 115 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)22v has been recodified as N.J.A.C. 7:26A-3.2(a)16ii.

N.J.A.C. 7:26A-3.2(a)22v(3) (recodified as 7:26A-3.2(a)16ii(3)): The words "allowable amounts of contaminants" have been clarified by adding "as specified per N.J.A.C. 7:26A-3.5(a)3i." For a justification of this modification, please refer to the response to Comment No. 110 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(a)16ii(4): A new subparagraph has been added as follows: "(4) A notice that vehicles delivering materials to the recycling center shall certify the municipality of origin of that material, and other information contained on the Recyclable Materials Receipt Form." Because the municipality of origin of the material received must be indicated on the Recyclable Material Receipt Form, it is necessary that haulers bringing this material to the recycling center identify this information, otherwise the recycling center operator would have no source of this information. The modification therefore corrects a technical oversight in the proposal.

N.J.A.C. 7:26A-3.2(a)22vi (recodifed as 7:26A-3.2(a)16iii): This provision has been modified to clarify that the Recyclable Materials Receipt Form must be "provided to all persons bringing recyclable material to the recycling center." Because the information required on the form must originate from the persons delivering recyclable material to the recycling center, this modification merely underscores that the form must be provided to such persons.

N.J.A.C. 7:26A-3.2(a)22vi(4) (recodified as 7:26A-3.2(a)16iii(4)): The word "applicable" has been replaced with "an NJDEPE registered vehicle is used" to clarify that the applicant must provide the vehicle license plate number of vehicles delivering recyclable material to the recycling center only if an NJDEPE registered vehicle is used for this purpose. This change simply adds clarity to the requirement as proposed.

N.J.A.C. 7:26A-3.2(a)16iii(5): As an addition to the information required on the Recyclable Materials Receipt Form, the following requirement that the form be certified has been added: "A certification, to be completed and signed by the person delivering recyclable material to the recycling center at the time of delivery, that the information contained on the Recyclable Material Receipt Form is true, accurate and complete." This certification, which is similar to that required of solid waste transporters delivering solid waste to a solid waste facility, will clarify that the transporter of recyclable materials is responsible for correctly identifying the municipality of origin and amount of recyclable material, as well as the transporter's name and license plate number. While the transporter's responsibility for providing this information is implicit in the proposal, the Department believes that the addition of a certification is necessary to underscore the importance of correct information being supplied to recycling centers, particularly in light of the fact that tonnage grants are based upon the amount of material recycled by municipality of origin. The lack of clear regulatory guidance concerning Recyclable Material Receipt Form information was a technical flaw in the proposal which has now been corrected without significantly expanding the scope or burden of the rule.

N.J.A.C. 7:26A-3.2(a)22vii has been recodified as 7:26A-3.2(a)16iv.

N.J.A.C. 7:26A-3.2(b): The requirement that recycling center approval applicants submit a written certification that all information submitted is complete and accurate has been modified to specify what the certification must say and who must sign the certification. A new N.J.A.C. 7:26A-3.2(b)1 has been added which contains the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." A new N.J.A.C. 7:26A-3.2(b)2 has been added which requires that "the certification in (b)1 above shall be signed by the applicant as follows:

i. For a corporation, by a principal executive officer of at least the level of vice pesident;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, county, State, Federal or other public agency, by either a principal executive officer or ranking elected official."

Without a uniform certification, recycling center operators would have to devise their own certification which could potentially be either inadequate for the purpose intended by the Department or overly broad in scope, to the possible detriment of the operator. Therefore, the uniform standard provides greater regulatory clarity to recycling center operators and does not significantly enlarge or curtail the scope or burden of the rule.

N.J.A.C. 7:26A-3.2(d): The words "by the applicant" have been added to clarify that the applicant must submit one copy of the application to the relevant county. Furthermore, the following has been added at the end of this provision: "The applicant shall also forward one copy of the information required pursuant to (a) above to the municipal clerk of the municipality in which the recycling center is located. The applicant may delete confidential end-market information, required pursuant to (a)7 above, from these submittals." For a justification of these modifications, please refer to the responses to Comments Nos. 103 and 167 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.2(f): The word "tire," located prior to the words "recycling center," has been deleted and the words "for tires, tree stumps, tree parts or wood waste" have been added so that this provision is consistent with revised N.J.A.C. 7:26A-3.8. This modification reflects the fact that in addition to tires, tree stumps, tree parts and wood waste are flammable and therefore pose more of an environmental and public health and safety threat when received, stored, processed or transferred at a recycling center, than other Class B recyclable material, which are inert. Therefore, the Department has determined that it is prudent to require all recycling centers which handle flammable materials consisting of tires, tree stumps, tree parts or wood waste to comply with the fire control provision of N.J.A.C. 7:26A-3.8.

N.J.A.C. 7:26A-3.3: The heading to this section has been changed from "Application procedure for a general approval to operate a mobile recycling center" to "Mobile recycling equipment." In addition, proposed subsection (a) through (d) have been deleted, representing the elimination of the application and approval process for mobile recycling center. In place of these deleted subsections is new subsections (a) and (b) which concern operation of mobile recycling equipment. The new provisions are as follows:

"(a) Persons operating a mobile recycling equipment for Class B recyclable material shall operate such equipment only as follows:

1. At a site which possesses a general or limited approval from the Department and in manner which conforms to the approval for the site; or

2. Pursuant to an exemption at N.J.A.C. 7:26A-1.4(a) and in a manner which conforms to the criteria of the exemption.

(b) Persons operating mobile recycling equipment for Class B recyclable material shall comply with all applicable statutes and regulations, including but not limited to, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and 26:2D-1 et seq., and the New Jersey Noise Control Act of 1971, N.J.S.A. 13:1G-1 et seq."

The Department received substantial comments indicating that mobile recycling equipment will be used almost exclusively at a site with general or limited approval, or at the site of material generation. It was determined from these comments that a special mobile recycling center approval process is not necessary because the existing point of generation exemption would provide the same degree of regulation of mobile recycling operations. It is expected that the number of limited approval applications will increase due to the addition to that universe of persons seeking to operate mobile recycling equipment. Therefore, revenues generated through the increase in limited approval applications will make up for the loss of fees for mobile recycling centers. Given the foregoing, the elimination of the mobile recycling center approval process and the attendant fee, and the substitution of the general requirements for

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mobile recycling equipment and the existing general and limited approval process, is simply an administrative clarification which eliminates what would have been a redundant approval process. Therefore, the change is not substantial enough to warrant new notice and comment.

N.J.A.C. 7:26-3.4(a): The following clause has been added to the paragraph so that the standard for the submission of additional information to the Department conforms to the standard which was proposed at N.J.A.C. 7:26A-3.7(e): "and where the Department determines that additional information is necessary to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department." The remainder of the paragraph following this addition has been deleted. The lack of a common standard for the submission of additional information was a technical flaw in the proposal, which is being corrected through appropriate modifications in the adoption. These modifications do not enlarge or curtail the scope or burden of the rule, but simply provide a universally consistent standard for the submission of additional information which standard is in line with one such standard contained in the proposal.

N.J.A.C. 7:26A-3.4(b): The requirement that a recycling center applicant obtain all other applicable local, State, or Federal permits or approvals prior to the "issuance of a general approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional (now Class B) recyclable materials" has been deleted and replaced with the requirement that all such other permits or approvals be obtained prior to the "receipt of Class B recyclable materials and commencement of operations at the recycling center." As proposed, the standard would have required a recycling center applicant to expend considerable resources in obtaining all other permits and approvals attendant to operation of the recycling center before the applicant obtained the actual recycling center approval. The intent of proposed subsection (b) was to ensure that a recycling center would not operate unless it had obtained all necessary permits and approvals. By conditioning recycling center approval and not operation upon receipt of these other approvals, the Department imposed an unnecessary burden on the applicant which could slow the applicant's progress in obtaining all necessary permits. Furthermore, if no Department approval could be granted until all other Department permits were obtained, the applicant would be in a "catch-22" such that the applicant could never obtain any permits. The modification therefore eliminates the "catch-22" and the unnecessary burden on the applicant while maintaining the important environmental protection control measure that recycling center operations not commence until all other permits are obtained. The change streamlines the Department approval review procedure to allow for intra-Departmental review of all necessary permits or approvals for a project concurrently. Because the modified standard does not substantially enlarge or curtail the scope of the proposed rule, and reduces the burden on applicants but only incidentally to the clarification of the proposed intent, the modification is minor in nature.

N.J.A.C. 7:26A-3.4(c)2: The words "including site preparation and transportation costs" have been added to clarify that, for the purpose of determining a performance bond amount, the cost of disposal includes the cost of site preparation and transportation costs.

N.J.A.C. 7:26A-3.5(a): This subsection has been modified by the addition of an administrative completeness procedure to the approval process. For a justification of this modification, please refer to the response to Comment No. 204 in the Comment-Response portion of this notice of adoption. The administrative completeness provisions are as follows:

"(a) Within 30 days of receipt of an application for recycling center approval submitted pursuant to N.J.A.C. 7:26A-3.2(a), the Department will determine whether the application is administratively complete. An application is administratively complete where it satisfies the information submission requirements of N.J.A.C. 7:26A-3.2(a), 3.4 and 3.8 and where a fee has been submitted in accordance with N.J.A.C. 7:26A-2.

1. If an application is administratively complete in accordance with (a) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If an application fails to meet the criteria for administrative completeness of (a) above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(b) Within 90 days of issuance of the letter of administrative completeness, the Department will issue a general approval to operate a recycling center for a period not to exceed five years where the Department determines the following:

1. That the application meets the criteria for a general approval of N.J.A.C. 7:26A-3; and

2. That the applicant fails to meet the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and N.J.A.C. 7:26A-3.12.

(c) Within 90 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the application to operate a recycling center where the Department determines the following:

1. That the applicant fails to meet any of the criteria for a general approval of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and N.J.A.C. 7:26A-3.12.

(d) No recycling center shall receive Class B recyclable materials and commence operation until it has received written approval from the Department."

This administrative completeness procedure has also been introduced into N.J.A.C. 7:26A-3.6, Renewal of general approvals, and N.J.A.C. 7:26A-3.7, Application for a limited recycling center approval. This modification of the rules by adding an administrative completeness procedure for Department approvals does not significantly enlarge or curtail how the Department's review process will be conducted and provides accountability to the regulated community.

N.J.A.C. 7:26A-3.5(a)2 (recodified as 7:26A-3.5(e)2): The word "approved," located prior to the words "source-separated," has been deleted and the following phrase has been added after the word "materials": "approved to be received, stored, processed or transferred at the recycling center." These modifications clarify that the Department does not approve recyclable materials, but recycling centers, as per N.J.S.A. 13:1E-99.34b.

N.J.A.C. 7:26A-3.5(b) (recodified as 7:26A-3.5(f)): The references to subparagraphs (a) 22i and 22v of N.J.A.C. 7:26A-3.2 have been deleted and replaced with references to subparagraph (a) 16i and 16ii, reflecting deletions and additions made to N.J.A.C. 7:26A-3.2(c).

N.J.A.C. 7:26A-3.6(a): The following sentence has been added at the end of this provision: "One copy of the application for renewal of a general approval shall be submitted by the applicant to the solid waste or recycling coordinator of the county in which the recycling center is located." For a justification of this modification, please refer to the response to Comment No. 140 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.6(d): A 60 day administrative completeness provision has been added to the application renewal process which is the same as discussed in the changes to the general approval provision at N.J.A.C. 7:26A-3.5.

N.J.A.C. 7:26A-3.6(f): This subsection has been deleted and recodified at N.J.A.C. 7:26A-3.6(f)2 in conjunction with the creation of the administrative completeness procedures at N.J.A.C. 7:26A-3.6(e) and (f).

N.J.A.C. 7:26A-3.7(a) has been modified for grammatical clarity.

N.J.A.C. 7:26A-3.7(a)1: The references to N.J.A.C. 7:26A-3.2(a)13 and 19 have been deleted because these provisions have been included as substantive operational performance standards in N.J.A.C. 7:26A-4.1(a)7. The reference to N.J.A.C. 7:26A-3.2(a)21 has also been deleted because N.J.A.C. 7:26A-3.2(a)21 has been deleted. For a justification of this deletion, please refer to the response to Comment No. 121 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.7(a)2 has been deleted because it duplicates information submission requirements incorporated by reference in N.J.A.C. 7:26A-3.7(a)1.

N.J.A.C. 7:26A-3.7(a)3 and 4 have been recodified as 7:26A-3.7(a)2 and 3, respectively.

N.J.A.C. 7:26A-3.7(a)3: This provision has been modified by the deletion of the word "local" prior to the word "municipal" and adding the words "planning board, or from the board of adjustment" after the word "municipal." The words "governing body" have also been deleted. These modifications are not substantive as they merely direct recycling center applicants to the appropriate municipal agency.

For a justification of these modifications, please refer to the response to Comment No. 142 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.7(b): The following subsection has been added: "Persons applying to the Department for a limited aproval to operate

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a recycling center for Class B recyclable materials shall notify the applicable county solid waste or recycling coordinator of this application as well as the municipality in which the recycling will occur." For a justification of this modification, please refer to the response to Comment No. 144 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.7(b), (c) and (d) have been recodified as N.J.A.C. 7:26A-3.7(c), (d) and (e), respectively.

N.J.A.C. 7:26A-3.7(e) through (h) have been modified or added to establish an administrative review process and provide an administrative completeness determination for limited recycling center approvals. Limited approval aministrative review is the same as the administrative completeness procedures for a general approval in N.J.A.C. 7:26A-3.5 except that the Department's decision on approval or denial is due 60 days from the letter of administrative completeness instead of 90 days for general approval. For a justification of this modification, please refer to the response to Comment No. 265 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.7(e) (recodified as 7:26A-3.7(j)): The words "No less than" have been replaced with "within" to clarify that individuals operating pursuant to a limited approval have up to 45 days, not greater than or equal to 45 days, for submission of a final report to the Department.

N.J.A.C. 7:26A-3.7(e) (recodified as 7:26A-3.7(j)): The phrase "the solid waste or recycling coordinator of the county in which the recycling center is located and to the applicable municipal planning board" has been inserted after the phrase "to the Department." The change is required to make reporting requirements to county and municipal officials for limited approvals consistent with all other approval and notification requirements in the rules. This effectuates the intent of the proposal to authorize and encourage effective county and municipal planning and operational oversight.

N.J.A.C. 7:26A-3.7(e)5 (recodified as 7:26A-3.7(j)5): the requirement for a written certification that all residue from a limited approval operation has been disposed of in accordance with N.J.A.C. 7:26-6 has been modified to clarify that the certification must be completed "by the person issued a limited approval." In addition, a standard of review for the certification has been provided: "to the best of her or his knowledge after diligent inquiry." The lack of a review standard was an oversight in the proposal which is clarified by this condition.

N.J.A.C. 7:26A-3.7(f) has been deleted because modifications have been made to N.J.A.C. 7:26A-4.1(a)7 which consolidate all regulatory compliance requirements. N.J.A.C. 7:26A-4.1(a)7 requires that all recycling centers operate in accordance with all applicable statutes and regulations, including, but not limited to, noise control, air pollution control, stream encroachment, NJPDES permit regulations and soil erosion and sediment control regulations, and with applicable fire and safety codes.

N.J.A.C. 7:26A-3.7(g) (recodified as 7:26A-3.7(k): After the word "shall" the phrase "take such measures as are necessary to" has been added for clarification of the proposal. For a justification of this modification, please refer to the response to Comment No. 143 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.7(i) (recodified as 7:26A-3.7(m)): The following sentence has been added to this provision which concerns requests for time extensions of limited approvals: "The petitioner shall also notify the applicable municipal planning board and county solid waste or recycling coordinator of its request for extension of the limited approval." This change responds to comments from county and municipal agencies requesting fuller notification of recycling activities within their jurisdictions, and also makes the notification requirements which had appeared in some but not all relevant provisions of the proposal consistent throughout the adopted rule. This modification does not substantially enlarge the scope of burden of the rule.

N.J.A.C. 7:26A-3.7(i) (recodified as 7:26A-3.7(m): A colon has been placed after the phrase "In no event will the Department" and the phrase "extend the duration of the limited approval for more than 50 percent of the time of the original limited approval" has been recodified as N.J.A.C. 7:26A-3.7(m)1 after the colon. In addition, N.J.A.C. 7:26A-3.7(m)2 has been added and requires that "In no event will the Department issue more than one limited approval to the same applicant for the same site within one calendar year commencing on the date of issuance of the limited approval." This addition to the rule clarifies that limited approvals cannot be obtained "back-to-back" so that limited approvals are combined for longer than 180 days. This modification is consistent with the Department's intent in the proposal that limited approvals be available for short-term or seasonal recycling activities. As proposed, however, an applicant might have construed N.J.A.C. 7:26A-3.7 as allowing for the granting of one limited approval after another. The modified standard restricts limited approvals to one per applicant per calendar year for a particular site. This standard allows for an individual engaging in seasonal recycling activities to conduct short term recycling activities once per season. The modification does not significantly enlarge or curtail the scope or burden of the rule, but simply clarifies the distinction between longer term general approvals and shorter term limited approvals.

N.J.A.C. 7:26A-3.7(j) (recodified as 7:26A-3.7(n)): The reference of the need for limited approval operations to comply with N.J.A.C. 7:26A-3.8 has been expanded to include recycling centers "for tires, tire stumps, tree parts and wood waste," rather than just tires as proposed. This modification reflects changes to N.J.A.C. 7:26A-3.8, discussed below.

N.J.A.C. 7:26A-3.8: The words "tree stump, tree parts or wood waste" have been added after the word "tire" in the heading. This modification reflects the fact that, in addition to tires, tree stumps, tree parts and wood waste are potentially flammable and therefore pose more of an environmental or public health and safety threat when received, stored, processed or transferred at a recycling center than does inert material, such as concrete debris, for example. Therefore, the Department has determined that it is prudent to require recycling centers which handle potentially flammable materials to comply with the fire control provision of N.J.A.C. 7:26A-3.8. The modification does not significantly enlarge the scope or burden of the rule since a fire control plan for recycling centers for tree stumps, tree parts and flammable wood waste is often required by local government. The modification clarifies the jurisdiction of local fire officials and municipal code enforcement offices regarding fire control plans for such facilities and puts a recycling center applicant on notice that operations may not commence until the necessary fire control plan is filed at the local level.

N.J.A.C. 7:26A-3.8(a): The word "similar" has been deleted and replaced by the word "other." This modification is necessary to clarify that it was not the Department's intention to exclude additional, thermal processes for tires, such as pyrolysis (the decomposition of tires through exposure to a high temperature in an oxygen-starved environment) which are not similar to slicing, shredding, chipping, and crumbing, but are not similar to incineration either. This is a minor technical change.

N.J.A.C. 7:26A-3.8(c): The word "marshal" has been deleted and replaced by the word "official." For a justification of this modification, please refer to the response to Comment No. 116 in the Comment-Response portion of this notice of adoption. Also, for the reasons explained above, the word "tire" has been deleted and replaced with "for tires, tree stumps, tree parts or wood waste."

N.J.A.C. 7:26-3.9(a): The phrase "and shall be determined by the Department based on the information submitted pursuant to N.J.A.C. 7:26A-3.2(a) 7, 8 and 9, 7:26A-3.3 and 7:26A-3.7" has been deleted to eliminate redundancy. It is not necessary to state that storage amounts will be based upon the information submitted pursuant to these subsections because this information is already taken into account in the preparation of the general or limited approval.

N.J.A.C. 7:26A-3.9(b): The words "or processed", which follow the word "unprocessed", have been deleted. Furthermore, the phrase "at recycling centers approved pursuant to this subchapter" has been added after the word "stored" and the words "on-site" have been deleted. Lastly, the words "six months," located at the end of the provision, have been deleted and replaced by the phrase "one year from the date of its receipt." For a justification of these modifications, please refer to the response to Comment No. 147 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.9(c): A new provision has been added which is as follows: "The storage of petroleum contaminated soil at a recycling center approved to receive this material shall be subject to additional storage requirements as indicated in the approval issued pursuant to N.J.A.C. 7:26A-3.5." This modification puts the regulated community on notice that additional storage requirements may be incorporated into a general or limited approval for this material because of the special concerns associated with petroleum contaminated soil, such as prevention of runoff and prevention of volatilization. For instance, special conditions such as requirements for storage pads and coverings, may be incorporated into the approval if determined to be necessary in particular circumstances.

N.J.A.C. 7:26A-3.10(a): The word "Department" has been deleted and replaced by "a general or limited" and the word "original" has been

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deleted and replaced by "general or limited" to make these references to "approval" consistent with the rest of the subchapter.

N.J.A.C. 7:26A-3.10(b)2: The following has been added to this provision concerning changes to recycling center approvals which require prior approval of the Department: "except that changes in end-market information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7 shall not require the prior approval of the Department but shall be handled in accordance with (f) below." This revision has been made in response to comments which indicated that prior Department approval for changes in end-markets would substantially interfere with the efficient and effective marketing of recycled products by recycling centers. The change provides greater flexibility to recycling center operations in marketing their products, while not substantially increasing or curtailing the scope or burden of the rule.

N.J.A.C. 7:26A-3.10(c): The following sentence has been added to the end of the paragraph: "The owner or operator shall also provide written notice to the solid waste or recycling coordinator of the applicable county of any request to modify a general approval, and shall provide written notice to the applicable municipality of a request to modify a limited approval." This modification makes the notice requirement of subsection (c) consistent with other county and municipal modifications contained in the proposed rules or added to the rules on adoption. This is a minor change which does not pose a significant new burden on recycling center operators while allowing better regulatory coordination between the Department and local governmental agencies.

N.J.A.C. 7:26A-3.10(d): This paragraph has been revised to standardize the criteria and review standard for additional information submittal requirements throughout the rules. The identical language for additional information submission appears at N.J.A.C. 7:26A-3.7(d). Accordingly, the following has been added: "to adequately address public or environmental health, safety or welfare."

N.J.A.C. 7:26A-3.10(d): The phrase "within 30 days of receipt of the request" has been added to clarify the Department's review process for recycling center modifications. Justification for the change may be found in response to Comment No. 148 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.10(e): This paragraph regarding approval or denial of modifications to a recycling center approval has been modified to state that such decisions will be made "according to the criteria of (a) through (d) above" to provide a cross reference. Furthermore, the following has been added to the end of the paragraph: "The owner or operator shall not institute the modification until it receives written approval from the Department." This addition clarifies the prior approval requirement which is stated in N.J.A.C. 7:26A-3.10(a) and repeated here for emphasis and clarity only.

N.J.A.C. 7:26A-3.10(f): The following provision concerning changes to end-market information has been added: "Within one week of any change to the end-market information submitted to the Department pursuant to N.J.A.C. 7:26A-3.2(a)7, the owner or operator shall submit to the Department a written notification which details any change in the use of the recyclable material transferred from the recycling center to an end-market or in the end-market location to which recyclable materials are transferred. A DEPE address is provided for transmittal of this notice. This modification responds to comments that the requirement of Department approval prior to a recycling center changing its end-markets would have interfered with the recycling center's ability to effectively market its products. The new standard removes the potential regulatory impediment to flexible marketing of recyclable products, but preserves the Department's interest in ensuring that recyclable materials are indeed reused for a recycling purpose, and not simply landfilled. The change does not significantly expand or curtail the scope or burden of the rule, but increases its flexibility.

N.J.A.C. 7:26A-3.10(g): The sentence "The Department will also notify the solid waste or recycling coordinator of the county in which the recycling center is located, and the applicable municipal planning board of any approval or denial of modification to a general or limited approval" has been added. Justification for the change may be found in response to Comments No. 149 and 150 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.11(a)2: The phrase "to have the recycling center included" has been deleted and replaced by "of the recycling center operating pursuant to a general approval to maintain inclusion." The deletion and addition specify that facilities with general approval but not limited approval must maintain plan inclusion, and to clarify a recycling center may be denied approval for failure to "maintain" its inclusion in the applicable district solid waste management plan. As proposed, the phrase "to have the recycling center included" did not clearly indicate that plan inclusion is an ongoing criteria of recycling center approval, and that if plan inclusion status is withdrawn, the recycling center shall be denied Department approval.

N.J.A.C. 7:26A-3.11(a)7 has been deleted and recodified at N.J.A.C. 7:26A-3.12(a)7 so that failure to obtain any required permit or approval from the Department or other government agency is a ground for revocation of the recycling center approval but not a ground for denial. This change is necessary because N.J.A.C. 7:26A-3.4(b) has been modified to state that other permits or approvals are necessary prior to recycling center operation, not prior to the issuance of a general approval. Accordingly, failure to obtain these other permits or approvals cannot logically be a ground for denial of a general approval. It is more appropriately a ground for revocation. This modification is technical in nature and does not significantly enlarge or curtail the scope or burden of the rule.

N.J.A.C. 7:26A-3.11(b)4: The following new paragraph (b)4 has been added: "The applicant has committed any of the acts which are criteria for approval revocation set forth at N.J.A.C. 7:26A-3.12(a)1 through (a)6 below." The addition is required in order to eliminate inconsistency in the proposal whereby grounds for revocation of an approval did not constitute grounds for denial of an approval. Justification of the change may be found in response to Comment No. 153 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.11(c): The Department has modified this provision by substituting a "preponderance of evidence" standard for the "clear and convincing evidence" standard initially proposed. Justification of the change may be found in response to Comment No. 157 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.12(a)6: The phrase "without the prior approval of the Department" has been added to clarify that not all transfers of a general or limited approval are grounds for approval revocation but only those that have not been approved by the Department.

N.J.A.C. 7:26A-3.12(a)7 has been added to make failure "to obtain any required permit or approval from the Department or other state or federal agency" a ground for approval revocation. This requirement was moved from N.J.A.C. 7:26A-3.11(a)7.

N.J.A.C. 7:26A-3.12(a)8 has been added so that recycling center approval may be revoked where the owner or operator "has committed any of the acts which are criteria for denial of a general or limited approval set forth in N.J.A.C. 7:26A-3.11." The addition of this paragraph corrects an inconsistency which existed in the proposal whereby an approval could not be revoked for the same reasons it could be denied in the first place.

N.J.A.C. 7:26A-3.12(b): The following sentence has been added: "The Department will also notify the solid waste or recycling coordinator of the county in which the recycling center is located of any revocation of a general approval or the applicable municipal planning board of any revocation of a limited approval." Justification for the change may be found in response to Comment No. 160 of the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.13(b): The mailing address of the Division of Solid Waste Management, Office of Recycling has been replaced with the address for the Department's office of Legal Affairs to reflect a change in internal administrative procedures for handling hearing requests in the DEPE.

N.J.A.C. 7:26A-3.14(a): The word "directly" has been deleted to avoid confusion on implementation of this rule concerning what actions constitute transfer of an approval. The language proposed could have created the mistaken interpretation or impression that "indirect transfers" do not require prior approval. The word "directly" has been deleted to clarify that all transfers of approvals require prior approval by the Department. This is a minor, technical change not affecting the scope or burden of the rule.

N.J.A.C. 7:26A-3.14(c): A new subsection has been added as follows: "One copy of the written request to transfer a general approval shall be submitted by the owner or operator of the recycling center to the applicable solid waste or recycling coordinator of the county in which the recycling center is located. One copy of the written request to transfer a limited approval shall be submitted by the owner or operator of the recycling center to the applicable municipal planning board." Justification for the change may be found in response to Comment No. 163 in the Comment-Response portion of this notice of adoption.

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N.J.A.C. 7:26A-3.15(a): The following subsection has been added: "On or before March 17, 1992, the Department will assess the information currently on file for each recycling center having obtained or applied for approval prior to November 18, 1991, and will inform all owners and operators of such recycling centers of any additional submittal requirements resulting from this subchapter." The Department has added this language to clarify that, inasmuch as the Department currently maintains the official files for all approved recycling centers, the burden for review of those files for conformance with the submittal requirements of this chapter correctly falls on the Department. This is a minor, technical change not affecting the scope or burden of the rule.

N.J.A.C. 7:26A-3.15(a) (recodified as 7:26A-3.15(b)): The phrase "effective date of this subchapter" has been deleted and replaced by "Department's assessment pursuant to (a) above." The change has been made for clarity to reflect the new subsection (a). This is a minor, technical change not affecting the scope or burden of the rule.

N.J.A.C. 7:26A-3.15(a) (recodified as 7:26A-3.15(b)): The words "for Class B recyclable materials which" have been added to clarify that recycling centers for Class A recyclable materials are not required to obtain approval. This is a minor, technical change not affecting the scope or burden of the rule.

N.J.A.C. 7:26A-3.15(a) (recodified as 7:26A-3.15(b)): The words "applied for or obtained approval from the Department" have been added to clarify that the review procedure established in N.J.A.C. 7:26A-3.15(a) is applicable to recycling centers which have not only obtained approval from the Department prior to the effective date of this chapter (November 18, 1991), but to those which have applied for approval as well.

N.J.A.C. 7:26A-3.16(a): The words "or limited" have been deleted because separate recordkeeping criteria for recycling centers holding limited approvals are established in N.J.A.C. 7:26A-3.7(e) (recodified as 7:26A-3.7(j)). The rule inadvertently included this language which overlaps and conflicts with the specific requirements of N.J.A.C. 7:26A-3.7(e) (now (j)).

N.J.A.C. 7:26A-3.16(a)1: The words "and municipality of origin" have been added as an administrative consolidation of the requirements in N.J.A.C. 26A-3.16(a)1 and (a)2. N.J.A.C. 7:26A-3.16(a)2 has been deleted to reflect this addition and consolidation.

N.J.A.C. 7:26A-3.16(c): The information submittal requirement has been modified to require submittal of monthly summaries of the relevant information rather than all such information. The phrase "an annual report containing monthly summary statement of" has been added after "submit" and the following language has been added "the summaries shall include the following:

1. Monthly totals of the amount of recyclable material received from each customer by municipality of origin;

2. Monthly totals of the amount of recyclable product transferred to each end-market and;

3. The amount of residue disposed of during each month."

Justification for this modification may be found in response to Comment No. 168 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.16(e): The phrase "as well as information pertaining to the municipality of origin of recyclable material" has been added to clarify that this information will be held confidential by the Department. Justification for the change may be found in response to Comment No. 229 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.16(e): The phrase "environmental" has been added prior to "health and safety concerns" in order to clarify the confidentiality standard. The phrase "as determined by the Department" has been added after "safety concerns" to clarify that the Department will make this determination based on the criteria in this subsection. This is a minor technical change that does not expand the scope or burden of the regulation.

N.J.A.C. 7:26A-3.16(e): The following sentence has been added after the cross-references in the paragraph: "for a period of two years from the date on which the information is submitted to the Department." Justification for this addition may be found in response to Comment No. 167 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-3.17, Clean fill approval requirements: This entire section has been deleted. Justification for the deletion may be found in response to Comments Nos. 1 to 15 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4: The Department has modified the heading of subchapter 4 by adding the words "Right of entry and inspection" at the end of the heading to clarify the contents of this subchapter.

N.J.A.C. 7:26A-4.1(a)1: The following, located after the word "transferred," has been deleted: "shall be only those which have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream and shall consist only of metal, glass, paper, or plastic containers, and corrugated and other cardboard or non-traditional recyclable materials approved pursuant to the requirements of N.J.A.C. 7:26A-3." The following has been inserted after the word transferred: "at all recycling centers shall conform to the following criteria:

i. The recyclable materials shall have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream;

ii. The recyclable materials shall consist only of Class A recyclable materials or of Class B recyclable materials which the Department has approved pursuant to N.J.A.C. 7:26A-3 for receipt, storage, processing or transfer at the recycling center; and

iii. Class A recyclable materials may be commingled only with other Class A recyclable materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 3.7." These modifications reorganize this provision to present the information in a more readable manner. They do not represent substantive changes because the scope of the provision is the same. 7:26A-4.1(a)1iii is a new subparagraph which clarifies the manner in which recyclable materials may be received, stored, processed or transferred in a commingled fashion.

N.J.A.C. 7:26A-4.1(a)2: The following has been deleted "exceeding that which is prescribed by a county or local health and safety ordinance. In no case shall residue be stored on-site for a period." For a justification of this modification, please refer to the response to Comment No. 174 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.1(a)4: The requirement for storage of residue in "roll off" containers has been deleted and replaced with the requirement that residue be stored in "a manner which prevents run-off, leakage or seepage from the residue storage area into, on or around the soil or storage area." This change deletes the prescriptive containment method for residue and replaces it with an environmental performance standard. This change gives the applicant flexibility in choosing a method to contain residue in an environmentally safe manner according to the performance standard. The modification is consistent with the intent of the proposed standard to require that residue be stored in a mannner which prevents contact with the ground which might lead to run-off and other environmental degradation.

N.J.A.C. 7:26A-4.1(a)5 has been deleted. For a justification of this deletion, please refer to the response to Comments Nos. 181 to 183 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.1(a)8 (recodified as 7:26A-4.1(a)7): This paragraph has been expanded to require that recycling centers operate in conformance with applicable "Federal, State, county, municipal and other local laws and regulations, including, but not limited to, nuisance codes, the noise control rules at N.J.A.C. 7:26, air pollution control rules at N.J.A.C. 7:27, stream encroachment rules at N.J.A.C. 7:13, the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A, the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-1 et seq., and with all applicable fire and safety codes." This modification incorporates performance standards which had been scattered throughout the proposal in subchapter 3 and 4 into one paragraph. For instance, the requirement for compliance with stream encroachment rules and noise control rules were previously proposed at N.J.A.C. 7:26A-3.2(a)14 and 15 respectively. The requirement for compliance with soil erosion rules had been proposed at N.J.A.C. 7:26A-3.2(a)19, and the requirement for compliance with the air pollution control rules proposed at N.J.A.C. 7:26A-3.2(a)13. The consolidation of these performance oriented standards into one paragraph in subchapter 4 makes the standards more easily discernible and accessible for the regulated community. In addition, the transfer of information submittal requirements in the rule to the performance standard language in N.J.A.C. 7:26A-4.1(a)7 reduces the amount of information a recycling center applicant must submit up-front, while maintaining the important environmental protections represented by these requirements.

N.J.A.C. 7:26A-4.1(a)9 has been deleted and incorporated into N.J.A.C. 7:26A-1.4(a)7.

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N.J.A.C. 7:26A-4.1(a)10 (recodified as 7:26A-4.1(a)8): The following requirement has been added to the end of this paragraph: "and such that mud tracking into nearby streets is prevented." This provision had been an information submittal requirement proposed at N.J.A.C. 7:26A-3.2(a)16. The provision has been recodified at N.J.A.C. 7:26A-4.1(a)8 as a specific performance standard.

N.J.A.C. 7:26A-4.1(b) has been deleted in its entirety. For a justification of this deletion, please refer to the response to Comment No. 180 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.1(c) has been deleted in its entirety. For a justification of this deletion, please refer to the response to Comment No. 185 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.2 has been deleted in its entirety. For a justification of this deletion, please refer to the response to Comments Nos. 192 to 212 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.3(a) (recodified as 7:26A-4.2(a)): This subsection has been reworded for grammatical clarity.

N.J.A.C. 7:26A-4.3(b) has been deleted in its entirety. For a justification of this deletion, please refer to the response to Comment No. 221 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.3(c) has been deleted in its entirety. For a justification of this modification, please refer to the response to Comment No. 220 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.4(a) (recodified as 7:26A-4.3(a)): The words "or an authorized representative" have been modified by addition of the language "acting pursuant to the county Environmental Health Act N.J.S.A. 26:3A2-1 et seq." For a justification of this modification, please refer to the response to Comments Nos. 188 and 189 in the Comment-Response portion of this notice of adoption. In addition, the right of inspection has been clarified to apply to "any site at which an exempted activity is conducted pursuant to N.J.A.C. 7:26A-1.4(a)." The omission of this language was an oversight in the proposal, although its necessity was clearly anticipated. The requirement at proposed N.J.A.C. 7:26A-1.4(b)3, which enables the Department to regulate exempted activities as a recycling center should they exceed the scope of the exemption, could not be effectuated but for the Department's ability to gain access to the site of an exempted activity and conduct a compliance inspection. The modification, therefore, simply corrects this anomaly. Finally, the words "in order to determine compliance with the provisions of all applicable laws or rules and regulations adopted pursuant thereto" have been added to clarify that the right to enter "at any time" is also not "for any purpose" but only for those purposes specifically authorized by statute (see N.J.S.A. 13:1E-9).

N.J.A.C. 7:26A-4.3(b): The provision which was proposed at N.J.A.C. 7:26A-4.4(a)5 concerning the right to enter and inspect for the purpose of reviewing and copying records has been recodified as N.J.A.C. 7:26A-4.3(b) and modified by restricting the right of entry for this purpose to "normal operating hours." Justification for this modification may be found in response to Comment No. 223 in the Comment-Response portion of this notice of adoption.

N.J.A.C. 7:26A-4.5(a) (recodified as 7:26A-4.4(a)): The Department has changed the tonnage report submittal date from March 1 to February 1 of each year because it will provide increased timeliness in reporting by municipalities, accelerated processing of tonnage grants and quicker assessment of State recycling rates by the Department. In addition, the phrase "as well as the date on which the recyclable materials were delivered to the recycling center" has been deleted because this information is not necessary in order for the Department to adequately administer the tonnage grant program. The requirement therefore created an unnecessary administrative burden on recycling center operations.

N.J.A.C. 7:26A-4.5(b) (recodified as 7:26A-4.4(b)): The phrase "in those instances where manufacturers or out-of-State recycling centers will not provide recycling tonnage reports to New Jersey municipalities, the," located at the beginning of the provision, has been deleted. Also, the word "all" has been inserted prior to the word "transporters." For a justification of these modifications, please refer to the response to Comment No. 197 in the Comment-Response portion of this notice of adoption. The Department has also modified the tonnage report submittal date from March 1 of each year to February 1 of each year for the reasons described above in discussion of the change to N.J.A.C. 7:26A-4.4(a). Furthermore, this provision has been modified by the insertion of the words "source separated" prior to the words "recyclable material" to clarify that recyclable materials which are regulated under this provision must be separated at the point of generation. N.J.A.C. 7:26A-4.4(b)has been modified by the inclusion of the phrase "for those instances where source separated recyclable materials are transported to manufacturers and recycling centers located in states other than New Jersey" after the words "calendar year." This modification clarifies the obligations of the transporter in those instances where the transporter is required to submit tonnage information. This provision has also been modified by the addition of the words "a manufacturer or" after the words "brought to." These modifications clarify that transporters bringing source separated recyclable materials to out-of-State manufacturers must submit tonnage information, in addition to those instances where materials are brought to out-of-State recycling centers. Lastly, the Department has deleted the phrase "as well as the date on which the recyclable materials were delivered to the recycling center," located prior to the words "those persons" for the reasons discussed above in reference to N.J.A.C. 7:26A-4.4(a).

N.J.A.C. 7:26A-4.5(c) (recodified as 7:26A-4.4(c)): This provision has been modified by the deletion of the word "March" and insertion of the word "February" for the reasons discussed in reference to the changes to N.J.A.C. 7:26A-4.4(a) above. Also, the following has been added at the end of this provision: "The report shall detail the amount of each source separated recyclable material, expressed in tons, cubic yards, cubic feet, or gallons received, stored, processed or transferred. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons." This modification clarifies the manner in which the report should be prepared and is consistent with the other reporting requirements of this chapter.

N.J.A.C. 7:26A-5: The heading of the subchapter has been changed to: "requirements for Processing Discarded Appliances that Contain Refrigerant Fluid," for clarity and for consistency of terminology throughout the subchapter.

N.J.A.C. 7:26A-5.1: The heading of this section has been modified to now read: "Requirements for processing discarded appliances, motor vehicles, machines or other goods which contain refrigerant fluid" for clarity and for consistency of terminology throughout the subchapter.

N.J.A.C. 7:26A-5.1 (a), (b), (c) and (d): The word "capture" has been deleted and replaced with the term "recovery" for consistency of terminology between subchapter 5 of N.J.A.C. 7:26A and the Federal refrigerant fluid recovery requirements in Title VI of the Clean Air Act Amendments of 1990.

N.J.A.C. 7:26A-5.1(c): The following sentence has been added to the end of the paragraph. "If arrangements cannot be made with a reprocessing facility to accept recovered refrigerants, or if the refrigerants cannot be otherwise made suitable for reuse, the person who recovered the refrigerant shall store or dispose of the material in accordance with applicable laws and regulations." This addition clarifies that the responsibility for safe disposition of refrigerant fluids does not cease in those instances where no reprocessing service is immediately available or where the material is unsuitable for reprocessing. In such cases, the material must be stored or disposed of properly in accordance with applicable law. The addition does not create a new responsibility but simply clarifies and emphasizes an existing responsibility.

N.J.A.C. 7:26A-5.1(d)5: This new paragraph clarifies that recovery and disposition of refrigerant fluid must comply with the "provisions of Title VI of the Clean Air Act Amendments of 1990" in addition to the other environmental standards. This addition creates no new compliance obligations beyond that which is already required under Federal law. It has been included at N.J.A.C. 7:26A-5.1(d)5 for informational purposes to notify persons who have recovered refrigerant fluid of their obligations under existing law.

N.J.A.C. 7:26A-6. This subchapter has been deleted in its entirety. For a justification of the deletion, please see response to Comments Nos. 239 to 259 in the Comment-Response portion of this notice of adoption.

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

CHAPTER 26A
RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department governing the *[approval to operate as a]* ***operation of*** recycling center***s*** pursuant to the

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Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

(b) This chapter shall not apply to hazardous waste. See N.J.A.C. 7:26-1, 7, 8, 9, 10, 11, 12 and 13.

7:26A-1.2 Construction and severability

(a) This chapter shall be liberally construed to permit the Department to effectuate the purposes of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

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

(c) The Department may amend, repeal or rescind this chapter as necessary and in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the *[following]* meanings*[:]* ***set forth below. All terms which are used in this chapter and which are not defined herein but which are defined in N.J.A.C. 7:26 shall have the same meanings as in that chapter.***

"Act" means the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

***"Applicant" means any person seeking a general or limited approval to operate a recycling center.**

"Brush" means branches, woody plants and other like vegetative material. Leaves and grass do not constitute brush.

"Class A recyclable material" means a source separated non-putrescible recyclable material specifically excluded from Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, which material currently includes source separated non-putrescible metal, glass, paper, plastic containers, and corrugated and other cardboard.

"Class B recyclable material" means a source separated recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, the following:

1. Source separated, non-putrescible, waste concrete, asphalt, brick, block, asphalt-based roofing scrap and wood waste;

2. Source separated, non-putrescible, waste materials other than metal, glass, paper, plastic containers, corrugated and other cardboard resulting from construction, remodeling, repair and demolition operations on houses, commercial buildings, pavements and other structures;

3. Source separated whole trees, tree trunks, tree parts, tree stumps, brush and leaves provided that they are not composted;

4. Source separated scrap tires;

5. Source separated petroleum contaminated soil that is delivered to a non-mobile in-State asphalt plant, concrete production plant or brick making facility for incorporation as a raw material in its production process; and

6. Source separated petroleum contaminated soil which is processed at its point of generation by mobile recycling equipment which produces asphalt, concrete or bricks by incorporating source separated petroleum contaminated soil as a raw material in its mobile production process.*

*["Clean fill" means an uncontaminated, nonwater-soluble, non-decomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products.

"Commingled source separated traditional recyclable materials" means a combination of source separated metal, glass, or plastic containers, or a combination of source separated paper grades.]*

"Commingled" means a combining of non-putrescible source separated recyclable materials for the purpose of recycling.

"Contaminant" means *[any substance, matter or material]* ***solid waste*** which adheres to, or which is otherwise contained on or in, source separated recyclable materials.

"Department" ***or "NJDEPE"*** means the New Jersey Department of Environmental Protection ***and Energy***.

["Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage for a period not to exceed six months of source separated recyclable materials for all possible uses except for disposal as solid waste.]

"End-market" means any person which receives processed or unprocessed source separated *[or source separated commingled]* recyclable material and utilizes the material as a finished product or as a raw material for a manufacturing process.

"General approval" means an approval to operate a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material for a period of time not to exceed five years.

"Limited approval" means an approval to operate a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material for a period of time not to exceed 180 days.

"Manufacturer" means any person which utilizes *[traditional]* ***Class A*** recyclable material as raw materials in the production of new paper, metal, glass or plastic products ***derived from plastic containers***.

"Mobile recycling *[center]* *equipment*" is *[a recycling center for non-traditional]* ***equipment which processes Class B*** recyclable material ***and*** which does not operate from a permanent location *[and which consists of equipment that]* ***but which*** is capable of being transported from site to site *[for the purpose of receiving, storing, processing or transferring non-traditional recyclable materials]*.

["Non-traditional recyclable material" means any source separated or commingled source separated non-hazardous materials other than metal, glass, paper, or plastic containers; corrugated and other cardboard. Non-traditional recyclable materials include, but are not limited to, tires, wood waste and tree stumps and certain construction/demolition debris, such as concrete, bricks, cinder blocks and asphalt.]

"Off-site" means any site other than the specific site or point of generation of recyclable materials.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), corporate official, partnership, association, Federal agency, state, municipality, commission, political subdivision of a state, county or municipality, or any interstate body.

"Processing" means the preparation of source separated recyclable materials so that they conform to end-market specifications.

"Product" means the material or ***the*** good generated as a result of processing source separated recyclable materials *[or commingled source separated recyclable materials]* for which no further processing is required prior to final utilization.

"Recover" means to remove refrigerant fluid in any condition from a refrigerator, freezer, air conditioner, chiller, or similar appliance and store it in an external container without necessarily testing or processing it in any way.

"Recyclable material" means *[that]* ***those*** material***s*** which ***would otherwise become solid waste and which*** may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

"Recycling" means any process by which materials ***which would otherwise become solid waste*** are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

"Recycling center" means a facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable materials *[or commingled source separated recyclable materials]*, except that *["]*recycling center*["]* shall not include a *["]*manufacturer.*["]*

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"Refrigerant fluid" means *[chlorofluorocarbon, fluorocarbon, bromofluorocarbon or hydrochlorofluorocarbon chemical used as refrigerant in a refrigerator, freezer, air conditioner, chiller, or similar device. These chemicals include, but are not limited to, refrigerants 11, 12, 500, 502 and 22 (ASHRAE Standards 34-57 and 34-78).]* ***the following Class I or Class II substance as defined by section 602 of Title VI of the Clean Air Act Amendments of 1990 (42 U.S.C. 7671) and additional substances that are listed by the United States Environmental Protection Agency that are used as a refrigerant in any appliance including any personal, household, commercial or industrial air conditioner, refrigerator, chiller, freezer or similar appliance:**

Class I

Group I
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)
Group II
halon-1211
halon-1301
halon-2402
Group III
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)
Group IV
carbon tetrachloride
Group V
methyl chloroform

Class II

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
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hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)*

"Refrigerant reprocessing facility" means a facility which receives captured refrigerant fluid, stored and transported in the appropriate containers, and cleans or otherwise reprocesses these refrigerant fluids to a level of purity consistent with industry standards for the use to which the reprocessed refrigerant fluid will be put, and which then returns the reprocessed refrigerant fluid to commerce.

"Residue" means any solid waste generated as a result of processing source separated recyclable materials at a recycling center which must be disposed of as solid waste in accordance with the interdistrict and intradistrict solid waste flow rules set forth at N.J.A.C. 7:26-6.

"Solid waste" means that which is defined as solid waste in N.J.A.C. 7:26-1.6

["Source separated I.D. 27 soils" means any nonwater-soluble, non-decomposable inert soil which meets the definitional criteria of solid waste type I.D. 27, dry industrial waste, at N.J.A.C. 7:26-2.13(g)1vi.]

"Source separation" or "source separated" means the process by which *[solid waste]* ***recyclable*** materials are separated at the point of generation *[into discrete classes of materials which are kept separate and apart from residential, commercial and institutional]* ***by the generator thereof from*** solid waste *[by the generator thereof]* for the purposes of *[collection, disposition and]* recycling.

*["Traditional recyclable material" means any source separated, nonhazardous metal, glass, paper, or plastic containers, and corrugated and other cardboard.

"Treat" or "treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of a material so as to:

1. Neutralize or otherwise change the pH of such material;
2. Recycle energy or material resources from the material;
3. Render such material non-hazardous, or less hazardous;
4. Render the material safer to transport, store or dispose of; or
5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

"Use" or "reuse" means the procedure whereby a source separated I.D. 27 soil is:

1. Employed as an ingredient in an industrial process to make a product. However, a material will not satisfy this condition if distinct components of the material are reclaimed as separate end products (for example, if the soil must be treated or reclaimed prior to use or reuse); or
2. Employed in a particular function or application as an effective substitute for a commercial product.]*

7:26A-1.4 Exemptions

(a) The activities exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and the specific criteria applicable to these activities are as follows:

1. Manufacturers shall not be required to obtain general or limited approval pursuant to N.J.A.C. 7:26A-3 for the receipt or storage of source separated recyclable materials. This exemption shall also apply to asphalt manufacturing plants which receive *[only]* ***solely*** source separated recyclable *[milled]* asphalt *[which has been processed (milled) to raw material specification at the point of generation and which is further reprocessed]* prior to ***its*** introduction into the ***asphalt*** manufacturing process;

2. The recycling of source separated recyclable materials which are generated, processed and reused ***as a product*** exclusively at the point of generation ***where all applicable county and municipal approvals have been obtained for that activity***. *[In no event shall source separated recyclable materials be stored at the point of generation for more than six months.]* Specifically excluded from this exemption are ***source separated petroleum contaminated soils and leaves, and the receipt, storage, processing or transfer of*** materials generated off-site;

3. Recycling activities in which tree branches, tree limbs and brush are the sole materials to be received, stored, processed or transferred provided that:

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i. Only the amount of material which the equipment on-site is capable of processing within a one-month period is stored on-site; and

ii. Storage of material on-site shall not exceed *[six months]* ***one year***;

4. Tire retreaders and tire remolders which receive, store, process or transfer tires provided that:

i. Only that amount of material which the equipment on-site is capable of processing within a *[one]****two***-month period is stored on-site; and

ii. Storage of material on-site shall not exceed *[six months]* ***one year***;

5. Any person or recycling center which receives less than *[1,000]* ***5,000*** scrap tires per month and which does not process the scrap tires provided that:

i. Storage of materials on-site shall not exceed six months;

ii. Tires shall only be stored in ***a totally enclosed structure or in*** roll-off containers or trailers dedicated to scrap tire storage; *[and]*

iii. The provisions of N.J.A.C. 7:26A-3.8(b) and (c) are met; ***and***

iv. The tires are transferred to an end-market or to a recycling center approved to receive, store, process or transfer scrap tires, or to a tire facility herein exempted;

6. (Reserved)

*[6.]***7.***The transport of source separated *[non-traditional]* ***Class B*** recyclable materials to an in-State recycling center holding a general or limited approval pursuant to this *[sub]*chapter; *[and]*

*[7.]****8.*** Any person or recycling center which receives source separated *[non-traditional]* ***Class B*** recyclable materials, with the exception of scrap tires, ***leaves and petroleum contaminated soil*** for temporary storage, which shall not exceed *[one]* ***two*** month***s*** provided that such person or recycling center meets the following criteria:

i. *[All source separated non-traditional recyclable material shall be stored in containers dedicated for the exclusive storage of non-traditional recyclable material]* ***Materials shall be stored in a manner which prevents run-off, leakage or seepage from the storage area into, on or around the soil of the storage area, and shall be stored in accordance with all applicable county and municipal laws and regulations***;

ii. No source separated *[non-traditional]* ***Class B*** recyclable material which is received and stored as per this exemption shall be processed in any way, including further separation*[, prior to the transfer of material to a recycling center approved by the Department to receive, store, process or transfer the non-traditional recyclable material]*;

iii. Source separated *[non-traditional]* ***Class B*** recyclable material which is stored as per this exemption shall *[only]* be transferred ***only*** to a recycling center approved *[by this Department]* to receive, store, process or transfer the *[non-traditional]* ***Class B*** recyclable material; and

iv. Records of the daily amount and type of the *[non-traditional]* ***Class B*** recyclable materials received, stored and transferred***, including the name and address of the recycling center to which the materials are transferred,*** shall be kept and shall be maintained for three years from the date of recording by the person or recycling center operating pursuant to this exemption. The required records shall be kept on site, be made available to the Department during an inspection and be submitted to the Department upon request*[.]* ***; and***

9. Those generators of source separated petroleum contaminated soil who arrange for mobile recycling equipment to process source separated petroleum contaminated soil at its point of generation and whose mobile recycling equipment produces asphalt, concrete or bricks by incorporating source separated petroleum contaminated soil as a raw material in its mobile production process.

(b) The general requirements applicable to all exemptions set out in (a) above are as follows:

1. The receipt, storage, processing or transfer of recyclable material shall be conducted in a manner consistent with the protection of public health, safety and the environment in light of the nature, scale and location of the exempted activity;

2. *[Measures shall be taken to minimize any negative impacts of the receipt, storage, processing or transfer activities on]* ***All persons operating pursuant to an exemption in (a) above shall ensure that the receipt, storage, processing or transfer of materials pursuant to the exemption is conducted in a manner which minimizes degradation of*** existing transportation patterns, ambient acoustical conditions, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands and agricultural development areas, dedicated recreational or open space areas, floodways and endangered or threatened wildlife and vegetation***, consistent with applicable municipal, county, State and Federal law and regulations***;

3. Activities exempted pursuant to this section which exceed or violate the criteria for exemptions specified in (a) above and of this subsection, or which are conducted in a manner which endangers the public health, welfare and safety or the environment, or which are in violation of Federal, State or local law, shall be subject to regulation as a recycling center pursuant to this chapter or *[as a]* ***subject to the*** solid waste *[facility]* ***rules*** pursuant to N.J.A.C. 7:26; *[and]*

4. *[Tonnage]* ***With the exception of the intra-State transport of source separated recyclable materials, tonnage*** reports shall be submitted ***to the municipality from which the exempted material originated and*** to the Department in accordance with N.J.A.C. 7:26A-*[4.4]****4.5***(c)*[.]***;*

5. All persons operating pursuant to an exemption in (a) above shall provide a written notice of such operation to the Department, the host municipality, and host county prior to the commencement of operations; and

6. Exemption from the requirement of a general or limited approval pursuant to (a) above shall not constitute an exemption from applicable county or municipal laws or regulations.

SUBCHAPTER 2. ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER *[OR MOBILE RECYCLING CENTER; FEE FOR PERSONS SEEKING APPROVAL TO TRANSPORT SOURCE SEPARATED RECYCLABLE MATERIALS OUT-OF-STATE]* ***FOR CLASS B RECYCLABLE MATERIAL***

7:26A-2.1 Fees for general or limited approval

*[(a) The general conditions and applicability of the fee schedule for all persons seeking or holding general or limited approval to operate a recycling center or mobile recycling center are as follows:

1. The Department will collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a general or limited approval to operate a recycling center or mobile recycling center or that submit an application for a general or limited approval. The fee will cover the Department's costs of reviewing application submittals, making modifications to applications, conducting site visits, preparing approval and denial letters, and reviewing annual and final reports.

2. All applicants for a general or limited approval shall submit the minimum fee as set forth in (a)5 below to the Department at the time of application.

3. Upon a determination by the Department that an application satisfies the criteria for a general or limited approval, the annual fee will be calculated and pro-rated for the period of the fee year remaining. For those persons seeking a limited approval from the Department, the annual fee will be pro-rated to correspond to the duration of the limited approval. The minimum fee already paid will then be subtracted from the pro-rated assessment. In no case will such payment of a pro-rated fee result in a fee that is less than the minimum fee listed in (a)5 below. No approval will be issued until the Department has received the pro-rated annual fee from the applicant.

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4. The annual fee for the operation of a recycling center or mobile recycling center holding a general or limited approval from the Department is $8,820 for the base year ending on June 30, 1990. Thereafter, the annual fee will be calculated in accordance with N.J.A.C. 7:26A-2.3 below.

5. The minimum fee for application for a general or limited approval to operate a recycling center or mobile recycling center is $3,530 for the base year ending on June 30, 1990. Thereafter, the minimum fee will be calculated in accordance with N.J.A.C. 7:26A-2.3 below.]*

***(a) The following apply to the application fee for general or limited approval:**

1. All applicants for a general approval to operate a recycling center for Class B recyclable material shall submit an application fee of $2,500 at the time of application.

i. The application fee for general approval will cover the Department's costs of conducting county and Statewide recycling plan consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.2(a), 3.4 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies, and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

2. All applicants for a limited approval to operate a recycling center for Class B recyclable material shall submit an application fee of $2,000 at the time of application.

i. The application fee for limited approval will cover the Department's costs of conducting municipal law consistency reviews, reviewing information submitted in accordance with N.J.A.C. 7:26A-3.4, 3.7 and 3.8, preparing letters of administrative completeness and incompleteness, advising applicants on technical deficiencies and preparing approval and denial letters in accordance with N.J.A.C. 7:26A-3.5.

(b) The following apply to the annual fee for general approval and the monthly fee for limited approval:

1. All persons who possess a general approval to operate a recycling center for Class B recyclable material shall submit an annual fee of $6,400 on May 1 for each fiscal year beginning on July 1 and ending on June 30. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

i. The annual fee for general approval will cover the Department's costs of reviewing modification submittals and issuing letters of approval or denial for modifications, advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, routine program correspondence, review and analysis of annual report data and other technical analyses required to implement the recycling program, legislative development and analysis, and recycling program staff training and development activities.

2. All persons who possess a limited approval to operate a recycling center for Class B recyclable material shall submit a fee of $500 per month for each month of operation authorized by the limited approval. The fee for the total number of months of authorized operation is due 60 days from the date of issuance of the limited approval.

i. The monthly fee for limited approval will cover the Department's costs of reviewing modification submittals and issuing letters of approval or denial for modifications, advising recycling center owners or operators on technical compliance matters, conducting market research, analysis and development activities, routine program correspondence, review and analysis of final report data and other technical analyses required to implement the recycling program, legislative development and analysis, and recycling program staff training and development activities.

(c) All fees in (a) and (b) above are for the base fiscal year ending on June 30, 1992. Thereafter, the fees will be adjusted annually in accordance with N.J.A.C. 7:26A-2.2.*

*[7:26A-2.2 Fee for approval of the out-of-State transport of recyclable material

(a) The general conditions and applicability of the fee schedule for all persons seeking approval from the Department pursuant to N.J.A.C. 7:26A-4.2 for the out-of-State transport of recyclable materials are as follows:

1. The Department will collect an annual fee for the billing year July 1 to June 30 from all persons that are issued an approval from the Department for the out-of-State transport of recyclable material or that submit an application for approval. The fee will cover the Department's cost of reviewing application submittals, coordinating the dissemination of recycling tonnage reports, verifying end markets and preparing approval and denial letters.

2. All applicants for an approval for the out-of-State transport of recyclable material shall submit the minimum fee as set forth in (b)5 below to the Department at the time of application.

3. Upon a determination by the Department that an application satisfies the criteria for an approval for out-of-State transport of recyclable material, the annual fee will be calculated and pro-rated for the period of the fee year remaining. For those persons seeking an approval for a period of less than one year, the annual fee will be pro-rated to correspond to the duration of the approval. The minimum fee already paid will then be subtracted from the pro-rated assessment. In no case will such payment of pro-rated fees result in a fee which is less than the minimum fee listed in (b)5 below. No approval will be issued until the Department has received the pro-rated annual fee from the applicant.

4. The annual fee for an approval of out-of-State transport of recyclable material is $180.00 for the base year ending on June 30, 1990.

5. The minimum fee for application for approval of out-of-State transport of recyclable material is $72.00 for the base year ending on June 30, 1990.]*

***7:26A-2.2 Adjustment of fees**

(a) The Department will adjust the fees for each activity provided in N.J.A.C. 7:26A-2.1 annually, based upon the following formula:

$$\text{Fee} = (\text{hours required}) \times (\text{hourly rate})$$

where "hours required" and "hourly rate" are as set forth in the Annual Recycling Center Fee Schedule Report provided in (b) below.

(b) Each year, the Department will prepare an Annual Recycling Center Fee Schedule Report. The report will include the following:

1. A statement of the hours required to perform each type of activity for which fees are assessed under N.J.A.C. 7:26A-2.1. The statement will be based upon the Department's timekeeping records for a period of at least nine months, ending no more than six months before the completion of the report, subject to the adjustments provided in (b)1i and ii below.

i. If the Department determines that it has not performed an activity a sufficient number of times within the one-year period to provide data sufficient to reliably determine the hours required to perform the activity, the Department may supplement data from that period with data collected in previous years.

ii. With respect to activities to be performed more than once in the period covered by the fee (such as several compliance monitoring inspections to be performed in a one-year period), the data upon which the report is based may show a decrease in the amount of time required to perform an activity, all or part of which decrease results from a lack of Department staff sufficient to perform the activity the expected number of times within the period. In such event, the Department may maintain the fee at the level required to defray the cost of staff sufficient to perform the activity the expected number of times within the period; and

2. A statement of the hourly rate for calculating fees. The hourly rate is the average cost of one hour of Department staff time, calculated according to the following formula:

$$\frac{(AS + FB + IC + OE + LS)}{BH}$$

where:

i. AS equals the average salary of a full-time employee working in the Department's recycling center approval program;

ii. FB equals the fringe benefits of a full-time employee working in the Department's recycling center approval program, calculated as a Department of Treasury set percentage times the average salary,

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and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a full-time employee working in the Department's recycling center approval program, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency times the total of the average salary plus fringe benefits;

iv. OE equals normal operating expenses (including without limitation postage, telephone, travel, supplies and data system management) attributable to a full-time employee working in the Department's recycling center approval program;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's recycling center activities, divided by the total number of Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's recycling program spends annually performing activities for which fees are to be assessed under N.J.A.C. 7:26A-2.1(a)4 and (a)5.

(c) Promptly after completing the report described in (b) above, the Department will provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26A-2.1 within the one-year period covered by the report.

(d) Promptly after completing the report described in (b) above, the Department will publish a notice in the New Jersey Register stating that the report is available, and directing interested persons to contact the Department for a copy of the report. The Department will provide a copy of the report to each person requesting a copy.*

*[7:26A-2.3 Adjustment of fees

(a) All fees contained in N.J.A.C. 7:26A-2.1 and 2.2 above will be adjusted annually by the Department using the following factors:

1. R = adjustment rate
2. B = base fee
3. N = number of approvals

(b) The annual fee will be determined by computing the factor "R" so that the total fees collected equals the Department's cost of providing services. The fee will be calculated by multiplying the factor "R" times the base fee "B." The product of the above multiplication is then multiplied by the number of approvals "N." The equation for the foregoing is as follows:

$N(R \times B)$ = the cost of providing services

(c) The adjustment rate will be determined by the Department annually and will be noticed in the New Jersey Register no later than April 30 of each year.]*

7:26A-*[2.4]***2.3*** Payment of fees

Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Collections and Licensing
CN *[402]* ***417***
Trenton, New Jersey 08625

SUBCHAPTER 3. *[RECYCLING CENTER APPROVAL]* ***APPROVAL OF RECYCLING CENTERS FOR CLASS B RECYCLABLE MATERIALS***

7:26A-3.1 General requirements applicable to all recycling centers which receive, store, process or transfer *[non-traditional]* ***Class B*** recyclable material

(a) No recycling center shall receive, store, process or transfer any *[non-traditional]* ***Class B*** recyclable material without the prior written approval of the Department. The procedures for obtaining approval are set forth at N.J.A.C. 7:26A-3.2, *[3.3,]* 3.4, 3.5, 3.7 and 3.8. ***All persons issued a general or limited approval to operate a recycling center for Class B recyclable material pursuant to this subchapter shall comply with all conditions of the approval.***

[1. The only putrescible materials which may be approved by the Department for receipt, storage, processing or transfer at a recycling center or mobile recycling center are source separated tree stumps, tree trunks and leaves.]

(b) Any person who operates a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material without the prior written approval of the Department shall be considered to be operating an unlicensed solid waste facility and shall be subject to penalties as set forth in N.J.S.A. 13:1E-9 and N.J.A.C. 7:26-5 in addition to penalties which may be assessed by other regulatory agencies pursuant to their authority. ***That person may also be subject to penalties for violations of any other Department rules and the statutes under which such rules are promulgated.***

(c) Any facility which received written Departmental approval to receive, store, process or transfer any source separated ***Class B*** recyclable materials prior to *[the effective date of this chapter]* ***November 18, 1991*** may continue to do so if all other requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and this chapter have been met.

(d) The transport to, delivery to or acceptance of source separated *[non-traditional]* ***Class B*** recyclable materials at any *[recycling facility]* ***location*** in New Jersey which has not received the prior approval of the Department *[to operate as a recycling center pursuant to N.J.A.C. 7:26A-3 or the transport and delivery of source separated recyclable materials to any out-of-State facility without the prior approval of the Department pursuant to N.J.A.C. 7:26A-4]* shall constitute a violation of the interdistrict and intradistrict solid waste flow rules set forth at N.J.A.C. 7:26-6.

***(e) Prior to filing an application with the Department for recycling center approval, and prior to filing for inclusion in the applicable district Solid Waste Management Plan, the applicant shall publish a notice in a newspaper of general circulation within the host municipality which indicates that the applicant will apply to the county for inclusion of a recycling center in the solid waste management plan of the district in which the recycling center is located and will apply to the Department for recycling center approval. The notice shall include the following:**

1. The name of the proposed recycling center, the name of the owner or operator of the proposed recycling center and the nature of the project;

2. The generally recognized address of the proposed recycling center, as well as the block and lot of the proposed recycling center;

3. An indication that a copy of the application for county plan inclusion may be examined at the office of the solid waste or recycling coordinator of the county in which the recycling center is located or at the applicable municipal clerk's office; and

4. An indication that comments regarding the application for county plan inclusion can be made at the public hearing which shall be held by the board of chosen freeholders, submitted to the county clerk's office or submitted to the office of the solid waste or recycling coordinator of the county in which the recycling center is located.

(f) The notice shall be published two times by the applicant with the second publication being no less than 15 days prior to the public hearing held by the applicable board of chosen freeholders. The applicant shall forward a copy of the notice to the New Jersey Department of Environmental Protection and Energy, Division of Solid Waste Management, Office of Recycling, and to the municipality in which the recycling center will be operating, upon its publication.*

7:26A-3.2 Application procedure for general approval to operate a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material

(a) Prior to the receipt, storage, processing or transfer of any *[non-traditional]* ***Class B*** recyclable materials at a recycling center, the owner or operator of the recycling center shall submit to the Department the following information in addition to a fee in accordance with N.J.A.C. 7:26A-2:

1. The name, address and telephone number of the person or persons seeking to own and operate the proposed recycling center, and the address of the recycling center if different from the above;

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2. A description of the geographical location of the recycling center identified by the name of the municipality in which the recycling center is located, by a tax map showing the lot and block numbers of the recycling center site and of all adjoining properties, and by a *[description of]* ***zoning map showing*** the current land use of the recycling center site and of all adjoining properties;

3. A listing, by name, address and telephone number, of all persons owning *[ten]* ***five*** percent or more of corporation stock in the recycling center, or a listing of the general and limited partners where applicable. In the case where no persons own *[ten]* ***five*** percent or more of corporation stock in the recycling center, the names of the corporation principals shall be listed. *[In particular, the]* ***The*** owner or operator of the recycling center shall list any intra-corporate relationships between the recycling center and any solid waste hauler or disposal operation registered with *[either the New Jersey Board of Public Utilities or]* the Department *[or both]*;

4. A listing of the material or materials, including the types of any *[possible]* ***reasonably anticipated*** contaminants, to be received, stored, processed or transferred at the recycling center;

5. The maximum amount of each material, including contaminants, to be received, stored, processed or transferred at the recycling center per day, expressed in tons***,*** *[or]* cubic yards***, cubic feet or gallons*** per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the materials from cubic yards to tons;

6. A listing of all products and residue resulting from the proposed recycling activities, and the amount of such products and residue expressed in tons***,*** *[or in]* cubic yards***, cubic feet or gallons*** per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the material from cubic yards to tons;

7. The name, address and telephone number of *[all]* ***planned*** end-markets for the materials received, stored, processed or transferred by the recycling center.

i. End-market contracts or agreements shall be submitted as evidence of the applicant's ability to sell the products resulting from the proposed activities of the recycling center;

ii. Where end-market contracts or agreements are not available at the time of application for a general approval to operate a recycling center, the applicant shall submit letters of interest from prospective end-market users of the products resulting from the applicant's recycling operation. Letters of interest may be based on information provided by the applicant to prospective end-market users such as a description of the equipment to be used at the recycling center and the specifications of the products resulting from recycling center operation;

8. A description, including manufacturer's specification sheets, of all equipment to be utilized for the receipt, storage, processing or transferring of each *[non-traditional]* ***Class B*** recyclable material received, stored, processed or transferred, including the name of the equipment manufacturer, model number and operating capacity of the equipment***.*** *[and a dated and signed invoice indicating receipt and ownership or lease of all equipment described above;]* ***Also, a written statement by the applicant that no Class B recyclable material will be received, stored or transferred at the recycling center until the equipment identified by the applicant is installed or situated at the recycling center site;***

9. One copy of a site plan map, prepared, signed and sealed by a licensed New Jersey professional engineer or surveyor, which identifies (plots) the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials. This site plan shall also:

i. Be drawn to a scale no larger than *[1]* ***one*** inch equals 100 feet;

ii. Indicate the routing of vehicles between the recycling center and all nearby roadways serving the site, as well as the traffic flow within the site, and indicate the provisions incorporated into the site plan to ensure safe and efficient vehicular and pedestrian circulation, parking, loading and unloading;

iii. Delineate the floodplain as defined at N.J.A.C. 7:13-1.2;

iv. Delineate the incidence of wetlands, New Jersey Pinelands, prime agricultural lands, historic sites (where applicable) and other environmentally sensitive areas;

v. Identify the direction of water runoff both on and off-site and the screening and landscaping provisions which may be incorporated at the site; *[and]*

vi. Indicate topographic contours drawn at two-foot intervals*[.]*****;***

vii. Indicate the location and dimensions, in feet, of the unprocessed and processed materials stockpile areas. Also, based on this information, the total cubic yard storage capacity of the unprocessed and processed materials stockpile areas shall be indicated; and

viii. Indicate the site access controls to be employed at the recycling center;

10. An original 7.5 minute USGS Quadrangle map which includes the boundary of the recycling center plotted on the map. The map shall delineate any public access roads to the site and any streams or ponds and sensitive receptors (for example, hospitals, schools, playgrounds, homes, etc.) within a one-half mile radius of the site;

11. A copy of the deed of record establishing ownership of the recycling center property or, if the applicant is other than the landowner, a *[notarized]* legal agreement (for example, a legal lease agreement) to use the real property in question for the intended purpose;

12. A description of the design capacity of the recycling center setting forth the number and types of vehicles bringing material to the recycling center for receipt, storage or processing, and the number and types of vehicles transferring products and residue from the site on a daily basis;

13. A copy of a New Jersey air pollution control permit ***application*** required pursuant to N.J.A.C. 7:27-8.2(a)1 *[and a copy of the application for the air pollution control permit or a written determination from the New Jersey Department of Environmental Protection that the requirements for a New Jersey air pollution control permit are not applicable to the proposed recycling center]* ***where applicable***;

*[14. In the event that a proposed site of a recycling center is located within the one hundred year flood plain, the applicant shall obtain either a New Jersey stream encroachment permit or a written determination from the New Jersey Department of Environmental Protection that the requirements for a New Jersey stream encroachment permit are not applicable to the proposed recycling center. A copy of the permit or written determination shall be included in the applicant's submittal for recycling center approval;

15. A description of the methods of noise control which will be utilized at the recycling center and written demonstration of ability to comply with the noise control requirements of N.J.A.C. 7:29;

16. A description of the methods to be utilized at the recycling center to control litter, debris, off-site migration of litter and debris, and methods to prevent mud tracking into nearby streets;

17. A description of the methods to be utilized for source separation and recycling of any designated recyclable materials, as per the applicable district recycling plan, which may be generated at the recycling center by any on-site offices or other on-site activities;

18. A description of the site access controls to be employed at the recycling center;

19. Documentation establishing that the recycling center's soil erosion and sediment control plan has been approved by the appropriate local Soil Conservation District where applicable;]*

14. A written narrative explanation of the recycling center operation from the receipt of recyclable materials to the point of transfer of end-products;

*[20.]*****15.*** Documentation establishing that the recycling center is included in the solid waste management plan of the solid waste management district within which the recycling center is located; ***and***

*[21. A description of the source, or point of generation, and previous use of all materials to be received, stored, processed or transferred at the recycling center. This description may list the types

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of commercial activities (for example, construction sites) where the materials proposed to be received, stored, processed or transferred are generated, or the actual location, indicated by lot and block, where said materials are generated; and]*

*[22.]***16.*** An operations *[and maintenance (O and M)]* plan which shall include, at a minimum, the following:

i. Hours of operation of the recycling center;

*[ii. A maintenance plan for the equipment identified in (a)8 above;

iii. A safety plan which shall include a description of the measures to protect facility and other personnel from injury during operation, an indication of any exterior lighting provisions which may be needed for safety reasons, as well as any street lighting provisions which may be required, and the fire fighting procedures to be employed at the site, including documentation of the capacity of on-site water supply;

iv. A personnel training manual which shall outline those steps and procedures, written and otherwise, to instruct all personnel in the operation and maintenance of all equipment utilized in the receipt, storage, processing and transferring of source separated recyclable material and any possible residue which may result from the operation;]*

*[v.]***ii.*** An incoming materials specification sheet which shall be provided to all persons bringing, delivering or sending *[non-traditional]* ***Class B*** recyclable material to the recycling center and which shall include the following information:

(1) A listing of the source separated materials to be received by the recycling center;

(2) The size, weight, or other restrictions regarding materials to be received; and

(3) A notice that vehicles delivering materials to the recycling center will be inspected and, if found to contain more than allowable amounts of contaminants ***as specified per N.J.A.C. 7:26A-3.5(e)3i***, will be barred from offloading vehicle payload; ***and***

(4) A notice that persons bringing materials to the recycling center shall certify the amount of material per load, the municipality of origin of that material, and other information contained on the Recyclable Materials Receipt Form.*

*[vi.]***iii.*** A Recyclable Materials Receipt Form which shall ***be provided to all persons bringing recyclable material to the recycling center and which shall*** maintain the following information for each vehicle delivering recyclable material to the recycling center:

(1) The amount of source separated recyclable material received, expressed in tons***,*** *[or]* cubic yards***, cubic feet or gallons***. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

(2) The municipality of origin of the material received;

(3) The name of the person bringing source separated recyclable materials to the facility; *[and]*

(4) The vehicle license plate number and NJDEP***E*** registration number, if *[applicable]* ***an NJDEPE registered vehicle is used***; and

(5) A certification, to be completed and signed by the person delivering recyclable material to the recycling center at the time of delivery, that the information contained on the Recyclable Materials Receipt Form is true, accurate and complete.

*[vii.]***iv.*** An incoming materials inspection plan which shall detail the manner by which all vehicles entering the facility with recyclable materials to be stored, processed or transferred will be inspected to determine the contents of the vehicle payload area, including the incidence of or extent of contaminants which may be present in the truckload of recyclable materials received.

(b) The information required pursuant to (a) above shall be accompanied by *[a]* ***the*** written certification ***in (b)1 below.*** *[that all information submitted is complete and accurate.]*

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. The certification in (b)1 above shall be signed by the applicant as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, county, State, Federal or other public agency, by either a principal executive officer or ranking elected official.*

(c) One original and two copies of the information required pursuant to (a) above shall be submitted to:

The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Office of Recycling
CN 414
*[Ewing]***Trenton***, New Jersey *[08628]***08625-0414***

(d) One copy of the information required pursuant to (a) above shall be submitted ***by the applicant*** to the solid waste or recycling coordinator of the county in which the recycling center is located. ***The applicant shall also forward one copy of the information required pursuant to (a) above to the municipal clerk of the municipality in which the recycling center is located. The applicant may delete confidential end-market information, required pursuant to (a)7 above, from these submittals.***

(e) Every owner or operator of a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material seeking approval pursuant to this subchapter shall submit a fee as required by N.J.A.C. 7:26A-2.

(f) All persons who seek a general approval to operate a *[tire]* recycling center ***for tires, tree stumps, tree parts or wood waste*** pursuant to this subchapter shall also comply with the requirements at N.J.A.C. 7:26A-3.8.

7:26A-3.3 *[Application procedure for general approval to operate a mobile recycling center]* ***Mobile recycling equipment***

*[(a) Prior to the receipt, storage, processing or transfer of any non-traditional recyclable materials at a mobile recycling center, the owner or operator of the mobile recycling center shall submit to the Department the information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 3, 4, 5, 6, 7, 8, 13, 15, 16 and 22 and a fee in accordance with N.J.A.C. 7:26A-2.

(b) The information required pursuant to (a) above shall be accompanied by a written certification that all information submitted is complete and accurate.

(c) The owner or operator of a mobile recycling center shall be responsible for complying with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., in addition to all other applicable laws and regulations.

(d) All persons seeking approval to operate a mobile recycling center for tires pursuant to this subchapter shall also comply with the requirements at N.J.A.C. 7:26A-3.8.]*

***(a) Persons operating mobile recycling equipment for Class B recyclable material shall operate such equipment only as follows:**

1. At a site which possesses a general or limited approval from the Department and in manner which conforms to the approval for the site; or

2. Pursuant to an exemption at N.J.A.C. 7:26A-1.4(a) and in a manner which conforms to the criteria of the exemption.

(b) Persons operating mobile recycling equipment for Class B recyclable material shall comply with all applicable statutes and regulations, including, but not limited to, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. and 26:2D-1 et seq., and the New Jersey Noise Control Act of 1971, N.J.S.A. 13:1G-1 et seq.*

7:26A-3.4 Supplemental requirements for a general approval

(a) Prior to the issuance of a general approval to operate a recycling center *[or mobile recycling center]* for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable materials***, and where the Department determines that additional***

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information is needed to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department.* *[the Department may, in the interest of public or environmental health, safety or welfare, require the submission of additional information from the applicant.]*

(b) Prior to the *[issuance of a general approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional recyclable materials]* ***receipt of Class B recyclable materials and commencement of operations at the recycling center***, the applicant must receive all other applicable local, State, or Federal permits or approvals.

(c) Prior to issuance of approval to operate a recycling center *[or mobile recycling center]*, the Department may require an applicant to obtain and submit to the Department a performance bond or letter of credit in an amount determined by the Department as necessary to effectuate the proper removal, transportation and disposition of all materials which may be abandoned on a recycling center *[or mobile recycling center]* site. The criteria to be evaluated by the Department to determine if a performance bond or letter of credit is needed, and to be used in establishing the performance bond or letter of credit amount, are the following:

1. The history of enforcement actions taken by the Department against the applicant involving violations of any environmental statutes of the State, of the Department's solid waste management rules, N.J.A.C. 7:26, of this chapter, and of all other rules contained in Title 7 of the New Jersey Administrative Code, and the history of enforcement actions taken by the State, county or local government or any political subdivision of the State, county or local government;

2. The current cost of disposal***, including site preparation and transportation costs,*** at a permitted solid waste facility which would receive the materials which may be abandoned on a site based on the maximum storage capacity of the recycling center;

3. The amount of material to be received, stored, processed or transferred at the recycling center over the duration of the general approval;

4. The types of materials to be received, stored, processed or transferred at the recycling center;

5. Whether the lease agreements related to property or equipment are less than three years in duration;

6. Whether the lease agreements related to property or equipment restrict the operation of the proposed recycling center *[or mobile recycling center]*; and

7. An analysis of the stability of end-markets for the *[non-traditional]* ***Class B*** recyclable material received, stored, processed or transferred at the recycling center, which analysis shall consider the following:

i. The length of time the end-market has been in business;

ii. The length of time the end-market has been accepting the *[non-traditional]* ***Class B*** recyclable material and using it as a raw material in a manufacturing process; and

iii. The number of end-markets in New Jersey, nationally and internationally which accept the *[non-traditional]* ***Class B*** recyclable material in question.

7:26A-3.5 General approval

(a) *[Upon a determination that information submitted pursuant to]* ***Within 30 days of receipt of an application for recycling center approval submitted pursuant to N.J.A.C. 7:26A-3.2(a), the Department will determine whether the application is administratively complete. An application is administratively complete where it satisfies the information submission requirements of*** N.J.A.C. 7:26A-3.2(a), *[3.3,]* 3.4 and 3.8 *[is complete and meets the criteria N.J.A.C. 7:26A-3, and that]* ***and where*** a fee has been submitted pursuant to N.J.A.C. 7:26A-2***.****[, the Department will issue[*

1. If an application is deemed administratively complete in accordance with (a) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If an application fails to meet the criteria for administrative completeness in accordance with (a) above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(b) Within 90 days of issuance of the letter of administrative completeness, the Department will issue a general approval to operate a recycling center *[or mobile recycling center]* for a period not to exceed five years*[.]* ***where the Department determines the following:***

1. That the application meets the criteria for a general approval of N.J.A.C. 7:26A-3; and

2. That the applicant fails to meet any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(c) Within 90 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the application to operate a recycling center where the Department determines the following:

1. That the application fails to meet the criteria for a general approval of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(d) No recycling center shall receive Class B recyclable materials and commence operation until it has received written approval from the Department.

(e)* The general approval will accomplish the following:

1. Authorize the receipt, storage, processing or transferring of *[non-traditional]* ***Class B*** recyclable materials at the recycling center *[or mobile recycling center]*;

2. Indicate the conditions of operation which shall be met by the recycling center owner or operator prior to the receipt, storage, processing or transfer of the *[approved]* source-separated recyclable materials ***approved to be received, stored, processed or transferred at the recycling center***; and

3. Indicate the limitations on recycling center operation, including, but not limited to:

i. Limitation on the amount of contaminants which may be present in any truckload of source-separated recyclable materials received at the recycling center;

ii. Limitation on the amount of residue which may be produced as a result of receiving, storing, processing or transferring source-separated recyclable materials at the recycling center; and

iii. Limitation on the commingling of *[non-traditional]* ***Class B*** materials at the recycling center.

*[(b)]****(f)*** All recycling centers receiving a general approval to operate a recycling center *[or mobile recycling center]* shall prominently post and maintain a legible sign, at or near the entrance to the recycling center, indicating that it is an approved New Jersey Department of Environmental Protection recycling center *[or mobile recycling center]*. In addition, the sign shall also indicate those items detailed in N.J.A.C. 7:26A-3.2(a)*[22i]****(16i*** and *[v]*****ii***.

7:26A-3.6 Application for renewal of a general approval to operate a recycling center *[or mobile recycling center]*

(a) Applications for renewal of general approvals issued pursuant to this subchapter shall be submitted ***at least*** three months prior to expiration of the current approval and shall comply with all requirements for renewal set forth in this subchapter. ***One copy of the application for renewal of a general approval shall be submitted by the applicant to the municipal clerk of the municipality in which the recycling center is located, and to the solid waste or recycling coordinator of the county in which the recycling center is located.***

(b) Applicants for renewal of existing general approvals shall certify in writing to the Department that there have been no changes in the operations of the recycling center *[or mobile recycling center]* since the issuance of the general approval in order to renew the approval in its existing form. In the event that there have been changes in the operations of the recycling center *[or mobile recycling center]* or where changes are planned, the application for renewal of a general approval shall be accompanied by a written

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request to modify the general approval in accordance with N.J.A.C. 7:26A-3.10.

(c) In a case where the person who has received the general approval pursuant to this subchapter does not comply with (a) and (b) above and continues to operate without renewal of its general approval, the Department may take actions which include, but are not limited to, the following:

1. Appropriate enforcement action including the assessment of penalties under N.J.S.A. 13:1E-9; and

2. Require the person who has received the general approval to file an application as a new applicant for a general approval in accordance with N.J.A.C. 7:26A-3.2, *[3.3,]* 3.4 or 3.8 and pay the annual fee as per N.J.A.C. 7:26A-2.

(d) *[The Department, following receipt of an application for renewal of an existing general approval, will, upon determining that the application submittals are complete and meet the criteria of this subchapter, grant an extension of the approval for a period not to exceed five years.]* ***Within 30 days of receipt of an application for renewal of a recycling center approval, the Department will determine whether the application is administratively complete. An application for renewal is administratively complete where it satisfies the requirements for renewal set forth in this subchapter, including the requirements for modification of a recycling center application set forth in N.J.A.C. 7:26A-3.10, where modifications will be made. Also, a fee must be submitted in accordance with N.J.A.C. 7:26A-2 for an application to be administratively complete.**

1. If a renewal application is deemed administratively complete in accordance with paragraph (d) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If a renewal application fails to meet the criteria for administrative completeness in accordance with paragraph (d) above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(e) Within 60 days of issuance of the letter of administrative completeness, the Department will grant an extension of the approval for a period not to exceed five years where the Department determines the following:

1. That the renewal application meets the criteria of N.J.A.C. 7:26A-3; and

2. That the applicant fails to meet any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(f) Within 60 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the renewal application where the Department determines the following:

1. That the application fails to meet the criteria of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a general approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(g) No recycling center shall receive Class B recyclable material and commence operation until it has received written approval from the Department.*

*[(e)]***(h)*** All persons granted a renewal pursuant to (d) above shall continue to pay the annual fee as specified in N.J.A.C. 7:26A-2.

[(f) The Department may deny an application for renewal of a general approval based on any of the criteria set out in N.J.A.C. 7:26A-3.11.]

7:26A-3.7 Application procedure for limited approval to operate a recycling center for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable material

(a) *[No]* ***A*** person *[shall]* ***may*** operate a recycling center for the receipt, storage, processing or transferring of *[non-traditional]* ***Class B*** recyclable materials for a period of time not to exceed 180 days *[without]* ***provided that*** prior approval of the Department ***has been obtained*** and *[without having submitted]* a fee ***has been submitted*** in accordance with N.J.A.C. 7:26A-2 to the Department. The following information shall be submitted to the Department in order to obtain limited approval:

1. The information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 3, 4, 5, 6, 7, 8, 9*[, 13, 14, 19 and 21]* ***and 14***;

[2. A written narrative explanation of the recycling operation;]

*[3.]***2.*** A written schedule for completion of the recycling operation; and

*[4.]***3.*** Written evidence of approval from the *[local]* municipal *[governing body, where applicable]* ***planning board, or from the board of adjustment***.

(b) Persons applying to the Department for a limited approval to operate a recycling center for Class B recyclable materials shall notify the applicable county solid waste and recycling coordinator of this application as well as the municipality in which the recycling activity will occur.

*[(b)]***(c)*** The Department may require the issuance of a performance bond or letter of credit for persons granted a limited approval to operate a recycling center in accordance with the criteria of N.J.A.C. 7:26A-3.4(c).

*[(c)]***(d)*** Prior to the issuance of a limited approval to operate a recycling center for *[non-traditional]* ***Class B*** recyclable materials, and where the Department determines that additional information is needed to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department.

*[(d)]***(e)*** *[Upon a determination that the information submitted pursuant to (a) through (c) above is complete and meets the criteria of this subchapter and that a fee has been submitted pursuant to N.J.A.C. 7:26A-2, the Department will issue]* ***Within 30 days of receipt of an application for a limited approval submitted pursuant to (a) above, the Department will determine whether the application is administratively complete. An application is administratively complete where it satisfies the information submission requirements of (a) through (d) above and where a fee has been submitted in accordance with N.J.A.C. 7:26A-2.***

1. If an application is deemed administratively complete in accordance with paragraph (e) above, the Department will issue a letter to the applicant indicating the administrative completeness of the application.

2. If an application fails to meet the criteria for administrative completeness in accordance with paragraph (e) above, the Department will advise the applicant that the application is incomplete and will specify in writing what additional information is required for administrative completeness.

(f) Within 30 days of the issuance of the letter of administrative completeness, the Department will issue to the applicant* a limited approval to operate a recycling center, valid for a specified period of time, ***not to exceed 180 days, where the Department determines the following:*** *[for non-traditional recyclable materials which are indicated in the Department's approval.]*

***1. That the application meets the criteria of N.J.A.C. 7:26A-3; and**

2. That the applicant fails to meet any of the criteria for denial or revocation of a limited approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(g) Within 30 days of the issuance of the letter of administrative completeness, the Department will issue a letter of denial of the application where the Department determines the following:

1. That the application fails to meet the criteria of N.J.A.C. 7:26A-3; or

2. That the applicant meets any of the criteria for denial or revocation of a limited approval set forth at N.J.A.C. 7:26A-3.11 and 3.12.

(h) No recycling center shall receive Class B recyclable material and commence operation until it has received written approval from the Department.*

(i) The ***limited*** approval will indicate the conditions, if any, which must be met by the recycling center owner or operator for the approval to remain in effect for a time period not to exceed 180 days.

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*[(e)]**(j)* *[No less than]* ***Within*** 45 days after the expiration of the time period covered by the limited approval to operate a recycling center, a final report shall be prepared by the person issued the limited approval and submitted to the Department***, the solid waste or recycling coordinator of the county in which the recycling center is located, and to the applicable municipal planning board***. The final report shall contain the following information:

1. The name, address and telephone number of the person or persons to whom the Department has issued the limited approval to operate a recycling center;

2. The location of the approved recycling center, if different than ***in (j)1*** above, including the street address, lot and block, municipality and county;

3. A listing of the total amount of each *[non-traditional]* ***Class B*** recyclable material received, stored, processed or transferred during the period of approved operation, expressed in tons***,*** *[or in]* cubic yards***, cubic feet or in gallons***. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

4. The amount of residue disposed of, expressed in tons***,*** *[or in]* cubic yards***, cubic feet or gallons***, including the name and New Jersey Department of Environmental Protection ***and Energy*** solid waste registration number of the solid waste collector/hauler which provided the haulage/disposal service. Those persons specifying the total amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons;

5. A written certification ***by the person issued a limited approval*** that***, to the best of her or his knowledge after diligent inquiry,*** all residue has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26***-6***;

6. The name, address and telephone number of the end-markets for all *[non-traditional]* ***Class B*** recyclable materials transported from the recycling center, including the amounts, in tons***,*** *[or]* cubic yards***, cubic feet or gallons***, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

7. A listing of each *[non-traditional]* ***Class B*** recyclable material received at the recycling center by municipality of origin and by the amount per municipality.

[(f) All persons operating a recycling center pursuant to a limited approval shall operate in accordance with the noise control rules at N.J.A.C. 7:29, and with all applicable fire and safety codes.]

*[(g)]**(k)* All persons operating a recycling center pursuant to a limited approval shall ***take such measures as are necessary to*** ensure that no illegal and unauthorized dumping occurs at the recycling center site.

*[(h)]**(l)* One original and two copies of the information required pursuant to (a) and *[(e)]* ***(j)*** above shall be submitted to:

The New Jersey Department of Environmental Protection
and Energy
Division of Solid Waste Management
Office of Recycling
CN 414
*[Ewing]***Trenton***, New Jersey *[08628]***08625-0414***

*[(i)]**(m)*Limited approvals issued by the Department pursuant to *[(d)]* ***(f)*** above may not be renewed pursuant to N.J.A.C. 7:26A-3.6. The Department may, however, extend the duration of the approval where the holder of the limited approval petitions the Department in writing explaining the need for an extension and where the Department determines that an extension is necessary to protect the public or environmental health, safety or welfare. Petitions shall be submitted to the address set out in *[(h)]* ***(l)*** above. ***The petitioner shall also notify the applicable municipal planning board and county solid waste or recycling coordinator of its request for extension of the limited approval.*** In no event will the Department *[extend]***:*

1. Extend the duration of the limited approval for more than 50 percent of the time of the original limited approval*[.]**; **or**

2. Issue more than one limited approval to the same applicant for the same site within one calendar year commencing on the date of issuance of the limited approval.*

*[(j)]**(n)* All persons who seek limited approval to operate a *[tire]* recycling center ***for tires, tree stumps, tree parts or wood waste*** pursuant to this subchapter must also comply with the requirements at N.J.A.C. 7:26A-3.8.

7:26A-3.8 Tire***, tree stump, tree parts or wood waste*** recycling centers *[and mobile tire recycling centers]*: additional requirements for general or limited approval

(a) The methods of processing tires that may be approved by the Department are limited to slicing, shredding, chipping, crumbing or *[similar]* ***other*** activities as determined by the Department. At no time shall incineration, landfilling, abandonment or other disposal of tires, in whole or in part, occur at the recycling center.

(b) The owner or operator of a tire recycling center shall take all steps necessary to ensure that no mosquito colony formation or development is allowed to occur on the recycling center site.

(c) A fire control plan for the recycling center shall be filed with and approved by the local fire *[marshal]* ***official*** or other person of competent jurisdiction and shall be filed with the local municipal code enforcement officer prior to operation of a *[tire]* recycling center ***for tires, tree stumps, tree parts or wood waste***.

7:26A-3.9 Storage of *[non-traditional]* ***Class B*** recyclable materials

(a) The temporary storage of unprocessed and processed *[non-traditional]* ***Class B*** recyclable material at recycling centers shall be limited to the amount indicated in the general or limited approval to operate *[and shall be determined by the Department based on the information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7, 8 and 9, 7:26A-3.3 and 7:26A-3.7]*.

(b) Notwithstanding (a) above, in no event shall unprocessed *[or processed non-traditional]* ***Class B*** recyclable material be stored *[on-site]* ***at recycling centers approved pursuant to this subchapter*** for a period in excess of *[six months]* ***one year from the date of its receipt***.

(c) The storage of petroleum contaminated soil at a recycling center approved to receive this material shall be subject to additional storage requirements as indicated in the approval issued pursuant to N.J.A.C. 7:26A-3.5.

7:26A-3.10 Modifications of general or limited approvals

(a) All owners and operators of recycling centers which have received *[Department]* ***a general or limited*** approval to operate a recycling center pursuant to this subchapter shall obtain prior approval from the Department for any modification of the *[original]* ***general or limited*** approval.

(b) Modifications to the general or limited approval to operate a recycling center which require the prior approval of the Department include the following:

1. Any change affecting the conditions of the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 7:26A-3.7; and

2. Any change to the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), *[3.3,]* 3.4, 3.7 and 3.8***, except that changes in end-market information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7 shall not require the prior approval of the Department but shall be handled in accordance with (f) below***.

(c) The owner or operator shall notify the Department in writing of the intended modification and shall update the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), *[3.3,]* 3.4, 3.7 and 3.8. ***The owner or operator shall also provide written notice to the solid waste or recycling coordinator of the applicable county of any request to modify a general approval, and shall provide written notice to the applicable municipality of any request to modify a limited approval.***

(d) The Department will review the information submitted in accordance with (c) above and will determine whether additional information is necessary to *[approve the modification]* ***adequately address public or environmental health, safety or welfare***. If ***such*** additional information is required *[in order to evaluate the modification request]*, the Department will notify the owner or

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operator in writing ***within 30 days of receipt of the request***. Thereafter, the owner or operator shall submit to the Department in writing the additional information.

(e) Upon determining that the information submitted for modification review is complete, the Department will approve or deny the modification ***according to the criteria of (a) through (d) above and will*** *[by]* notify*[ing]* the owner or operator in writing. ***The owner or operator shall not institute the modification until it receives written approval from the Department.***

(f) Within one week of any change to the end-market information submitted to the Department pursuant to N.J.A.C. 7:26A-3.2(a)7, the owner or operator shall submit to the Department a written notification which details any change in the use of the recyclable material transferred from the recycling center to an end-market or in the end-market location to which the recyclable material is transferred. The written notification shall be sent to:

New Jersey Department of Environmental Protection and Energy
Division of Solid Waste Management
Office of Recycling
CN 414
Trenton, New Jersey 08625-0414

(g) The Department will notify the solid waste or recycling coordinator of the county in which the recycling center is located, and the applicable municipal planning board, of any approval or denial of modification to a general or limited approval.

7:26A-3.11 Criteria for denial of a general or limited approval to operate a recycling center *[or mobile recycling center]* and for denial of a renewal of a general approval

(a) The following constitutes the criteria for denial of a general or limited approval or of a renewal of a general approval and will result in the issuance of a letter of denial of general or limited approval to operate a recycling center *[or mobile recycling center]*:

1. Failure to submit any of the information required pursuant to this subchapter;

2. Failure *[to have the recycling center included]* ***of a recycling center operating pursuant to a general approval to maintain inclusion*** in the applicable district solid waste management plan *[where applicable]*;

3. Failure to correct any deficiencies in information submitted pursuant to this subchapter as determined by the Department, within 60 days of receipt of a letter detailing said deficiencies;

4. Failure to sign and return the general or limited approval to operate a recycling center *[or mobile recycling center]* to the Department's Office of Recycling for execution of the approval within 21 working days of its receipt;

5. Failure to demonstrate that only source separated recyclable materials will be received, stored, processed or transferred at the recycling center; ***and***

6. Failure to submit the appropriate fee required pursuant to N.J.A.C. 7:26A-2*[; and]***.*

[7. Failure to obtain any required permit or approval from the Department or other State or Federal agency.]

(b) In addition to the criteria for denial of a general or limited approval set out in (a) above, the Department may also deny a general or limited approval on the basis of the following criteria:

1. The applicant has been denied a license or registration pursuant to N.J.S.A. 13:1E-1 et seq.;

2. The applicant has been denied a certificate of public convenience and necessity pursuant to N.J.S.A. 48:13A-1 et seq.; *[or]*

3. The applicant has had its registration, license or certificate of public convenience and necessity revoked by the Board of Public Utilities*[.]* ***or DEPE; or***

4. The applicant has committed any of the acts which are criteria for approval revocation set forth at N.J.A.C. 7:26A-3.12(a)1 through (a)6.

(c) If the Department denies an application for a general or limited approval to operate a recycling center *[or mobile recycling center]* and bases the denial on a written determination that the facility for which the application was made is a solid waste facility for which a registration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5, the owner or operator of the facility, in any appeal of the Department's denial, shall have the burden to show by *[clear and convincing]* ***a preponderance of the*** evidence that the facility for which the application was made is not a solid waste facility for which a registration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5.

7:26A-3.12 Procedures and criteria for revoking a general or limited approval

(a) The Department may revoke a general or limited approval upon a determination that a person holding a general or limited approval has:

1. Violated any provision of N.J.S.A. 13:1E-1 et seq., the Act, or any rule, regulation or administrative order promulgated pursuant to N.J.S.A. 13:1E-1 et seq. and the Act;

2. Violated any solid waste utility law at N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq., or any rule, regulation or administrative order promulgated pursuant to N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq.;

3. Violated any provision of any laws related to pollution of the waters, air or land surfaces of the State or of any other State or Federal environmental laws including criminal laws related to environmental protection;

4. Refused or failed to comply with any lawful order of the Department;

5. *[Has failed]* ***Failed*** to comply with any of the conditions of the general or limited approval issued by the Department; *[or]*

6. Transferred a general or limited approval to a new owner or operator pursuant to N.J.A.C. 7:26A-3.14 ***without the prior approval of the Department***[.]***;*

7. Has failed to obtain any required permit or approval from the Department or other State or Federal agency; or

8. Has committed any of the acts which are criteria for denial of a general or limited approval set forth in N.J.A.C. 7:26A-3.11.

(b) The Department will revoke a general or limited approval by providing the holder of an approval with written notice of the action which details the reasons for the action. ***The Department will also notify the solid waste or recycling coordinator of the county in which the recycling center is located of any revocation of a general approval or the applicable municipal planning board of any revocation of a limited approval.***

7:26A-3.13 Appeal procedure

(a) An applicant who believes himself or herself to be aggrieved with respect to the following decisions made by the Department may appeal the decision within 20 calendar days after the date of the decision and request an administrative hearing:

1. Denial of a general or limited approval, or any part thereof; or

2. Revocation or modification of a previously issued approval.

(b) Requests for an administrative hearing shall be submitted to:

*[The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Office of Recycling
CN 414
Ewing, New Jersey 08628]*
Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402*

(c) All requests for an administrative hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making the request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the applicant's appeal;

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested;

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Any legal issues associated with the alleged facts at issue must also be included; and

5. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).

(d) A hearing request not received by the Department within 20 calendar days after the date of the Department decision being appealed will be denied by the Department.

(e) If the applicant or interested party fails to include all the information required by (c) above, the Department may deny the hearing request.

(f) Following receipt of a complete request for a hearing pursuant to (c) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(g) If the Department determines that the matter is a contested case, the Department will file the request for an administrative hearing with the Office of Administrative Law. Such hearings will be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules N.J.A.C. 1:1. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:26A-3.14 Transfer of a general or limited approval to operate a recycling center *[or mobile recycling center]*

(a) A general or limited approval to operate a recycling center *[or mobile recycling center]* shall not be transferred *[directly]* to a new owner or operator without the Department's prior approval.

1. Any transfer of an approval must be pre-approved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 60 days in advance of the proposed transfer of ownership or operational control of a recycling center. The request for approval shall include the following:

i. The name, address and social security number of all prospective new owners or operators;

ii. A written certification by the proposed transferee that the terms and conditions contained in the general or limited approval will be met by the proposed transferee; and

iii. A written agreement between the current owner or operator of the recycling center *[or mobile recycling center]* and the proposed new owner or operator containing a specific future date for transfer of ownership or operational control.

2. A new owner or operator may commence operations at the recycling center only after the existing approval has been revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

3. The owner or operator of record of the approved recycling center *[or mobile recycling center]* remains liable for ensuring compliance with all conditions of the approval unless and until the existing approval is revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the owner or operator of record of the approved recycling center *[or mobile recycling center]* from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

(b) For the purposes of this section, the transfer of a controlling interest in the stock or assets of a recycling center holding a general or limited approval from the Department shall constitute the transfer of a general or limited approval pursuant to (a) above.

(c) One copy of the written request to transfer a general approval shall be submitted by the owner or operator of the recycling center to the applicable solid waste or recycling coordinator of the county in which the recycling center is located. One copy of the written request to transfer a limited approval shall be submitted by the owner or operator of the recycling center to the applicable municipal planning board. The Department shall notify county or municipal officials of determinations concerning the transfer of general or limited approvals.

7:26A-3.15 Filing requirements for existing recycling centers *[and mobile recycling centers]* which receive, store, process or transfer *[non-traditional]* ***Class B*** recyclable material

(a) On or before March 17, 1992, the Department will assess the information currently on file for each recycling center having obtained or applied for approval prior to November 18, 1991, and will inform all owners and operators of such recycling centers of any additional submittal requirements resulting from this subchapter.

*[(a)]***(b)* Within 120 days of the *[effective date of this subchapter]* ***Department's assessment pursuant to (a) above***, all owners or operators of recycling centers ***for Class B recyclable materials which*** *[or mobile recycling centers operating for the receipt, storage, processing or transfer of non-traditional recyclable materials that received written approval from the Department for the receipt, storage, processing or transfer of non-traditional recyclable materials]* ***applied for or obtained approval from the Department*** prior to *[the effective date of this subchapter]* ***November 18, 1991*** shall comply with all information submittal and fee submittal requirements of this chapter, as well as all rules of this chapter.

*[(b)]***(c)* Any recycling center *[or mobile recycling center]* that must file information seeking approval for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable materials pursuant to *[(a)]* ***(b)*** above may continue to operate pursuant to the approval issued by the Department prior to *[the effective date of this subchapter]* ***November 18, 1991*** until such time as the Department has made a determination regarding its application for a general approval to operate a recycling center *[or mobile recycling center]* for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable materials pursuant to the procedures of this subchapter.

*[(c)]***(d)* No recycling center *[or mobile recycling center]* operating for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable materials, and for which written Departmental approval was issued prior to *[the effective date of this subchapter]* ***November 18, 1991*** may modify its operation from that which it represented in the information submitted to the Department and for which Departmental approval to operate was based unless such modification is approved by the Department in accordance with this subchapter.

7:26A-3.16 Record keeping and annual report; confidentiality of records

(a) All recycling centers *[or mobile recycling centers]* holding a general *[or limited]* approval shall maintain daily records of all materials received, stored, processed or transferred. Said records shall indicate, at a minimum:

1. A daily record of the amounts of each recyclable material by type ***and municipality of origin*** which are received, stored, processed or transferred each day, expressed in tons*****,* *[or in]* cubic yards***, cubic feet or gallons***. Those operators specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

[2. A listing of each recyclable material received at the recycling center by municipality of origin and by the amount per municipality;]

*[3.]***2.*** The name, address and telephone number of the end-markets for all recyclable materials transported from the recycling center, including the amounts, in tons*****,* *[or]* cubic yards***, cubic feet or gallons***, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

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*[4.]***3.** The amount of residue disposed of, expressed in tons **,** *[or]* cubic yards**, cubic feet or gallons***, including the name and New Jersey Department of Environmental Protection ***and Energy*** solid waste registration number of the solid waste collector/hauler contracted to provide the haulage/disposal service. Those persons specifying the amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons.

(b) All recycling centers *[and mobile recycling centers]* holding a general *[or limited]* approval shall retain the information required pursuant to N.J.A.C. 7:26A-3.2(a)*[22vi]***16iii*** for three calendar years following the calendar year for which reporting is required pursuant to (c) ***and (d)*** below.

(c) All recycling centers *[or mobile recycling centers]* operating pursuant to a general approval shall submit ***an annual report containing monthly summary statements of*** the information required pursuant to (a) above to the New Jersey Department of Environmental Protection ***and Energy***, Office of Recycling, on or before *[July]* ***February*** 1 of each year, for the previous calendar year. ***The summaries shall include the following:**

1. Monthly totals of the amount of recyclable material received from each customer by municipality of origin;

2. Monthly totals of the amount of recyclable product transferred to each end-market; and

3. The amount of residue disposed of during each month.*

(d) As a condition of approval to operate a recycling center *[or mobile recycling center]* for the receipt, storage, processing or transfer of *[non-traditional]* ***Class B*** recyclable materials the Department may require the filing of the information required in (a) above at more frequent intervals which shall be specified in the general approval to operate a recycling center *[or mobile recycling center]* issued by the Department.

*[(d)]***(e)*** All recycling centers *[or mobile recycling centers]* operating pursuant to a general approval shall certify in writing to the Department that all residue generated at the recycling center has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26. The certification shall be submitted annually as part of the annual report required pursuant to (c) ***and (d)*** above.

*[(e)]***(f)*** All information submitted to the Department pursuant to this chapter shall be handled in accordance with the requirements of the Public Records law, N.J.S.A. 47:1-1 et seq. The Department will hold confidential all end-market information***, as well as information pertaining to the municipality of origin of recyclable material,*** submitted pursuant to N.J.A.C. 7:26A-3.2*[(a)7]*, 3.7*[(e)5,]* ***and*** 3.16*[(a)3, and 4.2(a)4]* ***for a period of two years from the date on which the information is submitted to the Department,*** where specified as confidential by the applicant and where there are no health***,*** *[or]* safety ***or environmental*** concerns which require the release of the information***, as determined by the Department***.

*[7:26A-3.17 Clean fill approval requirements

(a) Solid waste materials such as rock, soil, gravel, concrete, glass and/or ceramic products may be used as clean fill where the following conditions are met:

1. The materials are source separated at the point of generation and are maintained free of putrescible matter and other wastes including, but not limited to, wood, fiberboard, insulation, asbestos, paper, metal, aluminum piping and vegetative waste.

2. The materials are used only for the grading of land and the preparation of building sites at construction projects, for road subgrade at road construction sites; and

3. The materials meet the specifications of all applicable building codes, highway construction codes and other industry standards for fill materials not derived from waste materials.

(b) Prior to engaging in an activity which involves the utilization of solid waste as clean fill, the following information shall be submitted to the Department:

1. A description of the origin of the waste material including address;

2. A description of the former use of the material;

3. A listing of the type and quantity of material;

4. A description of processing activities required to convert the solid waste material into clean fill, that is, crushing, grinding, cleaning, etc.;

5. The address of fill site including lot, block, and property owner;

6. The dimensions of the area to be filled with recycled clean fill;

7. A description of planned land use for area being filled;

8. A schedule of project activities; and

9. A written statement from the property owner which certifies that he or she is fully aware of the proposed clean fill activities and has no objection to the use of this property for said purposes.

(c) The information required pursuant to (b) above shall be submitted to:

The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Bureau of Landfill Engineering
CN 414
Ewing, New Jersey 08628

(d) Upon receiving the information described in (b) above, and determining that the proposed clean fill activity is in compliance with N.J.A.C. 7:26A-3.18 and all other applicable laws and regulations, the Department will issue a letter to the applicant which approves of the clean fill activity.]*

SUBCHAPTER 4. OPERATIONAL STANDARDS AND GENERAL RULES FOR RECYCLING CENTERS WHICH RECEIVE, STORE, PROCESS OR TRANSFER *[TRADITIONAL]* ***CLASS A*** AND *[NON-TRADITIONAL]* ***CLASS B*** RECYCLABLE MATERIAL***; RIGHT OF ENTRY AND INSPECTION***

7:26A-4.1 Operational standards

(a) All owners or operators of recycling centers *[or mobile recycling centers]* which receive, store, process or transfer *[traditional]* ***Class A*** and/or *[non-traditional]* ***Class B*** recyclable material shall comply with the following operational standards:

1. All recyclable materials received, stored, processed or transferred ***at all recycling centers shall conform to the following criteria:*** *[shall be only those which have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream and shall consist ony of metal, glass, paper, or plastic containers, and corrugated and other cardboard or non-traditional recyclable materials approved pursuant to the requirements of N.J.A.C. 7:26A-3;]*

i. The recyclable materials shall have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream;

ii. The recyclable materials shall consist only of Class A recyclable materials, or of Class B recyclable materials which the Department has approved pursuant to N.J.A.C. 7:26A-3 for receipt, storage, processing or transfer at the recycling center; and

iii. Class A recyclable materials may be commingled only with other Class A recyclable materials. Class B recyclable materials may be commingled only with other Class B recyclable materials and only to the extent authorized in the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

2. Residue shall not be stored on-site for a period *[exceeding that which is prescribed by a county or local health and safety ordinance. In no case shall residue be stored on-site for a period]* in excess of six months;

3. All residue shall be removed from the recycling center site in accordance with the Department's interdistrict and intradistrict solid waste flow rules, N.J.A.C. 7:26-6;

4. All residue shall be stored separately from recyclable material and in *["roll-off" containers or similar containers appropriate for the amount of residue stored. These containers shall be dedicated for the exclusive deposition of residue generated at the recycling center;]* ***a manner which prevents run-off, leakage or seepage from***

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the residue storage area into, on or around the soil of the residue storage area;*

[5. No recyclable materials shall be received, stored, processed or transferred which are contained in plastic bags unless evidence of an end-market for the plastic bags has been demonstrated to the Department.]

*[6.]****5.*** At no time shall any hazardous waste, as defined in N.J.A.C. 7:26, be received, stored, processed or transferred at any recycling center as defined in N.J.A.C. 7:26A-1;

*[7.]****6.*** At no time shall capacitors or electronic components which contain polychlorinated biphenyls (PCBs) and which are attached to, or detached from, appliances or other scrap metal be shredded, sheared or baled;

*[8.]****7.*** The operation and related activities of a recycling center shall be in conformance with all applicable Federal, State***, county, municipal,*** and ***other*** local laws and regulations including ***,*** but not limited to***,*** nuisance codes***, the noise control rules at N.J.A.C. 7:29, the air pollution control rules at N.J.A.C. 7:27, the stream encroachment rules at N.J.A.C. 7:13, the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A, the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-1 et seq., and with all applicable fire and safety codes***;

[9. Recycling centers shall be operated in compliance with the noise control rules at N.J.A.C. 7:29;]

*[10.]****8.*** Recycling centers shall be operated in such a manner that the recycling center property is maintained free of litter and debris ***and such that tracking of mud into nearby streets is prevented***; and

*[11.]****9.*** All recycling centers located within the Pinelands Protection Area shall be operated in a manner consistent with the goals of the comprehensive management plan developed by the Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and shall obtain all approvals required by the Pinelands Commission.

*[(b) Recycling activities shall be conducted in a manner consistent with the protection of public health, safety, welfare and the environment in light of the nature, sale and location of the operation. Specifically, measures shall be taken to minimize negative impacts of the recycling activities on existing transportation patterns, ambient acoustical conditions, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands and agricultural development areas, dedicated recreational or open space areas. Floodways and endangered or threatened wildlife and vegetation.

(c) No facility may display or otherwise use the term "recycling center," "mobile recycling center" or the word "recycling" as a method of identifying its purpose or operation unless said facility operates according to the requirements established in this chapter, the standards found in N.J.S.A. 13:1E-1 et seq., and the rules found in N.J.A.C. 7:26.]*

*[(d)]****(b)*** The construction of all recycling centers shall be in conformance with the New Jersey Uniform Construction Code, N.J.S.A. 52:27D-119 et seq., and the rules promulgated pursuant thereto.

*[7:26A-4.2 Out-of-State transport of recyclable materials

(a) Except as noted in (g) below, the out-of-State transport of commingled source separated recyclable materials or non-traditional recyclable materials shall require the prior written approval of the Department. Persons seeking approval to transport commingled source separated recyclable materials or non-traditional recyclable materials shall submit a fee in accordance with N.J.A.C. 7:26A-2.2 and shall submit the following information to the Department:

1. A listing of the recyclable material or materials to be transported;

2. The estimated amount of each material to be transported, expressed in tons or in cubic yards. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

3. The municipality and county of origin of the material or materials to be transported;

4. The name, address, and telephone number of the recycling centers or end-markets where the commingled source separated recyclable materials or non-traditional recyclable materials are to be transported; and

5. A copy of the approval, permit, or similar instrument allowing receipt of the listed materials at the recycling center or end-market by the appropriate State agency of the receiving State, as applicable.

(b) The information required by (a) above shall be submitted to:

The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Office of Recycling
CN 414
Ewing, New Jersey 08628

(c) Upon a determination that the information submitted pursuant to (a) and (b) above is complete, accurate and meets the criteria for approval of this section, and that the appropriate fee has been submitted pursuant to N.J.A.C. 7:26A-2.2, the Department shall issue a letter of approval for the out-of-State transport of those recyclable materials specified in the approval for a period not to exceed one year. A copy of the letter of approval from the Department authorizing the out-of-State transport of recyclable material shall be maintained in the transporting vehicle at all times during the transportation of recyclable materials out-of-State.

(d) The approval issued pursuant to (c) above shall entitle its holder to transport those recyclable materials specified in the approval from any in-State location specified in the approval to any out-of-State recycling center, end market or manufacturer specified in the approval.

1. The holder of an approval for the out-of-State transport of recyclable materials may add or change the list of in-State locations from which it receives recyclable material for transportation out-of-State where it submits a written request of the addition or change to the Department at the address in (b) above in advance of the addition or change, and where it receives written approval of the addition or change from the Department.

2. The holder of an approval for the out-of-State transport of recyclable material shall not add or change the types of recyclable materials which are transported out-of-State or change the out-of-State recycling center, end market or manufacturer destination to which recyclable material is transported unless a new approval has been obtained pursuant to (c) above and unless a fee has been submitted pursuant to N.J.A.C. 7:26A-2.2.

(e) All persons holding an approval from the Department for the out-of-State transport of recyclable material shall prepare and submit to the Department, on or before July 1 of each year, an annual report which contains the following information for the previous calendar year:

1. The amount of each recyclable material, expressed in tons or cubic yards, collected from each in-State location, specified by municipality, authorized by the Department in its approval, as well as the date on which the recyclable materials were collected. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

2. The amount of each recyclable material, expressed in tons or cubic yards, transported to each out-of-State recycling center, end market or manufacturer, and the date on which the recyclable materials were transported out-of-State. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(f) Applications for renewal of approvals for the out-of-State transport of recyclable materials shall be submitted to the Department three months prior to the expiration of the current approval and shall be accompanied by the annual fee as required by N.J.A.C. 7:26A-2.2.

(g) The out-of-State transport of non-commingled source separated traditional recyclable material or commingled source separated paper grades transported directly to a manufacturer shall be exempt from the requirements of (a) above.]*

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7:26A-*[4.3]***4.2*** Inclusion in district solid waste management plans

[(a) In addition to any other requirements or conditions imposed by this chapter before operation, no] ***No*** recycling center, as defined in N.J.A.C. 7:26A-1.3, with the exception of those recycling centers operating pursuant to an approval granted under N.J.A.C. 7:26A-*[3.3 or]* 3.7, shall commence operations unless and until it is included in the applicable district solid waste management plan.

*[(b) No person shall transport or cause or permit to be transported any designated recyclable materials to an authorized solid waste facility for disposal as municipal solid waste unless the adopted district recycling plan as approved by the Department is amended therefore. Any adopted and approved district recycling plan may be amended in accordance with the provisions of N.J.S.A. 13:1E-1 et seq. and subject to approval by the Department.

(c) Any recycling center not subject to approval by the Department pursuant to N.J.S.A. 13:1E-99.34b and N.J.A.C. 7:26A-3 shall obtain site plan approval from the governing body of the county wherein the recycling center is located prior to the commencement of operations where applicable, except that any recycling center designed and operated solely to serve the needs of the municipality wherein the recycling center is located shall be required to obtain site plan approval from the governing body of that municipality where applicable.]*

7:26A-*[4.4]***4.3*** Right of entry

(a) The New Jersey Department of Environmental Protection ***and Energy*** or an authorized representative ***acting pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-1 et seq.*** shall have the right to enter and inspect any building or other portion of a recycling center or *[mobile recycling center]* ***any site at which an exempted activity is conducted pursuant to N.J.A.C. 7:26A-1.4(a)***, at any time ***in order to determine compliance with the provisions of all applicable laws or rules and regulations adopted pursuant thereto***. This right to inspect includes, but is not limited to:

1. Sampling any materials on site;
2. Photographing any portion of the recycling center;
3. Investigating an actual or suspected source of pollution of the environment; ***and***
4. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the recycling center approval issued by the Department*[; and]***.*

[5. Reviewing] ***(b) The right of entry specified in (a) above shall be limited to normal operating hours for the purpose of reviewing*** and copying all applicable records, which shall be made available to the Department during an inspection and submitted to the Department upon request.

7:26A-*[4.5]***4.4*** Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by *[March]* ***February*** 1 of each year to all municipalities from which recyclable material is received in the previous calendar year. The report shall detail the amount of each source separated recyclable material, expressed in tons or cubic yards*[, brought to the recycling center, as well as the date on which the recyclable materials were delivered to the recycling center]*. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(b) *[In those instances where manufacturers or out-of-State recycling centers will not provide recycling tonnage reports to New Jersey municipalities, the]* ***All*** transporters of *[the]* recyclable materials shall be required to provide a recycling tonnage report by *[March]* ***February*** 1 of each year to all municipalities from which ***source separated*** recyclable material is received in the previous calender year ***for those instances where source separated recyclable materials are transported to manufacturers and recycling centers located in states other than New Jersey***. The report shall detail the amount of each source separated recyclable material, expressed in tons or cubic yards, brought to ***a manufacturer or*** *[the]* recycling center*[, as well as the date on which the recyclable materials were delivered to the recycling center]*. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(c) All persons operating pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4 shall provide recycling tonnage reports by *[March]* ***February*** 1 of each year to the applicable municipalities***, to the county*** and to the Department for the previous calendar year. ***The report shall detail the amount of each source separated recyclable material, expressed in tons, cubic yards, cubic feet, or gallons received, stored, processed or transferred. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.***

SUBCHAPTER 5. *[OPERATIONAL REQUIREMENTS FOR REFRIGERANT REPROCESSING FACILITIES]* ***REQUIREMENTS FOR PROCESSING DISCARDED APPLIANCES THAT CONTAIN REFRIGERANT FLUID***

7:26A-5.1 Requirements for processing discarded *[refrigerators and freezers]* ***appliances, motor vehicles, machines or other goods which contain refrigerant fluid***

(a) No shearing, shredding, baling or other actions which could cause release of refrigerant fluid shall take place *[until all reasonable efforts are made by all persons engaging in the repair or processing of refrigerators and freezers]* prior to *[recycling or disposal to capture]* ***recovery of*** such refrigerant fluid.

(b) *[Capture]* ***Recovery*** of refrigerant fluid shall be performed in a manner such that no venting of refrigerant fluid occurs.

(c) *[Recaptured]* ***Recovered*** refrigerant fluid shall be delivered to a facility which ***has agreed to*** reprocess*[es]* ***the*** refrigerant fluid to specifications suitable for reentry into commerce. ***If arrangements cannot be made with a reprocessing facility to accept recovered refrigerants, or if the refrigerants cannot be otherwise made suitable for reuse, the person who recovered the refrigerant shall store or dispose of the material in accordance with applicable laws and regulations.***

(d) *[Capture]* ***Recovery and disposition*** of refrigerant fluid must comply with all *[other]* applicable laws, regulations and guidelines, including, but not limited to***,*** the following:

1. Safety standards of the Occupational Safety and Health Administration (OSHA), including standards for handling compressed gases at 29 C.F.R. *[1910.01]* ***1910.101*** and standards for air contaminants at 29 C.F.R. *[1910.101]* ***1910.1000;***
2. Persons transporting recovered chlorofluorocarbons mixed or combined with a hazardous waste shall comply with the Department's hazardous waste rules at N.J.A.C. 7:26, particularly N.J.A.C. 7:26-7 and 7:26-8;
3. *[Captured]* ***Recovered*** refrigerant fluid shall be stored and transported in containers in accordance with the requirements at 49 C.F.R., particularly Chapter 1 and Subchapter C; and
4. *[Capture]* ***Recovery***, storage and transport of refrigerants shall comply with Air Conditioning and Refrigerant Institute (ARI) guideline K for containers for recovered refrigerants, incorporated herein by reference.

5. The provisions of Title VI of the Clean Air Act Amendments of 1990.

*[SUBCHAPTER 6. REUSE AND TREATMENT OF SOURCE SEPARATED I.D. 27 SOILS

7:26A-6.1 Preliminary criteria for reuse and treatment of source separated I.D. 27 soils

(a) No person shall reuse or treat source separated I.D. 27 soils, as defined at N.J.A.C. 7:26A-1.3, unless the criteria of this subchapter have been met.

(b) Prior to a request for approval for the reuse or treatment of any source separated soil, the applicant shall request and receive a waste classification for the soil. The request shall be made in writing to:

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The New Jersey Department of Environmental Protection
Division of Hazardous Waste Management
Bureau of Regulation, Classification and Technical Assistance
CN 028—401 East State Street
Trenton, New Jersey 08625

7:26A-6.2 Reuse of source separated I.D. 27 soils not subject to Departmental approval

(a) Any source separated soil which has been classified by the Department as I.D. 27 dry industrial waste as described at N.J.A.C. 7:26-2.13(g)1vi, and which has no contamination other than petroleum hydrocarbons, may be reused, as defined in N.J.A.C. 7:26A-1.3, in the following manner without prior Departmental approval pursuant to this subchapter:

1. Use in road construction applications, subject to meeting the specifications of established highway construction codes and other applicable industry standards;

2. Use as unconsolidated additive in asphalt production.

3. Source separated soils classified as I.D. 27 dry industrial waste by the Department that contain 5,000 parts per million (ppm) or less total petroleum hydrocarbons (TPH) and meet applicable New Jersey air pollution control rules, N.J.A.C. 7:27, may be reused, as defined in N.J.A.C. 7:26A-1.3, as an additive for cement without prior Departmental approval pursuant to this subchapter. Source separated I.D. 27 soils that contain greater than 5,000 ppm of TPH and meet applicable New Jersey air pollution control rules may be reused subject to compliance with the criteria in N.J.A.C. 7:26A-6.3 below.

7:26A-6.3 Reuse of source separated I.D. 27 soil subject to departmental approval

(a) The department shall review and approve plans for the reuse of source separated I.D. 27 soils for reuse options other than those specified in N.J.A.C. 7:26A-6.2, including all potential reuses of source separated I.D. 27 soils as fill material, for soils which contain contaminants other than petroleum hydrocarbons, or for soils which contain petroleum hydrocarbons at a level above 5,000 ppm. The Department will make its determination of the suitability of the reuse plan based upon a technical review of information submitted by the applicant which shall include the following:

1. A project or executive summary which shall include at a minimum:

i. An identification of the site of origin of the source separated I.D. 27 soil, including a description of the use of the soil at the site of origin;

ii. A discussion of the reasons for excavating the soil at the site of origin;

iii. A description of any regulatory activity at the site of origin, including a listing of any actions undertaken by the New Jersey Department of Environmental Protection with regard to any environmental contamination of the site of origin.

iv. A statement as to whether the site of origin was ever abandoned prior to the current excavating activities; and

v. An identification of the repository site where the source separated I.D. 27 soil will be used;

2. The amount of source separated I.D. 27 soil for the reuse project and the location of the site of origin plotted on a U.S.G.S. topographic map, 7.5 minute series;

3. A list of any contaminants contained in the source separated I.D. 27 soil and their concentrations;

4. Copies of the analytical package (chain of custody, sampling methods, etc.) used to classify the soil, along with the waste classification letter required pursuant to N.J.A.C. 7:26A-6.1(b);

5. A description of any treatment of the source separated I.D. 27 soil undertaken prior to its reuse;

6. The method of reuse of the source separated I.D. 27 soil;

7. The location, including municipality, block and lot, where the soil will be reused, plotted on a 7.5-minute U.S.G.S. Quadrangle Map;

8. A map of the location of source separated I.D. 27 soil reuse depicting the depth to ground water. Reference shall be made to the source of information that supports or documents groundwater depth;

9. A description of the measures to be taken during handling and transportation of the source separated I.D. 27 soil to minimize the environmental and health impacts of the reuse activity. These measures include, but are not limited to, dust control, erosion control, air pollution abatement and minimizing the risk of discharges to the environment;

10. A discussion of the restoration activities planned for the site of origin of the source separated I.D. 27 soil;

11. A discussion of the potential likelihood of adverse effects on health and the environment of the proposed reuse of the source separated I.D. 27 soil at the repository site;

12. The schedule for completion of the reuse project;

13. A description of all other contacts with the Department of Environmental Protection regarding the source separated I.D. 27 soil that is the subject of the reuse plan, (for example, underground storage tank removal, ECRA cleanup, etc.);

14. An indication of approval by the receiving State, as applicable, where reuse of the source separated I.D. 27 soil out-of-State is planned; and

15. Where the Department determines that additional information is needed to address public or environmental health, safety or welfare, the applicant for approval of a reuse plan shall submit the additional information requested by the Department.

(b) The applicant for approval of a plan for the reuse of source separated I.D. 27 soils shall submit eight copies of the information required pursuant to (a) above to:

The New Jersey Department of Environmental Protection
Division of Water Resources
Bureau of Ground Water Pollution Abatement
CN 029—401 East State Street
Trenton, New Jersey 08625

(c) Upon a determination that the information submitted pursuant to (a) and (b) above is complete, accurate, and meets the criteria of this subchapter and all other applicable laws and regulations, the Department will issue a written approval of the reuse plan for a period of time specified in the approval.

7:26A-6.4 Treatment of source separated I.D. 27 soil

(a) No person shall treat source separated I.D. 27 soil, as defined at N.J.A.C. 7:26A-1.3, without obtaining the prior approval of the Department. The approval for the treatment of source separated I.D. 27 soil where there is a potential discharge to the land or waters of the State will be in the form of a NJPDES permit issued pursuant to N.J.A.C. 7:14A-1 et seq. Air pollution control permits pursuant to N.J.A.C. 7:27 may also be required.

(b) No person shall treat source separated I.D. 27 soil, as defined at N.J.A.C. 7:26A-1.3, unless the treatment facility is included in an approved district solid waste management plan pursuant to N.J.S.A. 13:1E-1 et seq.

(c) Requests for approval for treatment of source separated I.D. 27 soils shall be submitted in duplicate to:

The New Jersey Department of Environmental Protection
Division of Water Resources
Bureau of Ground Water Pollution Abatement
CN 029—401 East State Street
Trenton, New Jersey 08625

(d) The transport of source separated I.D. 27 soils to facilities permitted by the Division of Water Resources to treat the material shall not be subject to the requirements of N.J.A.C. 7:26-6 as long as the facility is approved to take the material and is in compliance with the Division of Water Resources permit and the criteria in (a) and (b) above.

7:26A-6.5 Storage of source separated I.D. 27 soil

(a) Any source separated I.D. 27 soils which are intended or proposed to be reused or treated pursuant to this subchapter shall be maintained throughout the storage period until the point of soil reuse or treatment as per the following criteria:

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1. Soils shall be stored on and under protective plastic sheeting made of polyethylene or an equivalent plastic sheeting which has a thickness no less than 10 mils; and

2. Soils which are being stored shall be maintained to prevent weathering or runoff of the subject soils.

(b) In no event shall soil be stored for a period in excess of six months prior to commencement of reuse.]*

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Moratorium

Adopted Concurrent New Rule: N.J.A.C. 8:33-5.1

Proposed: September 16, 1991 at 23 N.J.R. 2881(a).

Adopted: October 21, 1991 by Frances J. Dunston, M.D., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: October 21, 1991 as R.1991 d.566, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1, 26:2H-5, 26:2H-8, and 26:2H-9.

Effective Date: October 21, 1991.

Expiration Date: July 27, 1995.

Summary of Public Comments and Agency Responses:

This proposed new rule was adopted on an emergency basis and became effective on August 22, 1991. The concurrently proposed new rule was published on September 16, 1991 and the comment period closed on October 16, 1991. During the comment period comments were received from the New Jersey Hospital Association; Kessler Institute for Rehabilitation, Inc.; New Jersey Association of Health Care Facilities; Saint Barnabas Medical Center; University Health System of New Jersey; Holy Name Hospital; East Orange General Hospital; Hackettstown Community Hospital; The Hospital Center at Orange; Bergen Pines County Hospital; Mercer Medical Center; The Valley Hospital; Morristown Memorial Hospital; Newton Memorial Hospital; South Jersey Hospital System; and Elizabeth General Hospital.

A summary of the comments received and agency responses follows:

COMMENT: A number of commenters found the proposed rule insensitive to the fact that during the course of the moratorium emergency situations may arise which would warrant the processing of certificate of need applications. They urged that the rule allow for the processing of both emergency certificate of need applications and the review of those applications which would be subject to administrative review procedures pursuant to N.J.A.C. 8:33-4. Among commenters offering these recommendations were Kessler Institute for Rehabilitation, Inc.; St. Barnabas Medical Center; Holy Name Hospital; East Orange General Hospital; Hackettstown Community Hospital; The Hospital Center at Orange; Newton Memorial Hospital and Bergen Pines County Hospital.

RESPONSE: The proposed new rule does not in any way diminish the Commissioner of Health's authority and responsibility to respond to emergency situations which represent immediate and documented risks to the health and safety of patients or the public at large. Nor was it the intent of the proposal to suggest this. Therefore, the Department is initiating a change, identified at N.J.A.C. 8:33-5.1(b)3 herein, to clarify that certificate of need applications for mandatory replacement of equipment and renovations of existing facilities, referenced at N.J.A.C. 8:33-2.7 and N.J.A.C. 8:33-4.3, will continue to be processed if the Department's Division of Health Facilities Evaluation determines that the processing of such applications is necessary to address an immediate and documented risk to the health and safety of patients.

As the proposed rule notes at N.J.A.C. 8:33-5.1(b), the purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c. 187, by enabling Department staff to concentrate their efforts on the formulation of the Plan and review system and to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan. A blanket exception to the moratorium for the processing of all applications subject to administrative review procedures at N.J.A.C. 8:33-4 would undercut the purpose of the moratorium because these types of certificate of need applications could be addressed in the Plan. For example, new medical technologies for which the Plan may call for certificate of need demonstrations and research projects will be addressed in the State Health Plan.

Nevertheless, there are certain types of applications, subject to administrative review procedures, which were never intended to be captured by the moratorium because they are not expected to be affected to any degree by the State Health Plan. Therefore, the Department is adopting a change at N.J.A.C. 8:33-5.1(b)1 through 5 to clarify that these types of applications will continue to be processed while the moratorium is in place. They include applications for: (1) transfers of ownership of health care facilities and services; (2) applications for computer and telephone systems; (3) extensions of time of previously approved certificates of need; (4) mandatory replacement of equipment and renovations to existing facilities where the Commissioner of Health determines, based on recommendations of the Department's Division of Health Facilities Evaluation, that there is an immediate and documented risk to the health and safety of patients; (5) mandatory new health care services where the Commissioner of Health determines that the service is essential as a result of Federal, State, county, or municipal governmental requirements; and (6) some changes in the cost and scope of previously approved certificate of need, where there are no changes in the number or types of beds previously approved, no modifications in the type of service described in the previously approved application, and where either the change in cost requested does not exceed 10 percent of the total approved project cost or the change of square footage requested does not exceed 10 percent of the approved square footage and does not result in a change of cost which exceeds 10 percent of the total approved project costs. An examination by the Department of applications for changes in cost and scope received in the past revealed that generally changes greater than 10 percent substantially altered the project originally approved. In fact, previous Department regulations permitted administrative rather than full review of applications for changes in cost less than 10 percent and current regulations permit administrative review of applications for a change in square footage less than 10 percent accompanied by a change of cost. Furthermore, the State Health Planning Board will be addressing the issue of processing applications for changes in cost and scope through administrative review, and, in all likelihood, will not adopt such a procedure for applications requesting approval of a change greater than 10 percent. While these types of applications are not expected to be affected to any degree by the State Health Plan and other rule changes intended to implement the State Health Plan, other types of applications which have been processed historically via administrative review procedures are expected to be addressed in the Plan and are captured by the moratorium.

COMMENT: A number of commenters asked that a sunset date be placed on the moratorium so that delays in the adoption of the State Health Plan "would not penalize health care providers." The New Jersey Hospital Association, Hackettstown Community Hospital, Bergen Pines County Hospital, Newton Memorial Hospital, Saint Barnabas Medical Center, South Jersey Hospital System and East Orange General Hospital supported a sunset with East Orange General Hospital noting that "a specific renewal date would be an incentive to have the State Health Plan completed, on schedule, as well as to assure that health care needs are met (and subsequent costs minimized)." Kessler asked that the moratorium on rehabilitation services and beds be immediately lifted.

The New Jersey Hospital Association (NJHA) urged the Department of Health to end the moratorium immediately and to use the existing certificate of need rules to review regulated health care services until the new State Health Plan is completed. In the absence of an immediate lifting of the moratorium now, the NJHA sought assurances that the elements of the State Health Plan will be adopted on schedule or sooner, so that the moratorium may be lifted promptly. It takes the position that if the State Health Plan is not adopted by the sunset date, the moratorium should expire, and certificate of need applications should be accepted and reviewed under the existing certificate of need rules. NJHA proposed that the certificate of need moratorium for Phase I services, as noted in N.J.A.C. 8:33-5.1(d), sunset by June 1, 1992, and the moratorium for Phase II services, also noted at N.J.A.C. 8:33-5.1(d), sunset by no later than December 1, 1992.

RESPONSE: The Health Care Cost Reduction Act requires that the State Health Planning Board prepare and revise annually the State Health Plan and that the Plan be adopted by the Commissioner of Health, pursuant to the Administrative Procedures Act, N.J.S.A.

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52:14B-1 et seq., subject to the approval of the Health Care Administration Board (HCAB). The Act further states that the State Health Plan shall identify the unmet health care needs in the area by service and location and "it shall serve as the basis upon which all certificate of need applications shall be approved." Without an adopted Plan in place, it would be impossible to meet the statutory requirements that certificate of need approvals be based upon the State Health Plan.

The proposed rule states at N.J.A.C. 8:33-5.1(c) that the moratorium shall be lifted for each health care service or health care facility at the time that the portion of the State Health Plan governing that particular health care service or health care facility is formally adopted. The schedules in the rule for the submission by the Department of specific service proposals for the Plan are realistically ambitious and will be respected. However, the Plan must be prepared by the State Health Planning Board and adopted by the Commissioner, subject to the approval of the Health Care Administrative Board and in accordance with the Administrative Procedures Act. This is a massive and complex undertaking. Therefore, the Plan will not be completed by July 1992 and because of the uncertainties of the administrative rulemaking process, it is impossible to exactly predict the date it will be completely formally adopted. However, to address the concerns of the commenters and the Health Care Administration Board, a sunset date for the moratorium of December 31, 1992 has been included in this rule.

COMMENT: The New Jersey Hospital Association represented that the moratorium rule is silent on when rehabilitation services will be addressed in the State Health Plan and asked for the inclusion of comprehensive rehabilitation services in Phase I of the State Health Plan.

RESPONSE: The Department advises that rehabilitation services are scheduled for Phase I presentation and will be addressed within the Chronic Diseases and Long-Term Care section of the Plan, as referenced at N.J.A.C. 8:33-5.1(d).

COMMENT: The comments offered by University Health Systems of New Jersey suggest support for the change which would permit the processing of certificate of need applications for the mandatory replacement of equipment and renovation to existing facilities necessary to address an immediate, documented risk to the health and safety of patients; however, the commenter asks that "immediate and documented risk to the health and safety of patients" include reference to overcrowded conditions, cost savings measures, diversion of emergency patients, and citations by governmental organizations.

RESPONSE: While the commenter appears to support the change offered at N.J.A.C. 8:33-5.1(b)3, it asks that overcrowded conditions, cost savings measures, diversion of emergency patients and citations by governmental organizations be explicitly noted as constituting an immediate, documented risk to the health and safety of patients. Its list of "risks to the health and safety of patients" is not necessarily so. In order to maintain the integrity, and to further the purposes of the moratorium, it is much wiser to judge what constitutes a threat to the health and safety of patients on a case-by-case basis rather than to list services which may not be needed on an emergency basis. If any of the conditions noted by the commenter constitute an emergency representing an immediate threat to patients, a provider will be given the opportunity to make its case to the Commissioner who will authorize the processing of a certificate of need application to address the emergency if he or she agrees that there is a genuine and immediate risk to patients that must be eliminated.

COMMENT: University Health Systems of New Jersey asks that certificate of need applications for mandatory new health care services, as well as the replacement of equipment, be processed during the moratorium if these applications constitute responses to citations by governmental organizations. It further asks that all "research projects should be exempt from the certificate of need process." Finally, it urges that all designated trauma centers "be permitted to acquire equipment and services related to the provision of trauma care."

RESPONSE: The change offered at N.J.A.C. 8:33-5.1(b)4 would allow for the processing of certificate of need applications for mandatory new health care services where the Commissioner of Health determines that it is essential to implement a new health care service as a result of Federal, State, county, or municipal government requirements. If a governmental citation includes a requirement that a new health care service be instituted immediately, then the provision as proposed would apply and additional language would only serve to confuse. Applications intended to respond to licensing citations would be governed by N.J.A.C. 8:33-5.1(b)3.

The commenter's statement concerning research projects inappropriately seeks a determination as to what type of health care service is subject to the certificate of need process. Such is not the function of this particular rulemaking process. In response, the Department can only say that if by any statutory or regulatory fiat, the contemplated "research" project requires a certificate of need, it is subject to the moratorium imposed by this rule.

Finally, prior to the initiation of the moratorium by emergency action, the Commissioner of Health issued certificate of need applications for trauma centers. Where those approved applications included the acquisition of equipment or services, the approved applicant is free to proceed to make the acquisitions. Where existing equipment in trauma centers needs to be replaced because the condition of that equipment represents an immediate and documented risk to the health and safety of patients, the provider may make its case to the Commissioner, pursuant to the change adopted at N.J.A.C. 8:33-5.1(b)3. Similarly, where the approved applicant seeks a change of cost or scope to its previously approved application, its case can be made pursuant to the change adopted at N.J.A.C. 8:33-5.1(b)5.

Summary of Agency Initiated Changes:

In the weeks following the adoption of the certificate of need moratorium on an emergency basis, the Department of Health received many inquiries from providers, applicants and potential applicants asking for clarification on the nature and scope of the moratorium. In an effort to respond to these inquiries, the Department issued a Notice of Interpretation to all interested parties on September 24, 1991. The Department now is initiating a change in the rule in order to incorporate the interpretation and clarification provided by the Notice. Specifically, the clarification notes that certain types of certificate of need applications, which will not be affected to any degree by the State Health Plan, will continue to be processed during the moratorium. The processing of these applications is consistent with and will not offend the purpose of the moratorium, which is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L. 1991, c. 187, and to avoid the possibility of the Department of Health, in the interim, taking any action which may be inconsistent with the requirements to be imposed by the Plan.

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

SUBCHAPTER 5. CERTIFICATE OF NEED MORATORIUM

8:33-5.1 Moratorium

(a) The Commissioner of Health places a moratorium on the acceptance by the Department of Health or any other reviewing body of all applications for a certificate of need and on the processing of certificate of need applications already received by the Department. The moratorium is effective August 22, 1991 and will continue *[indefinitely]* ***as set forth in (c) below***.

(b) The purpose of the moratorium is to permit the development of the State Health Plan required by the Health Care Cost Reduction Act, P.L.1991, c.187, by enabling Department staff to concentrate their efforts on the formulation of the new Plan and review system and to avoid the possibility of the Department taking any action which may be inconsistent with the requirements to be imposed by the Plan. ***The following types of certificate of need applications will continue to be processed while the moratorium is in place, since they are not expected to be affected to any degree by the State Health Plan:***

1. Transfer of ownership applications, which will be processed according to N.J.A.C. 8:33-2.10 and N.J.A.C. 8:33-4.2.

2. Telephone and computer system applications, which will be processed according to N.J.A.C. 8:33-2.7 and N.J.A.C. 8:33-4.11.

3. Certificate of need applications for the mandatory replacement of equipment and renovation to existing facilities. Applications for the mandatory replacement of equipment and renovation of existing facilities, referenced at N.J.A.C. 8:33-2.7 and N.J.A.C. 8:33-4.3, will be processed if the Department's Division of Health Facilities Evaluation determines that the processing of such applications is necessary to address an immediate, documented risk to the health and safety of patients.

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4. Certificate of need applications for mandatory new health care services. Where the Commissioner of Health determines that it is essential to implement a new health care service as a result of Federal, State, county, or municipal government requirements, he or she may, in his or her discretion, permit the processing of such applications, in accordance with N.J.A.C. 8:33-2.6 and N.J.A.C. 8:33-4.10.

5. Certificate of need applications for changes in cost and scope. Most applications for changes in the cost and scope are, indeed, covered by the moratorium, most notably those for a change in the number or type of beds previously approved, or for a modification in the type of service described in the previously approved application. Only those applications which meet the following criteria are not included in the moratorium and will be processed:

i. Applications for a change of cost that do not exceed 10 percent of the total approved project cost;

ii. Applications for a change of square footage that do not exceed 10 percent of the approved square footage and that do not result in a change of cost that exceeds 10 percent of the total approved project cost.*

(c) ***Between the effective date of this rule and December 31, 1992,*** *[The]* ***the*** moratorium shall be lifted for each health care service or health care facility at the time that the portion of the State Health Plan governing that particular health care service or health care facility is formally adopted pursuant to the Health Care Cost Reduction Act, P.L.1991 c.187, and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. ***On December 31, 1992, the moratorium will expire for all health care services and facilities.***

(d) The establishment of the State Health Plan will be accomplished in two phases. Phase I entails the presentation to the State Health Planning Board, in January 1992, the State Health Plan for the following services:

January 1992:
- Hospital Medical/Surgical Services
- Primary and Ambulatory Care
- Chronic Diseases and Long-Term Care
- Maternal and Child Health
- Cardiovascular Diseases
- Addictions
- High Technology Services

Phase II entails the presentation to the State Health Planning Board in July 1992, the State Health Plan for the following services:

July 1992:
- Mental Health
- Injuries and Trauma
- Sexually Transmitted Diseases (STD)/HIV/AIDS
- Cancer
- Occupational/Environmental Health
- Chronic Diseases and Home Health Care/ESRD

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Increase in Income Eligibility Limits
Pharmaceutical Services Manual; Hearing Aid Assistance for the Aged and Disabled; Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual; Lifeline Credit Program/Tenants' Lifeline Assistance Program Manual

Adopted Amendments: N.J.A.C. 10:51-5.6; 10:69-5.1; 10:69A-1.2, 5.3, 5.6, 6.2, 6.10; and 10:69B-4.2

Proposed: September 3, 1991 at 23 N.J.R. 2623(a).
Adopted: October 16, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: October 18, 1991 as R.1991 d.563, **without change.**
Authority: N.J.S.A. 30:4D-20 through 24, 36 through 42; N.J.S.A. 48:2-29.15, 16, 17; 48.2-29.31, 32; P.L. 1991, c.84 (approved April 3, 1991).
Effective Date: November 18, 1991.
Expiration Date: October 9, 1995, N.J.A.C. 10:51;
June 6, 1993, N.J.A.C. 10:69;
April 20, 1993, N.J.A.C. 10:69A;
November 21, 1993, N.J.A.C. 10:69B.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:51-5.6 Eligible PAAD beneficiary

(a) An eligible beneficiary is a legal resident of the State of New Jersey, 65 years of age or older or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits with an annual income less than $15,700 for a single person and less than $19,250 in combined income for a married couple, who possesses a current PAAD identification card or the temporary identification card. (See N.J.A.C. 10:51-5.23.)

1. (No change.)

(b) (No change.)

10:69-5.1 Age and income standards

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits and have an annual income below $15,700 if single or $19,250 combined income if married.

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

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-6. (No change.)

7. Chapter 221, Laws of 1987 effective July 29, 1987 and retroactive to December 31, 1986;

8. Chapter 16, Laws of 1987, effective February 1, 1989; and

9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991.

(b) (No change.)

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) The Division shall conduct periodic renewals of PAAD beneficiaries to determine continued eligibility. Generally, renewals shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD beneficiaries' income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2. Approximately four months prior to his or her eligibility expiration date, PAAD will advise the beneficiary if he or she is eligible for biennial eligibility, or if he or she will be required to complete a renewal form.

1.-2. (No change.)

3. All beneficiaries made eligible for PAAD as a result of the enactment of P.L. 1991, c.84 shall be granted eligibility retroactive to January 1, 1991, if their application is submitted on or before August 31, 1991.

10:69A-5.6 Responsibilities in the application renewal process

(a)-(b) (No change.)

(c) The applicant or beneficiary has the responsibility to:

1.-6. (No change.)

(d) (No change.)

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10:69A-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than $15,700 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than $19,250 to be eligible for PAAD.

1.-2. (No change.)

(c)-(i) (No change.)

10:69A-6.10 Eligibility period

(a) A PAAD eligibility card is effective for one year. The PAAD beneficiary shall renew his/her eligibility in accordance with the provisions of N.J.A.C. 10:69A-5.3(b). In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years. Beneficiaries who are subject to the two year renewal provision will have their eligibility card renewed automatically for one additional year.

(b) (No change.)

10:69B-4.2 Income standards

(a) Any single, permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than $15,700 to be eligible for Lifeline.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than $19,250 to be eligible for Lifeline.

1.-2. (No change.)

(c)-(h) (No change.)

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Notice of Administrative Correction

Medicare Supplement Coverage

Appendix to Subchapters 16 and 23 of Chapter 4, Exhibit A

Take notice that the Department of Insurance has discovered omissions in the text of N.J.A.C. 11:4, Appendix to Subchapters 16 and 23 of Chapter 4, Exhibit A, Bridging the Gap: A Guide to Medicare Supplements.

As proposed and adopted (see 22 N.J.R. 771(a); 23 N.J.R. 690(c)), this Exhibit A (at Code pages 4-133 to 4-144, 2-17-87 Code update) was amended, with unchanged paragraphs signified in the New Jersey Register notices by ellipses (...). An item entitled "Appendix to Subchapters 16 and 23 'Bridging the Medicare Gap: A Guide to Medicare Supplement (Information Concerning Changes to the Medicare Program Effective January 1, 1989)' " (at Code pages 4-158 to 4-169, 12-19-88 Code update) was repealed.

In the production of the 3-18-91 Code update, the latter item was correctly deleted from the Code, but inadvertently replaced with only the amended portions of the former Exhibit A, including the ellipses instead of the unchanged text from the existing Appendix (see Code pages 4-209 to 4-218, 3-18-91 Code update). The version of the Appendix which was amended was erroneously retained in the Code, rather than being deleted and replaced with the amended version.

This notice of administrative correction reproduces the entire text of the amended Appendix to Subchapters 16 and 23 of Chapter 4, Exhibit A, Bridging the Gap: A Guide to Medicare Supplements, to replace the part text of the Appendix, Exhibit A, now set forth at Code pages 4-209 to 4-218, 3-18-91 Code update. The former version of this item at Code pages 4-133 to 4-144, 2-17-87 Code update, is deleted from the Code. Appendix Exhibits B and C at Code pages 4-219 to 4-223, 3-18-91 Code update, are correct and retained in the Code.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected Exhibit follows (additions indicated in italics *thus*, to distinguish the additions from the permanently boldface portions of the Exhibit. Portions of the added text that are to be permanently boldface appear within the italicized text in boldface):

APPENDIX TO SUBCHAPTERS 16 and 23
EXHIBIT A
BRIDGING THE MEDICARE GAPS: A GUIDE
TO MEDICARE SUPPLEMENTS

INTRODUCTION

Medicare. The word can be both a comfort and a puzzle. A comfort because Medicare is a program which provides good, basic health coverage at minimal cost. A puzzle because the program's structure makes it look harder to understand than it really is.

Medicare historically has paid a relatively stable share of health care costs for older citizens, ranging from about 40 percent in 1977, 45 percent in 1984 and 40.1 percent in 1988, according to the U.S. House of Representatives Select Committee on Aging.

But health care costs have been rising faster than inflation—which means higher medical bills. So even though older people have been paying a relatively constant percentage of their medical bills, the bills themselves are larger. The bottom line is that older citizens are paying more total dollars for their share of health care costs.

Before making a decision about what kind of insurance to buy, everyone should assess his or her own needs. Assessing the need for additional protection is easier if one understands the basic structure of Medicare. The first section of this booklet is designed with that in mind.

The rest of this booklet will tell you what other types of insurance are available to fill some of Medicare's gaps.

BASIC STRUCTURE OF MEDICARE

Medicare coverage comes in two parts—Part A, hospital insurance; and Part B, medical insurance.

The two parts in the program parallel the divisions in the medical community between hospitals and physicians. Although hospitals are filled with doctors, few doctors actually work for hospitals. Most physicians are independent business people. So, if you go to the hospital with the flu, you receive separate bills—one for the things the hospital provides such as a room, nurses, food and drugs; and another for the doctors who treat you. Similarly, Medicare has two parts—A, which pays inpatient hospital bills, and B, which pays doctors' bills and other outpatient medical expenses.

Part A, the hospitalization portion of Medicare, is free, and most senior citizens participate automatically.

Part B, the medical portion requires a monthly premium, which, for most people, is deducted from the Social Security check. You're automatically enrolled in Part B when you enroll in Part A, unless you specifically state you don't want it. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher. If you wait because you're still working and you're still covered under your employer's group health plan, you will not have to pay the higher Part B premium when you do sign up.

Each of the two parts has a deductible, an amount of money which you have to pay before Medicare starts paying.

Each also requires a co-payment, a part of each bill you're required to pay.

And each has its own rules about when these payments are required. The specific dollar amounts can change from year to year. The chart in the back pocket of this booklet shows this year's deductible and co-payment amounts.

Medicare Part A—Hospital Insurance

The hospital insurance portion of Medicare Part A pays hospital room and board fees. It also pays for some goods and services (such

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as laboratory costs, physical therapy and drugs) while you're a patient in the hospital.

Part A does not cover all hospital bills. It covers a portion of them, depending on how long you are in the hospital and on the basis of benefit periods (see page ____).

Drawn on a graph like the one on page ____, the system resembles a three-step staircase. First you pay the Part A hospital deductible (which is roughly equal to the average national cost of one day in a hospital).

Then, for 60 days, Medicare pays 100 percent of the covered hospital expenses.

After 60 days, you take the first step down. For days 61 through 90, Medicare covers most of the hospital bills, but you have to pay a co-payment for each day you're there. (The co-payment is about 25 percent of the average national cost of a day in the hospital.)

If, after 90 days, you're still in the hospital, you have to make a decision. You either begin paying all the hospital bills yourself, or you take a half-step and dip into the ***lifetime reserve days that Medicare provides.***

Your lifetime reserve is a "bank" with 60 days of partial coverage. The daily co-payment rises to about 50 percent of the average national daily hospital charge. You can use all or some of the 60 days for any hospitalization between 91 and 150 days. Once you use up all 60 lifetime reserve days, however, you can't get them back.

Although the increases in co-payments may seem steep, the odds of experiencing a prolonged hospital stay are small. Only 2 percent of Medicare subscribers exhaust their coverage in any given year, according to the U.S. Health Care Financing Administration. And national statistics indicate that the average hospital stay for a person over 65 has been ranging between 7.5 and 11 days.

What Part A Also Covers

Medicare also pays for three of the newer, less expensive alternatives to hospitalization—skilled nursing facility care, home health care and hospice care.

Let's say you've had a stroke and have been in the hospital for several weeks. You no longer need the intensive care a hospital provides, but you do need daily rehabilitation therapy before going home. Your doctor may refer you to ***a skilled nursing facility,*** *where you will get professional nursing care and rehabilitation services. Although there are some restrictions, Medicare will generally pay all the facility's bills for the first 20 days and a portion of the bills for days 21 through 100, providing the care is reasonable and necessary.*

Medicare also will pay for ***home health care*** *to help you leave a hospital or skilled nursing facility if your condition meets certain requirements, among them a need for part-time skilled nursing care or therapy.*

In addition, Medicare covers ***hospice care*** *for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations, which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.*

How Often Can You Collect?

Medicare Part A pays hospital expenses on the basis of benefit periods. A benefit period starts when you enter a hospital and ends when you have been out of the hospital or skilled nursing facility for 60 days in a row.

Benefit periods determine whether you have to pay a deductible and how much of the hospital bill Medicare will pay. Let's say, for instance, that you were in the hospital for 60 days, went home for two weeks and then went back to the hospital for another two weeks. You would only have to pay one deductible, because both hospitalizations occurred in the same benefit period. You would, however, have to pay a co-payment for each day of the two weeks you were hospitalized the second time, because you exhausted your 100 percent coverage during the first 60 days of the benefit period.

When Will Medicare Refuse to Pay?

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But **Medicare does not cover custodial nursing home care** that provides only a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually Medicare pays hospitalization, skilled nursing facility and home health agency fees only when the facility or agency is Medicare-approved. **Although all New Jersey hospitals are approved,** some hospitals and treatment centers in other states may not be. And even if a skilled nursing facility or home health agency is licensed by the state, it may not be Medicare-approved.

Medicare may also refuse to pay for **experimental or controversial procedures.**

Except under certain very limited conditions in Canada and Mexico, Medicare will not cover care received outside the United States.

If you plan to travel, or if you're not sure whether the treatment or hospital you're considering has Medicare approval, check ahead of time with your local Social Security office to see if benefits are available.

Medicare Part B—Medical Insurance

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and medically necessary home health visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

How Much Does It Pay?

The medical insurance portion of Medicare was designed to pay 80 percent of the cost of most covered services. You pay the other 20 percent, which is the Part B ***co-payment.***

You could wind up paying more than 20 percent. *Fees charged by doctors, therapists, suppliers and hospitals may vary, even within one town. But Medicare has a fixed schedule of fees, known as the "approved amount," for procedures done in your area. Medicare will pay only 80 percent of the approved amount. So, if your bill from the doctor or hospital outpatient clinic is higher than the approved amount, you must pay the difference.*

Example: Suppose the Medicare approved amount for a medical procedure is $40, but your doctor charges you $50. Medicare will pay 80 percent of the $40 approved amount, or $32; you pay the 20 percent co-payment, or $8. But you also make up the difference between the $50 bill and Medicare's $40 approved amount ($10). So the total out-of-pocket cost to you is $18.

Some doctors "accept assignment." This means the doctor agrees to accept the Medicare-approved amount for the services provided. You still have to pay the 20 percent co-payment, or $8.

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment for all Medicare claims. The "Medicare-Participating Physician/Supplier Directory", which is available in Social Security offices and county Offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from Pennsylvania Blue Shield, the Medicare carrier for New Jersey.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of Your Medicare Handbook.

FILLING IN THE GAPS

You can bridge the gaps in Medicare in a variety of ways. But there are choices to make. Different policies tend to plug different holes in the Medicare program, so you probably won't find one policy that pays all of your health care costs.

To decide which policy suits you best, begin by evaluating your needs and financial circumstances. How much you can afford to pay for insurance? Do you want first dollar coverage that will help pay

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Medicare's deductibles and co-payments? Or are you more concerned about covering things that Medicare does not—for example, doctors' bills that go beyond the Medicare-approved amount or care outside the United States? Will you find it easier to budget regular insurance payments than to worry about later medical bills you might not be able to pay?

Medicaid

For some people, paying even small amounts for medical expenses or another health insurance policy may be a real hardship. If you are one of them, check with your local Social Security Officer or the state or County Welfare Agency to see if you are eligible for Medicaid, a free health care program for low-income people funded by the state and federal governments.

Although the combination of Medicare and Medicaid pays many of your health care costs, you should consider the following points before dropping any Medicare supplement policy you may already have:

1. a Medicare supplement policy may cover services not paid by Medicaid, such as private duty nursing, care outside the United States, a private room in a hospital;
2. if your Medicaid eligibility ends, you may have a six month waiting period before a new policy will pay benefits for health conditions you already have;
3. if you enter a nursing home, Medicaid will pay the premium for your Medicare supplement policy;
4. if you cancel Medicare supplement coverage that has been available to you at no charge as a retirement benefit or through your spouse, it may not be renewable if you no longer qualify for Medicaid.

New Jersey also has a variety of health care programs available to certain needy residents who may not qualify for the traditional Medicaid Program. Each program has its own eligibility requirements. Contact your County Welfare Agency or Board of Social Services to see if you qualify for any of the following:

New Jersey Care
Medically Needy
Community Care Program for the Elderly and Disabled (CCPED)
AIDS Community Care Alternative Program (ACCAP)

Prescriptions and Hearing Aids

New Jersey has a program that will help pay for prescription drugs, and another that will help pay for hearing aids.

The Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program helps pay for prescription medicines and some pharmacy items such as insulin syringes and needles.

The Hearing Aid Assistance to the Aged and Disabled (HAAAD) Program reimburses $100 to eligible residents of New Jersey who buy a hearing aid.

To qualify for PAAD or HAAAD, you must be at least 65 or be receiving Social Security Disability, and you must meet certain income limits. The limits which are higher than those for Medicaid can change.

For more information about each program call the toll-free hotline at (800) 792-9745.

What Does Your Employer Offer?

The ideal time to start thinking about how you will supplement Medicare is several months before you reach age 65, particularly since you may be able to take advantage of insurance coverage you have as an employee.

If you are covered by a health plan at work, your employer may allow you to remain insured under the plan after you retire and may continue to pay all or part of the premium. This is sometimes referred to as ***"continuation."***

Your employer may also offer a different arrangement called ***"conversion."*** *This permits you to buy insurance from the same insurance company you had at work, but it doesn't necessarily mean your new policy will have the same benefits. Nor does it mean the policy will be cheaper than similar policies you may find by shopping around on your own.*

Continuation and conversion offer two advantages: you will probably not be required to produce a medical history or undergo a medical examination; and, you will not have to wait to receive benefits.

One kind of insurance you may be able to keep through continuation or conversion is a major medical policy.

As the name implies, major medical coverage is designed to cover very large medical bills, usually after you have paid a substantial deductible. The deductibles may be as high as $1,000, but the coverage can amount to as much as $1 million.

Continuation of a major medical plan through a former employer may help pay for some costs after Medicare stops paying or for costs Medicare will not pay at all—for example, medical bills that exceed the Medicare allowed amount.

There are no hard and fast rules about continuation or conversion policies. Ask your employer's personnel office to explain your options. Can you continue or convert? How much will the coverage cost? Will the policy cover your spouse? (Some do and some don't.) What will the policy pay for?

Health Maintenance Organizations

Membership in a health maintenance organization—HMO—is another way to fill the gaps in Medicare. HMOs are prepaid health care programs. Like insurance policies, HMOs cover certain health care costs. Unlike insurance policies, HMOs actually provide health care services. Some HMOs have contracts with Medicare. As a Medicare beneficiary, you're eligible to join an HMO if you participate in at least Part B of Medicare and live in a county where an HMO that contracts with Medicare is available.

If you join an HMO, you don't have to pay the Medicare deductibles or co-payments or file claims. You pay a monthly premium to the HMO, which provides doctors' services and most other health care. You may have to pay a co-payment of $1 to $10 for some services.

The trade-off is that you have to use the HMO doctors. If you need a specialist, you must go to one recommended by the HMO. If you choose to see a non-HMO physician on your own, you have to pay the bills yourself.

There are different kinds of HMOs. Some have all their doctors located in facilities owned by the HMO. Some are networks of physicians who maintain their own offices and service HMO patients as a part of their regular practice.

HMO plans and premiums vary. A "low option" HMO plan generally covers at least the services included under the regular Medicare program. A "high option" plan usually includes additional services not covered by Medicare, for example, eye care.

For further information on Medicare-contracting HMOs, write the New Jersey Department of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN 325, Trenton, N.J. 08625.

Medicare Supplement Policies

If you are looking for a policy specifically designed to coordinate with Medicare, you may want to consider a Medicare supplement policy. The phrase "Medicare supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. Most policies sold to individuals are required to cover at least:

- the Part A hospital co-payment amounts;
- 90% of hospital expenses after 150 days (when Medicare runs out), up to a total of 365 days;
- 20% of Medicare's approved amounts under Part B subject to a maximum calendar year deductible of $75;
- the reasonable cost of the first three pints of blood;

Medicare supplement policies vary widely in price, depending on what they cover. Some supplements, for example, also cover a part of private duty nursing care, prescription drugs and the Part B deductible. Generally, the more comprehensive the coverage, the more expensive the policy will be.

The Department of Insurance maintains a list of the individual Medicare supplement policies for sale in New Jersey. The list is updated each year.

If you need a copy of the list, send a self-addressed, stamped envelope to the Department of Insurance, Enforcement and Con-

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sumer Protection, Senior Health Insurance Program, CN 325, Trenton, New Jersey 08625.

Blue Cross and Blue Shield Coverage

Blue Cross and Blue Shield of New Jersey, Inc. is a non-profit health service corporation offering three individual plans designed to coordinate with Medicare. However, only one of the three plans meets New Jersey's minimum standards for Medicare supplements.

SUPER 65

Blue Cross and Blue Shield Super 65 meets New Jersey's minimum standards for Medicare supplements. It pays the Part A deductible and Medicare's hospital co-payments. After 150 days in a hospital when Medicare stops paying, Super 65 covers 100 percent of Medicare eligible expenses for an unlimited number of days. It pays the Part B deductible, 20 percent of Medicare's allowed amounts for doctors and other out of hospital services without any dollar maximums. Super 65 covers the cost for care received outside the United States. You may enroll in Super 65 any time during the year. However, there is a six month waiting period for pre-existing conditions.

The following two plans are "limited benefit" policies because they do not pay all the benefits, or the dollar amounts of the benefits are less than what we require of Medicare supplements:

65

Blue Cross and Blue Shield 65 is designed to provide basic hospitalization coverage. It pays the Part A deductible and co-payments, and costs for care outside the United States. It also pays the Part B deductible and 20 percent of Medicare's approved amount for doctors who see you while you're hospitalized. Blue Cross and Blue Shield 65 pays 20 percent co-payments for some services outside a hospital but there are annual dollar maximums. It does not pay for hospitalization after 150 days (when Medicare runs out) and it does not cover physician home or office visits.

65 SELECT

Blue Cross and Blue Shield 65 Select is primarily aimed at covering the costs for a long hospital stay. You pay the everyday health care costs—the Part A and B deductibles and some medical co-payments—yourself. 65 Select will pay the Part B co-payment for physician care in the hospital, the Part A hospitalization co-payments, and 90 percent of hospital costs after Medicare runs out. It pays for some services performed outside a hospital, subject to annual dollar maximums, and for health care costs while traveling outside the United States. 65 Select does not cover physician home or office visits.

You can apply for Blue Cross and Blue Shield 65 or 65 Select within 31 days of your 65th birthday, or your Medicare effective date if you're disabled. If more than 31 days have passed since your 65th birthday, you can apply during the open enrollment period from February 1 through April 30 of each year. Your coverage will take effect on July 1.

Hospital Indemnity Policies

Frequently advertised by celebrities, indemnity policies pay a fixed amount of money per day, week or month while you are in the hospital. They are not designed, however, to fill Medicare's gaps.

The advantages are that they pay you regardless of whether you have other hospital coverage, and the money is yours to spend as you see fit.

The disadvantage is that they pay only if you're hospitalized. No matter what your medical bills are, you can't collect unless you're in the hospital.

And depending on the policy you choose, you may not collect much even then. Under New Jersey's minimum standards, policies must begin paying by day four of your hospital stay. But they don't have to pay before the fourth day, so if you go home after three, you may not see a dime. Some policies stop paying after 31 days.

The other thing to be careful about is that the payments made to you may be much lower than your bills—even though policies sold in New Jersey are required to pay at least $40 a day. Also, the amount of the benefit can remain the same year after year, so unless you update your coverage occasionally, inflation will take its toll on the value of the payments. If you do buy a hospital indemnity policy, try to update it every few years.

Don't buy a hospital indemnity policy as your only additional health coverage to supplement Medicare.

Long Term Care Policies

Long-term care refers to a wide range of medical and non-medical services people need for a long period of time due to a chronic illness, disability, or physical or mental handicap. Long-term care can be provided in a nursing home, at home or in a community facility.

Long-term care insurance policies cover different levels of nursing home care—skilled, intermediate, and custodial. Some will also help pay for alternatives to nursing home care: for example, home care and adult day care.

Before you buy a long-term care policy, be sure to read the policy provisions carefully. Will the policy pay benefits for skilled, intermediate and custodial nursing home care? Will it cover home health care? What is the definition for each level of care? Is there a waiting period (a period of time you have to be in the nursing home or receive home care before the policy will pay benefits)? Does the policy specifically exclude coverage for any conditions? How long will the policy pay benefits? Under what conditions can the company cancel or refuse to renew the policy?

For a copy of our "Buyer's Guide to Long-Term Care Insurance", send a self-addressed legal size envelope to: Long-Term Care Buyer's Guide, Public Affairs Division, Department of Insurance, CN 325, Trenton, New Jersey 08625

Accidents Only

*Accident-only policies provide coverage for death, dismemberment, or hospital and medical care due to an **accident**. They are not designed to pay routine health care costs.*

Specified Disease Policies

*You may have received advertisements in the mail for "dread disease policies"—policies that will cover you for specific diseases, like cancer. They are such a bad buy that **they are banned for sale** in New Jersey.*

Specified disease policies are a bad buy because they pay in so few situations that odds are heavily stacked against the company ever paying you anything.

Be An Educated Consumer

Now that you know what Medicare does and does not cover, and what kinds of policies are out there, you are ready to set your strategy.

If you are concerned about day-to-day expenses, look for a policy that pays in as many situations as possible. Generally speaking, your money would be better spent on something like a Medicare supplement policy which covers a broad spectrum of medical expenses than on a hospital indemnity policy which pays only a small portion of the total daily hospital cost.

Don't duplicate coverage. It's better to buy the most comprehensive policy you can afford than several policies that duplicate coverage. Some policies will will not pay for an expense already covered under another policy. So if you buy two of the same kind of policy, you can wind up with two sets of payments but only one set of benefits. **It is a federal crime** for someone to knowingly sell you a policy that duplicates Medicare or any private health policy you already have, but that will not pay costs covered by another insurance policy.

If you have a good basic supplement policy and want to add a hospital indemnity policy to it, be sure to update the coverage every few years, so that inflation doesn't erode the value of the coverage.

Watch Out for Key Phrases

Policies are contracts, and like other legal documents, they use special vocabulary, including:

Waiting periods, *If you're buying a new policy, you may have to wait up to 30 days before you will be eligible to collect anything. Some policies also have waiting periods of up to six months for specific conditions (for example, varicose veins) unless the conditions are considered a medical emergency and treated as such.*

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If you're considering converting or continuing your employee coverage, you are less likely to have a waiting period. If you're thinking about buying a new policy, don't rush out and cancel an existing policy. Keep the old policy until the new one begins paying benefits.

Pre-existing Condition Exclusions. Policies may not pay bills for a health condition you had before you bought the policy. This usually isn't a problem with coverage extended by employers, and in New Jersey, Medicare supplements must pay for any conditions after you've had the policy for six months. But policies that are not called Medicare supplements, such as hospital indemnity policies, can have pre-existing condition exclusions of up to two years.

Renewal. Find out if and when a company can refuse to renew the policy. There are three common types of renewal conditions:

Guaranteed renewable. This means that the company agrees to renew each year until you reach a certain age or for life as long as you pay the premium.

You may see policies that are:

Conditionally renewable. This means that the company agrees to renew as long as the company continues to insure people in the state with the same kind of policy. If the company decides to discontinue selling that kind of policy here, the coverage can be non-renewed at the end of the policy year or the next premium due date.

Renewable at company option. A policy with this provision can be non-renewed for any reason at the end of the policy year. This kind of clause is prohibited in New Jersey for individual policies, but you may see sales materials for policies with this type of renewal clause from outside the state.

Outline of Coverage. *Don't be pressured or frightened into buying something you may not ever be able to use, like a cancer policy. If the literature you have doesn't discuss the important items mentioned here, ask for an Outline of Coverage, which companies are required to supply.*

A Few Cautions

Don't be fooled into thinking that a company or agent represents Medicare or any other federal or state sponsored insurance program. The N.J. Department of Insurance sets minimum standards for policies and companies, but ***it does not endorse or sell policies.***

Be honest on the insurance application. If you lie or don't give a complete medical history, the company can refuse to pay. If someone else helps you fill out the application, check it before signing. It is your claim that will be denied if incorrect medical history is on the application.

Don't pay in cash. *Use a check, money order or bank draft and be sure it is payable to the company, not the agent or anyone else. Remember, even a guaranteed renewable policy can be cancelled if you don't pay your premium, so you want a record of your payments.*

By law, you have a 30-day "free look" to read the policy and return it for a full refund if you are not satisfied.

If you don't receive the policy within 30 days after applying, contact the company and obtain in writing a reason for the delay. If 60 days go by without information, call or write the Department of Insurance.

It is a violation of state regulations for your doctor to charge you a fee for filling out your claim form. If your doctor does charge you, you can file a complaint with the State Board of Medical Examiners, 28 W. State Street, Room 602, Trenton, NJ 08608.

Claim payments should be mailed promptly. So if you experience delays, don't be afraid to assert your rights. Insurance companies sometimes make mistakes: your inquiry or complaint may help to bring a faster or fairer claim settlement.

Getting Help

To get help filling out claim forms, evaluating policies and finding answers to your health insurance questions, you can contact the Senior Health Insurance Program (SHIP). SHIP is a free service designed to help you with your health insurance problems or questions. You can contact the New Jersey Division on Aging at 1-800-792-8820 for the number of the SHIP office in your county.

If you need other help, write the Department of Insurance, Enforcement and Consumer Protection, Senior Health Insurance Program, CN-325, Trenton, New Jersey 08625.

LABOR
(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

1992 Maximum Weekly Benefit Rates
1992 Taxable Wage Based Under the Unemployment Compensation Law
1992 Contribution Rate of Government Entities and Instrumentalities
1992 Base Week
1992 Alternative Earnings Test
Adopted Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6 and 1.7

Proposed: September 3, 1991 at 23 N.J.R. 2611(a).
Adopted: October 23, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: October 24, 1991 as R.1991 d.573, **without change.**
Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.
Effective Date: November 18, 1991.
Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being $308.00 per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being $288.00 per week.

(c) These maximum benefits shall be effective for the calendar year 1992 on benefit years and periods of disability commencing on or after January 1, 1992.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first $15,300 during the calendar year 1992.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being four-tenths of one percent (0.4 percent) for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1992.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being $110.00 per week for benefit years and period of disability commencing on or after January 1, 1992.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and N.J.S.A. 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being $6,600 for benefit years and period of disability commencing on or after January 1, 1992.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service
Examination and Purchase of Division of Motor Vehicle Records

Adopted New Rules: N.J.A.C. 13:18-11.3, 11.4 and 11.5

Proposed: September 16, 1991 at 23 N.J.R. 2857(a).
Adopted: October 23, 1991 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.
Filed: October 24, 1991 as R.1991 d.575, **without change.**
Authority: N.J.S.A. 39:2-10, 39:3-28, 39:6-42 and 47:1A-1 et seq.
Effective Date: November 18, 1991.
Expiration Date: March 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:18-11.3 Public records; examination; purchase of copies; exemption

(a) Except as otherwise provided in N.J.S.A. 47:1A-1 et seq. or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal Law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records which are required by law to be made, maintained, or kept on file by the Division of Motor Vehicles shall be considered public records. Public records shall be available for examination by the citizens of New Jersey during the regular business hours of the Division at the Trenton Regional Service Center, 120 South Stockton Street, Trenton, New Jersey or other office of the Division as determined by the Custodian of Records. Citizens of New Jersey shall have the right to copy public records by hand under reasonable supervision during regular business hours. Citizens shall have the right to purchase copies of public records by written request upon payment of the fee as set forth in N.J.A.C. 13:18-11.4.

(b) The right of examination of public records pursuant to N.J.S.A. 47:1A-3 may be denied in cases where the records being sought for examination pertain to any investigation in progress, if the inspection, copying, or publication of the records is not in the best interest of the public.

13:18-11.4 Fees; information search; exemption

(a) A citizen requesting to purchase a public record shall pay the fee established by the Division as set forth in this section.

(b) The fees are as follows:

1. A complete Driver History Abstract (other than an abstract issued to an insurance company pursuant to N.J.S.A. 39:6-42):
i. Uncertified, $4.00.
ii. Certified, $5.00.
2. A Notice of Scheduled Suspension, Order of Suspension or Notice of Restoration:
i. Uncertified, $4.00.
ii. Certified, $5.00.
3. Violation Record:
i. Uncertified, $4.00.
ii. Certified, $5.00.
4. Mail Lists:
i. Uncertified, $4.00.
ii. Certified, $5.00.
5. Registration or Driver License Application:
i. Uncertified, $4.00.
ii. Certified, $5.00.
6. Boat Registration Application:
i. Uncertified, $4.00.
ii. Certified, $5.00.
7. Final Decision of Director:
i. Uncertified, $4.00.
ii. Certified, $5.00.
8. File Search of Division Records:
i. Uncertified, $4.00.
ii. Certified, $5.00.

(c) Payment shall be made by check or money order payable to the New Jersey Division of Motor Vehicles.

(d) Government agencies are exempt from the fees set forth in this section.

(e) Notwithstanding the fees set forth in this section, the Director shall have discretion to establish fees for high volume tape to tape users depending upon the type and volume of information requested.

13:18-11.5 Procedure for record examination or request to purchase public records

A private citizen may request a copy of a public record, or make inquiry concerning the examination of a public record, by contacting:

Official Custodian of Records
New Jersey Division of Motor Vehicles
120 South Stockton Street
Trenton, New Jersey 08666
Attn: Manager, Bureau of Information Update and Retrieval
Telephone: (609) 292-4572

(b)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Bioanalytical Laboratory Directors
Examinations of Material from the Human Body

Adopted Amendment: N.J.A.C. 13:35-3.6

Proposed: January 7, 1991 at 23 N.J.R. 23(a).
Adopted: October 9, 1991 by the State Board of Medical Examiners, Sanford Lewis, M.D., President.
Filed: October 21, 1991 as R.1991 d.565, **with technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:9-2.
Effective Date: November 18, 1991.
Expiration Date: September 21, 1994.

The State Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C 13:35-3.6(d), which delineates from whom a bioanalytical laboratory director would be authorized to accept human specimens for examination. The official comment period ended on February 6, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 7, 1991 at 23 N.J.R. 23(a). Announcements were also forwarded to: The Trenton Times, the Star Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Medical Examiners, Room 602, 28 West State Street, Trenton, N.J. 08608.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners received eight comments regarding the proposed amendment. These comments were received from Marvin Lessig on behalf of the New Jersey Society of Pathologists, Evan M. Cadoff, M.D., Assistant Professor of Clinical Pathology at the University of Medicine and Dentistry of New Jersey (UMDNJ), William V. Harrer, M.D., Laboratory Director at Our Lady of Lourdes Medical Center, Felipe A. Quierimet, Jr. of St. Clares Riverside Medical Center, Alvin M. Salton, M.B.A., Bioanalytical Laboratory Director of Community Medical Laboratories, Robert M. Fogel, D.O., Chairman and Professor of Clinical Pathology at UMDNJ, Kirby T. Hannan of Met Path and

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Bessie M. Sullivan, M.D., President of the Union County Medical Society.

A summary of the comments received and responses of the Medical Board follows:

COMMENT: Marvin Lessig, D.O. on behalf of the N.J. Society of Pathologists, Evan M. Cadoff, M.D., Assistant Professor of Clinical Pathology at UMDNJ, and William V. Harrer, M.D., Laboratory Director at Our Lady of Lourdes Medical Center, comment that requiring a laboratory director to sign each lab report is not compatible with practice in the electronic age of reporting. The comments suggest it is unduly burdensome to require an original signature.

RESPONSE: The Board did not intend to limit signatures on laboratory reports to manual signatures. The Board points to a policy statement, in place since 1984, which provides that laboratory results which interpret test data must bear the original signature of the lab director. Reports reflecting numerical values, however, may carry a rubber stamp signature under the supervision of the lab director provided that the rubber stamp signature is on file with the hospital and identified for that physician. The Board is substituting the phrase "signed by" with "shall be submitted bearing the original, rubber stamp or electronic signature of" in order to clarify the intent of the Board to include rubber stamps and electronic signatures, as acceptable, pursuant to Board policy.

COMMENT: Dr. Lessig of the New Jersey Society of Pathologists along with Evan Cadoff, M.D., Assistant Professor of Clinical Pathology at UMDNJ, expressed concern that this rule precludes a patient from obtaining test results.

RESPONSE: The Board reviewed this comment and concludes that the logical reading of this rule does not prohibit a patient from receiving the results of laboratory tests. The test result will automatically be sent to a person who is authorized by this rule to initiate a test. Although the result is not automatically sent to the patient, this rule does not limit a patient's right to request and receive his test result. Therefore, no change will be made.

COMMENT: Dr. Felipe A. Quierimet, Jr. of St. Clares Riverside Medical Center expressed concern that the phrase delineating who is authorized to order a test, "State Board of Medical Examiners' authorized person," was vague.

RESPONSE: In response to this comment, the Board is substituting the clarifying language "health care professional authorized by Board rule." In this manner, Board rules may be referenced to make the list more specific. The substituted language also clarifies that the list pertains to categories of professionals and not individuals.

COMMENT: Several commenters stated that direct patient access to laboratory tests should be allowed. Some of the commenters advocated a blanket direct access and others advocated limited direct access such as for pregnancy, glucose or cholesterol testing.

RESPONSE: The Board's view is that public access to over-the-counter tests for home use satisfies the limited access issue. However, the Board feels strongly that the interpretation and counseling functions that a licensee peforms are essential. Therefore, laboratory tests should be an adjunct to total health care. The Board views the restriction on direct patient access to laboratory tests to be one of the most significant benefits of the rule amendment, and therefore, no modification will be made.

COMMENT: Bessie M. Sullivan, M.D., President of the Union County Medical Society, expressed concern about physicians with limited licenses receiving results of laboratory data that they are not licensed to interpret.

RESPONSE: The Board does not find this a concern, as there are statutes governing the scope of practice of these health care professionals. If there are any abnormalities outside of their scope of practice, limited licensed physicians would be obliged to refer the case to a plenary physician and therefore no modification will be made.

COMMENT: William Harrer, M.D., expressed concern that an employer wishing to order random drug testing on his employees would be precluded from doing so by this rule.

RESPONSE: It is the Board's view that an employer will utilize the services of a person authorized by this rule to initiate and interpret the lab test. In this manner, employers may conduct random drug testing on employees providing the tests are initiated by a person authorized by this rule to do so.

Summary of Changes Upon Adoption:

1. The words "osteopathic physician" were deleted as redundant from the list of categories of professionals authorized to initiate and receive laboratory test results. The phrase was inadvertently included in the proposal, and the Board wishes to clarify that an osteopathic physician is a "licensed plenary physician." Therefore, since "licensed plenary physician" is one category listed, it would be redundant to have a separate category listing "osteopathic physician."

2. In response to a comment from the Director of Laboratories at Saint Clares Riverside Medical Center, the more specific words "health care professional authorized by Board rule" were substituted for the words "State Board of Medical Examiners' authorized person" in the first sentence of N.J.A.C. 13:35-3.6(d). This clarification was made in order to specify the Board's intent more clearly by reference to Board rules. This substitution also serves to clarify that the phrase applies to categories of professionals and not individuals.

3. In response to comments from the New Jersey Society of Pathologists and the Directors of Clinical Pathology at UMDNJ and Our Lady of Lourdes Medical Center, the more specific words "bearing the original, rubber stamp or electronic signature of" were substituted for the words "signed by" in the second sentence of N.J.A.C. 13:35-3.6(d). This change was made in order to clarify the Board's intent that this rule conform with longstanding Board policy with regard to acceptable alternative forms of signature on laboratory reports.

4. The word "may" was deleted in the last sentence of N.J.A.C. 13:35-3.6(d) as a technical grammatical change which has no effect on the operation of the rule.

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

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physician

(a)-(c) (No change.)

(d) It shall be deemed to be professional misconduct for a bioanalytical laboratory director to accept a request for examination of material from the human body unless the request originates from a licensed plenary physician, *[osteopathic physician,]* dentist, podiatrist, chiropractor or any other *[State Board of Medical Examiners' authorized person]* ***health care professional authorized by Board rule***, public health officer or agency or local board of health. The reports of the scientific data obtained shall be submitted in writing *[signed by]* ***bearing the original, rubber stamp or electronic signature of*** a licensed laboratory director and shall be addressed to individuals who *[may]* originate a request pursuant to this subsection.

(a)

DIVISION OF STATE POLICE

Licensing and Registration of Dealers and Manufacturers; Sale, Purchase, Acquisition and Transfer of Firearms by Dealers to Eligible Persons; Investigation of Applications and Qualifications for Permits to Carry Handguns; Security Systems

Adopted New Rules: N.J.A.C. 13:54

Proposed: August 5, 1991 at 23 N.J.R. 2250(a).

Adopted: October 17, 1991 by Colonel Justin J. Dintino, Superintendent, Division of State Police.

Filed: October 18, 1991 as R.1991 d.564, **without change.**

Authority: N.J.S.A. 2C:58-2 et seq. and 2C:39-1 et seq.

Effective Date: November 18, 1991.

Expiration Date: November 18, 1996.

The Division of State Police afforded all interested parties an opportunity to comment on the adoption of proposed new rules N.J.A.C. 13:54, regarding (1): the licensing of firearms retailers; (2) the sale, purchase, acquisition and transfer of firearms by dealers; (3) the investigation of applicants for permits to purchase and/or carry firearms; and (4) security systems. Announcement of the opportunity to comment on the proposed adoption appeared in the New Jersey Register on August 5, 1991 at 23 N.J.R. 2250(a). The comment period expired on September 4, 1991. Thereafter, the comment period was extended.

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Notice of the proposed new rule, and a 30-day opportunity to comment thereon, was published in The Newark Star Ledger, The Trenton Times, The Asbury Park Press and The Camden Courier Post, all newspapers of general circulation.

Summary of Public Comments and Agency Responses:

The Counsel to the Coalition of New Jersey Sportsmen submitted the only written comments.

COMMENT: The rules should not mandate that sellers of rifles or shotguns who are not licensed dealers must file a certification with a law enforcement agency.

RESPONSE: As written, N.J.A.C. 13:54-1.8(a) does not mandate that all sellers of rifles or shotguns who are not licensed dealers must file a certification with a law enforcement agency. The rule employs the phrase "may" rather than "shall" with regard to filing certifications in instances where non-licensed sellers transfer shotguns or rifles by production of firearms identification cards. This is consistent with the applicable statute (**N.J.S.A.** 2C:58-3b).

COMMENT: The rule (N.J.A.C. 13:54-1.15) should not require that access to background investigations conducted for licenses, permits, firearms identification cards and registrations be confidential in the case of applicants.

RESPONSE: The rule is consistent with case law in this State which does not generally permit persons access to confidential background investigations, even pertaining to themselves. See *Nero v. Hyland,* 76 *N.J.* 213 (1978). However, the rule explicitly recognizes the ability of a court of competent jurisdiction to order its relaxation in appropriate circumstances.

It should be noted that N.J.A.C. 13:54 expired on October 5, 1991, pursuant to Executive Order No. 66 (1978). Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted **without change** as new rules by the Division of State Police on October 17, 1991, effective November 18, 1991.

CHAPTER 54
FIREARMS AND WEAPONS

SUBCHAPTER 1. FIREARMS IDENTIFICATION CARD AND PERMIT TO PURCHASE A HANDGUN

13:54-1.1 Firearms purchaser identification cards and permits to purchase handguns

This subchapter prescribes the requirements and procedures for the issuance of firearms purchaser identification cards, permits to purchase handguns and the general rules for holders of such permits and identification cards.

13:54-1.2 Definitions

The words and terms used in this chapter shall have the following meanings.

"Ammunition" means various projectiles, including bullets, missiles, slugs or balls together with fuses, propelling charges and primers that may be fired, ejected, projected, released, or emitted from firearms or weapons.

"Antique cannon" means any weapon which satisfies the definition of an antique firearm and which is also capable of firing a projectile of a caliber greater than .60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes.

"Antique firearm" means any firearm which is incapable of being fired or discharged, or which does not fire fixed ammunition regardless of data of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

"Assault firearms" means:

1. The following firearms:

Algimec AGM1 type

Any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

G3SA type

Galil type

Heckler and Koch HK91, HK93, HK94, MP5, PSG-1

Intratec TEC 9 and 22 semi-automatic firearms

M1 carbine type

M14S type

MAC 10, MAC 11, MAC 11-9 mm carbine type firearms

PJK M-68 carbine type

Plainfield Machine Company Carbine

Ruger K-Mini-14/5F and Mini-14/5RF

SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types

SKS with detachable magazine type

Spectre Auto carbine type

Springfield Armory BM59 and SAR-48 type

Sterling MK-6, MK-7 and SAR types

Steyr A.U.G. semi-automatic firearms

USAS 12 semi-automatic type shotgun

Uzi type semi-automatic firearms

Valmet M62, M71S, M76, or M78 type semi-automatic firearms

Weaver Arm Nighthawk

2. Any firearm manufactured under any designation which is substantially identical to any of the firearms listed in paragraph (1) above;

3. A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a folding stock or a pistol grip; or a semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds. For purposes of this paragraph, "semi-automatic" means a firearm which fires a single projectile for each pull of the trigger and is self-reloading or automatically chambers a round, cartridge or bullet. For purposes of this paragraph "pistol grip" means a well defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand;

4. A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

"Body armor penetrating bullets" means any bullet designed for use in handguns and whose core or jacket, if the jacket is thicker than .025 of an inch, is of tungsten carbide or hard bronze or is made of other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale and is capable of breaching or penetrating body armor.

"Chief of police" or "chief police officer" means the highest ranking member of a municipal police department.

"Firearm or firearms" means any handgun, rifle, shotgun, machine gun, assault firearm, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile, ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

"Gunsmith" means a person who is in the business of repairing or servicing firearms.

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"Handgun" means any pistol, revolver, or other firearm originally designed or manufactured to be fired by the use of a single hand.

"Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

"Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom.

"Manufacturer" means any person who receives or obtains raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks, and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and raw materials or parts solely for the repair of existing firearms.

"Person" means any individual, corporation, partnership, firm or association of any kind or nature whatsoever; any public entity of any kind or nature; the plural as well as the singular and any gender.

"Retail dealer" means any person, including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers, or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

"Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

"Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breach to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breach to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

"Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

"Superintendent" means the Superintendent of the New Jersey State Police.

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all:

1. Firearms, even though not loaded or lacking a clip or other component to render them immediately operable;

2. Components which can be readily assembled into a weapon;

3. Gravity knives, switch-blades, knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cestus or similar leather bands studded with metal filings or razor blades imbedded in wood; and

4. Stun guns and any other weapon or other device which projects, releases or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

"Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

13:54-1.3 Firearm identification card or permit to purchase required

(a) No person, other than a licensed or registered retail or wholesale dealer, shall receive, purchase or otherwise acquire a rifle, shotgun or antique cannon, other than an antique rifle or shotgun, unless that person possesses and exhibits a valid firearms purchaser identification card. No person shall sell, give, transfer, assign or otherwise dispose of a rifle, shotgun or antique cannon to a person other than a licensed or registered retail or wholesale dealer unless the buyer or receiver possesses and exhibits a valid firearms purchaser identification card. No person shall sell or acquire a sawed-off shotgun.

(b) No person, other than a licensed or registered retail or wholesale dealer shall receive, purchase or otherwise acquire a handgun unless that person possesss and exhibits a permit to purchase a handgun. No person shall sell, give, transfer or assign or otherwise dispose of a handgun to a person other than a licensed or registered retail or wholesale dealer unless the buyer or receiver possesses and exhibits a valid permit to purchase.

(c) The provisions of (a) and (b) above shall not apply to the Armed Forces of the United States, the National Guard or to a law enforcement agency; provided that such transactions are authorized in writing by the appropriate governmental entity as provided by this chapter.

13:54-1.4 Applications for a firearms purchaser identification card and for a permit to purchase a handgun

(a) Every person applying for a firearms purchaser identification card or for a permit to purchase a handgun shall furnish such information and particulars as are set forth in the application form designated STS-33, in the case of an identification card, or STS 33A, in the case of a permit to purchase. Forms can be obtained from municipal police departments, State Police stations and licensed retail firearms dealers.

(b) The applicant shall waive any statutory or other right of confidentiality relating to institutional confinement.

(c) The applicant shall provide the names and addresses of two reputable citizens personally acquainted with him as references.

(d) The application shall be signed by the applicant and the completed application, together with two sets of the applicant's fingerprints and fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c. 69), a consent for mental health records search form designated STS-1 and a nonrefundable application fee of $5.00 for a firearms identification card and $2.00 for a permit to purchase a handgun, shall be submitted to the chief of police of an organized full time police department in the municipality in which the applicant resides. If the municipality does not have an organized full time police department, application shall be made to the State Police station servicing the municipality in which the applicant resides, or to any State Police station in the case of a non-resident.

(e) The chief of police of an organized full time police department of the municipality where the applicant resides, or the Superintendent, when the applicant is a non-resident of this State or when the municipality does not have a full time department, shall accept and investigate applications for firearms purchaser identification cards and permits to purchase handguns.

(f) The fingerprints of any applicant shall be compared with any fingerprints maintained by the State Bureau of Identification and the Federal Bureau of Identification for the purpose of ascertaining the existence of any criminal record. The fingerprints shall be obtained and submitted for such comparison by the chief of police or the State Police, as the case may be.

(g) An applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which he or she was previously fingerprinted, and who provides other reasonable satisfactory proof of his or her identity, in the discretion of the chief of police or Superintendent, need not be fingerprinted again. In such case, the chief of police or superintendent shall otherwise fully investigate the application in accordance with this subchapter.

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(h) Applicants for a permit to purchase a handgun may apply for more than one permit per application. The number of permits requested, and each permit number shall be entered in the spaces provided on the application.

(i) The chief of police or the Superintendent, as the case may be, shall either approve or disapprove the applications. Permits and cards shall be issued by the chief of police or the Superintendent to persons who are found to be qualified and who are not subject to any of the disabilities set forth by this subchapter.

13:54-1.5 Prerequisites for a permit to purchase handgun or a firearms purchaser identification card

(a) Every person issued a permit to purchase a handgun, or a firearms purchaser identification card, shall be 18 years of age and of good repute in the community in which he lives.

(b) A permit to purchase a handgun, or a firearm purchaser identification card, shall not be issued to any person:

1. Who has been convicted of any crime;
2. Who is drug dependent as defined by N.J.S.A. 24:21-2;
3. Who has been or is then confined for a mental disorder in any institution;
4. Who is a habitual drunkard or an alcoholic;
5. Who suffers from a physical defect or disease which would make it unsafe for him or her to handle firearms;
6. Who knowingly falsifies any information on the application form for a permit to purchase a handgun or firearms purchaser identification card;
7. Who refuses to waive statutory or other rights of confidentiality relating to institutional confinement; or
8. Where the issuance would otherwise not be in the interest of the public health, safety and welfare.

13:54-1.6 Exception for physical disability, mental disorder or alcoholism

A permit or identification card may be issued to a person who had previously suffered from a physical defect or disease, or mental disorder, or was an alcoholic if the applicant provides a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof that he or she is no longer suffering from that particular disability in such a manner that it would interfere with or handicap him or her in the handling of firearms.

13:54-1.7 Validity of firearms identification card and permit to purchase a handgun

(a) A firearms purchaser identification card shall be valid until such time as the holder becomes subject to any of the disabilities set forth by law and this subchapter pertaining to an applicant's eligibility. Upon becoming subject to any of the disabilities set forth in this subchapter, the card shall be void and shall be returned to the Superintendent within five days.

(b) A permit to purchase a handgun shall be valid for a period of 90 days from date of issuance and may be renewed by the issuing authority for an additional 90 days, for a total of 180 consecutive days.

13:54-1.8 Written certification; delivery of permit to purchase

(a) Any person receiving, purchasing or otherwise acquiring a firearm by exhibiting a firearms purchaser identification card shall sign a written certification on form NJSP 634 which shall indicate that he or she presently complies with all of the requirements for obtaining an identification card and does not suffer from any of the disabilities set forth in this subchapter. The certification shall contain his or her name, address and firearms purchaser identification number. If the seller is not a licensed dealer, the certification may be filed with the chief of police of the municipality in which he resides or, in all other cases, with the Superintendent. The seller shall retain the certification if he is a licensed dealer.

(b) A permit to purchase a handgun shall be issued to the applicant in quadruplicate. Prior to receiving a handgun from the seller, the purchaser must deliver all copies of the permit to the seller, who shall complete all of the information on the required form. Within five days of the sale the seller shall forward the original copy to the Superintendent and the second copy to the chief of police of the municipality where the purchaser resides; provided that in a municipality having no chief of police, the second copy shall be forwarded to the Superintendent. The third copy shall be returned to the purchaser, and the fourth shall be kept by the seller as a permanent record.

13:4-1.9 Number of firearms that may be purchased

(a) Only one handgun may be purchased or delivered on each permit to purchase.

(b) There shall be no restriction on the number of rifles, shotguns and antique cannons that may be purchased or acquired, provided the receiver possesses a valid firearms purchaser identification card and otherwise complies with all of the provisions of this subchapter.

13:54-1.10 Revocation of a firearms purchaser identification card

(a) A firearms purchaser identification card may be revoked by a judge of the Superior Court of the county wherein the card was issued, after a hearing, and upon a finding that the holder no longer qualifies for the issuance of such a card.

(b) The county prosecutor, any law enforcement officer or any citizen may request a hearing for revocation by applying to the Superior Court of the county in which the card was issued.

(c) Any person having knowledge that a person is subject to any of the disabilities set forth in this subchapter to obtain or possess a permit to purchase a handgun or a firearms purchaser identification card may notify the chief of police, the Superintendent or any other law enforcement officer who may take such action as may be deemed appropriate.

13:54-1.11 Duplicate firearms purchaser identification card

(a) Persons shall apply for a duplicate firearms purchaser identification card to replace a lost, stolen or mutilated card, or in the case of a change of residence by the holder, within 30 days of such loss, theft, mutilation, or change of residence.

(b) The applicant shall complete an application for a duplicate firearms purchaser identification card designated as form STS-3 and a consent for mental health records search designated as form STS-1 and present same to the chief of police in the municipality where the applicant resides or to the Superintendent in all other cases.

(c) It shall be the responsibility of the chief of police of the municipality wherein the applicant currently resides or the Superintendent in all other cases, to conduct a criminal history records check and to determine if the applicant is subject to any of the disabilities as provided by law and this subchapter and to issue the duplicate card, should the applicant qualify. The applicant shall pay the appropriate fee for a Criminal History Record Check as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69).

13:54-1.12 Appeal

(a) Any person denied a firearms purchaser identification card or a permit to purchase a handgun may request a hearing in the Superior Court of the county in which he or she resides or in the Superior Court of the county in which his or her application for a firearms purchaser identification card was denied if he or she is a nonresident.

(b) Any person denied a firearm purchaser identification card or a permit to purchase a handgun shall be notified in writing by the issuing authority of the reasons for the denial.

(c) The request for a hearing shall be made in writing within 30 days of the denial, and such request shall also be served upon the chief of police or the Superintendent.

13:54-1.13 Firearms passing to heirs or legatees

(a) Notwithstanding the provisions of this subchapter concerning the acquisition of a firearm, a permit to purchase a handgun or a firearms purchaser identification card shall not be required of an heir or legatee for the passing of a firearm, upon the death of its owner. A person so acquiring ownership may retain the firearm if he or she meets the requirements of N.J.A.C. 13:54-1.5 and 1.6.

(b) If an heir or legatee is not qualified to acquire a firearm, he or she may retain ownership of the firearm for the purpose of sale for a period of 180 days, which period may be extended by the chief

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of police or the Superintendent. During such period the firearm must be placed in the custody of the chief of police or Superintendent.

(c) In the case of assault firearms or machine guns disposition shall be in accordance with N.J.A.C. 13:54-5.

13:54-1.14 Limitation on fees

No fees, other than those established by this chapter or law, shall be assessed or charged to any person by any governmental entity of this State for the processing of applications, or for the proper investigation of applicants for licenses, permits, cards and registrations in accordance with the provisions of this chapter.

13:54-1.15 Confidentiality of background investigation

Any background investigation conducted by the chief of police, the Superintendent or county prosecutor of any applicant for a license, permit, card or registration in accordance with the requirements of this chapter, shall not be disclosed to any person, not authorized by law or this chapter to have access to such investigation, including the applicant, except upon order of a court of competent jurisdiction.

SUBCHAPTER 2. HANDGUNS

13:54-2.1 Permit to carry a handgun

This subchapter prescribes requirements and procedures for the issuance, renewal and revocation of permits to carry handguns.

13:54-2.2 Permit required

No person, except as provided in N.J.S.A. 2C:39-6, shall carry, hold or possess a handgun without first having obtained a permit to carry the same in accordance with the provisions of this chapter.

13:54-2.3 Criteria for the issuance of a permit to carry a handgun

(a) No application for a permit to carry a handgun shall be approved by a police chief of a municipality, the Superintendent or the Superior Court, unless the applicant:

1. Is a person of good character who is not subject to any of the disabilities which would prevent him or her from obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter;

2. Has demonstrated that at the time of the application for the permit he or she is thoroughly familiar with the safe handling and use of handguns; and

3. Has demonstrated a justifiable need to carry a handgun.

13:54-2.4 Application for a permit to carry a handgun

(a) Every person applying for a permit to carry a handgun shall furnish such information and particulars as set forth in the application form designated SP 642. The application shall be signed by the applicant under oath and shall be endorsed by three reputable persons who have known the applicant for at least three years preceding the date of application, and who shall also certify thereon that the applicant is a person of good moral character and behavior. Applications can be obtained at police departments and State Police stations.

(b) Each applicant shall demonstrate a thorough familiarity with the safe handling and use of handguns by indicating in the space provided therefor on the application form, and on any sworn attachments thereto, any relevant information. Thorough familiarity with the safe handling and use of handguns may be evidenced by:

1. Completion of a firearms training course substantially equivalent to the firearms training approved by the Police Training Commission as described by N.J.S.A. 2C:39-6j;

2. Submission of an applicant's most recent handgun qualification scores utilizing the handgun(s) he or she intends to carry as evidenced by test firings administered by a certified firearms instructor of a police academy, a certified firearms instructor of the National Rifle Association, or any other recognized certified firearms instructor;

3. Completion of a course or test in the safe handling of a handgun administered by a certified firearms instructor of a police academy, a certified firearms instructor of the National Rifle Association, or any other recognized certified firearms instructor; or

4. Passage of any test in this State's laws governing the use of force administered by a certified instructor of a police academy, a certified instructor of the National Rifle Association, or any other recognized certified instructor.

(c) Where available, the information in (b) above shall be accompanied and validated by certifications of the appropriate instructor(s). In the absence of, or in addition to (b)1 through 4 above, the applicant shall provide any other available and accurate information which may evidence his or her proficiency in the safe handling and use of firearms, including most recent handgun qualification scores and whether he or she utilized the handgun(s) he or she intends to carry, courses attended in the safe handling and use of firearms, and extent of knowledge, however gained, of this State's laws pertaining to the use of force in the defense of person and property.

(d) Each application form shall also be accompanied by a written certification of need which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. In the case of employees of private detective agencies, armored car companies and private security companies, that:

i. In the course of performing statutorily authorized duties, the applicant is subject to a substantial threat of serious bodily harm; and

ii. That carrying a handgun by the applicant is necessary to reduce the threat of unjustifiable serious bodily harm to any person.

(e) The completed application together with two sets of the applicant's fingerprints and fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69), four photographs (1½ × 1½ square), a consent for mental health records search form designated STS-1, and a permit fee of $20.00 payable to the County Clerk where the permit is to be issued shall be submitted to the chief of police of the municipality in which the applicant resides, or the Superintendent:

1. If there is no full time police department in the municipality where the applicant resides; or

2. If the applicant is a non-resident of this State or if the applicant is an employee of an armored car company.

13:54-2.5 Approval of application

The chief of police or the Superintendent, as the case may be, shall cause the applicant to be thoroughly investigated. The investigation shall include, but not be limited to, ascertaining that the applicant satisfies all of the requirements contained in this chapter for obtaining a permit to purchase a handgun or a firearms purchaser identification card, that the applicant has or has not demonstrated a thorough familiarity with the safe handling and use of handguns as evidenced by the application and accompanying materials, and that the applicant has or has not factually demonstrated a justifiable need to carry a handgun. The chief of police or the Superintendent shall approve or disapprove the application after completion of the investigation. If the application is approved, it shall be forwarded to the county clerk for presentation to a judge of the Superior Court of the county where the applicant resides, or if a nonresident or an employee of an armored car company, to a county where he or she intends to carry the handgun.

13:54-2.6 Application of employees of armored car companies

Any application to carry a handgun by an employee of an armored car company shall be accompanied by a letter from the chief executive officer of the armored car company verifying employment of the applicant, endorsing approval of the application and agreeing to notify the Superintendent within five days of the termination of an employee to whom any permit is issued, and agreeing to obtain from that employee the permit, which shall be immediately surrendered to the Superintendent.

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13:54-2.7 Issuance of a permit to carry a handgun

(a) Upon being satisfied of the sufficiency of the application and the fulfillment of the provisions of Chapter 58, Laws of 1979, the judge shall issue a permit.

(b) The court may, at its discretion, issue a limited type permit which would restrict the applicant as to the types of handguns he or she may carry and where and for what purposes such handguns may be carried.

(c) The Superintendent shall be provided with copies of all permits to carry handguns issued or re-issued by the Superior Court.

13:54-2.8 Appeal

(a) Any person making application for a permit to carry a handgun who is denied approval by the chief of police or the Superintendent may request a hearing in the Superior Court of the county in which he or she resides, or a county in which he or she intends to carry a handgun, in the case of a non-resident or an employee of an armored car company. Such request shall be made in writing within 30 days of denial of the application. Copies of the request shall be served on the Superintendent, the county prosecutor and the chief of police of the municipality where the applicant resides, if he or she is a resident of this State.

(b) If the application is denied by the judge of the Superior Court the appeal shall be made in accordance with law.

13:54-2.9 Duration and renewal

(a) All permits to carry a handgun shall expire two years from the date of issuance or, in the case of an employee of an armored car company, upon termination of his or her employment by the company occurring prior thereto, whichever is earlier in time.

(b) Permits must be renewed in the same manner and subject to the identical procedures by which the original permit was obtained. The chief of police, the Superintendent and the Superior Court shall process a renewal for a permit to carry a handgun utilizing the same criteria established by this chapter for the issuance of an initial permit. This includes, but is not limited to, a renewed showing by the applicant of need, a renewed demonstration of thorough familarity with the safe handling and use of handguns, as may be evidenced by recitation of all of the information requested on the initial application, including, but not limited to, the applicant's most recent qualification scores in the firing of a handgun.

13:54-2.10 Revocation of permits

(a) Any permit issued pursuant to this chapter shall be void at such time as the holder no longer meets the requirements of N.J.A.C. 13:54-1.5 and 1.6, and the holder of such a void permit shall immediately surrender it to the Superintendent who shall give notice to the licensing authority.

(b) Any permit may be revoked by the Superior Court, after hearing, upon notice to the holder of the permit, if the Court finds that the holder no longer satisfies the requirements of N.J.A.C. 13:54-2.3.

(c) The county prosecutor of any county, the chief police officer of any municipality, the Superintendent or any citizen may apply to the Court at any time for revocation of any permit issued pursuant to this chapter.

(d) Any person having knowledge that a person is subject to any of the disabilities set forth in this chapter and no longer qualifies to carry a handgun may so notify the chief of police, the Superintendent or any other law enforcement officer who may take such action as may be deemed appropriate.

SUBCHAPTER 3. RETAIL DEALERS

13:54-3.1 Licensing of retail dealers; general

This subchapter prescribes requirements for issuance of licenses to retail dealers for the retail sale of firearms, retail sale of ammunition, gunsmithing and the requirements for issuance of licenses to employees of such dealers.

13:54-3.2 Retail license required

No retail dealer of firearms nor any employee of a retail dealer shall sell or expose for sale or possess with intent to sell, any firearm, parts of firearms, ammunition, or engage in gunsmithing, unless such person has first obtained a retail dealers license issued pursuant to this chapter.

13:54-3.3 Application for license

(a) Every person, partnership or corporation applying for a retail dealer license shall furnish such information and particulars as required by the application form designated SP-649, and in the case of partnerships and corporations, the application form designated SP-649A shall also be completed. Such forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625. All corporations applying for such a license, in addition to the application, shall submit a valid copy of the most recent certificate of incorporation, or such other documentation establishing the corporation as a legal entity.

(b) The completed application, together with two sets of the applicant's fingerprints, a consent for mental health records search form designated STS-1, and a nonrefundable fee of $50.00 payable to the Superintendent, in addition to the fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69), shall be submitted to the Superintendent.

(c) Any person who possesses an actual or equitable controlling interest in an applicant corporation shall complete the necessary application form and be fingerprinted.

(d) No retail dealer, shall permit any employee or other person to engage in the purchase, sale or offering for sale of any firearms, ammunition or engage in gunsmithing, unless such employee or person has been licensed by the Superintendent. Every employee applying for such a license must submit a completed application form designated NJSP 641, accompanied with two sets of fingerprints and a consent for mental health records search form STS-1. An employee who possesses a firearms purchaser identification card need not be fingerprinted, provided that the number of the firearms purchaser identification card is included in block number 29 of the application, and provided that the employee continues to be eligible to retain such card in acccordance with the provisions of this chapter. A nonrefundable fee of $5.00 shall be paid by the retail dealer to the Superintendent for each employee in addition to the fingerprint fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985 c.69).

13:54-3.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership, and every officer and director of a corporation, making application for a retail dealer license shall be over the age of 21 in the case of a dealer, and over the age of 18 in the case of an employee of such dealer, and shall possess the qualifications required to obtain a permit to purchase a handgun and a firearms purchaser identification card as provided in this chapter.

(b) An employee who is licensed by the Superintendent to engage in the purchase or sale of firearms, ammunition or to engage in gunsmithing is licensed for so long as the employee remains in the employ of the retail dealer or becomes disabled as provided in this chapter.

(c) Should an employee be transferred from his or her licensed location to another location, by the same licensed employer, that employee shall apply for a transfer of his or her employee license by submitting application form NJSP-641, consent for mental health records search form STS-1, and shall surrender his or her current employee license to the Superintendent.

(d) A retail dealer shall, within five days, return any employees' license of an employee who has been terminated, transferred, or has become disqualified as provided in this chapter, to the Superintendent.

(e) No retail dealer shall conduct a retail business in a mobile or temporary facility("Mobile" meaning a facility easily moved from one location to another. "Temporary" meaning a facility not having indicia of permanency). A temporary facility includes, but is not limited to, places for garage sales, flea markets, gun shows and exhibits.

(f) No retail dealer shall conduct a retail firearms business unless local zoning requirements have been satisfied for the operation of such a business, and the Superintendent has been notified in writing

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that such requirements have been satisfied. The Superintendent may, in his or her discretion, decline to process or investigate an application for a retail dealer license until such time as the applicant demonstrates compliance with local zoning requirements.

13:54-3.5 Exemptions for physical handicap

A physical handicap shall not disqualify an applicant for a license unless such handicap would make it unsafe for the applicant to handle firearms or would interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety or welfare.

13:54-3.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of filing of an application for a retail dealer license shall not be required to furnish the personal data as set forth in the application form for officers or directors of such corporation or for the stockholders of such corporation unless such officers, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-3.7 Licensing of retail dealers and employees

(a) The Superintendent shall cause the applicant for a retail dealer license to be investigated for purposes of providing the judge of the Superior Court with such information as the Superintendent deems appropriate with respect to the applicant's qualifications and disabilities.

(b) Upon completion of the investigation, the application shall then be forwarded by the Superintendent, accompanied by such other documentation as he or she deems appropriate, to a judge of the Superior Court in the County wherein the retail dealer intends to conduct business.

(c) The judge shall issue a license to an applicant:

1. Who conforms to the standards and qualifications prescribed by the Superintendent;

2. Who may engage in business as a retail dealer without any danger to the public safety, health or welfare; and

3. Who is not subject to any of the disabilities which would prevent him from obtaining a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter.

(d) The Superintendent shall maintain a copy of every license issued by the Superior Court to a retail dealer.

(e) An employee of a retail dealer shall be licensed by the Superintendent provided that such person:

1. Qualifies for the issuance of a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter; and

2. Would not pose a danger to the public health, safety or welfare.

13:54-3.8 Duration of retail dealer license

A retail dealer license shall be effective for three years from the date of issuance. If a retail dealer license is renewed, it shall be effective for three years from the date of the expiration of the initial or most recent license.

13:54-3.9 Conditions of issuance of license; revocation

(a) All licenses issued pursuant to this subchapter shall be subject to the following conditions, the breach of which may result in license revocation by the court, after notice, upon the application of the Superintendent.

1. The business shall be carried on only in the building or buildings designated in the license, provided that repairs may be made by the dealer or his employees outside of such premises.

2. The license or a copy certified by the issuing authority shall be displayed at all times in a conspicuous place on the business premises where it can be easily read.

3. No firearm, ammunition or imitation thereof shall be placed in any window or in any other part of the premises where it can be readily seen from the outside.

4. No rifle or shotgun, except antique rifles or shotguns, shall be delivered to any person, other than a licensed or registered retail or wholesale dealer or manufacturer, or a law enforcement agency as provided in this chapter, unless such person possesses and exhibits a valid firearms purchaser identification card and furnishes to the seller, on form NJSP 634, a certification signed by him setting forth his name, permanent address, firearms purchaser identification card number and such other information as the Superintendent may require. The certification shall be retained by the dealer and shall be made available for inspection by any law enforcement officer at any reasonable time.

5. No handgun shall be delivered to any person, other than a licensed or registered retail or wholesale dealer or manufacturer, or a law enforcement agency as provided by this chapter, unless:

i. Such person possesses and exhibits a valid permit to purchase a handgun and at least seven days have elapsed since the date of application for the permit;

ii. The person is personally known to the seller or presents evidence of his identity; and

iii. The handgun is unloaded and securely wrapped.

6. The dealer shall keep a true record of every firearm sold, given or otherwise delivered or disposed of, in accordance with the provisions of this chapter.

7. The license holder no longer qualifies for the issuance of a permit to purchase a handgun or firearms purchaser identification card or poses a danger to the public health, safety or welfare.

8. The dealer shall comply with any other conditions regulating retail dealers as provided in this chapter.

9. Any person having knowledge that a person licensed pursuant to this chapter has violated any of the foregoing conditions or is otherwise unqualified to hold a license pursuant to the requirements of this chapter, may notify any law enforcement officer, who shall in turn notify the Superintendent, who may take such action as may be deemed appropriate.

13:54-3.10 Renewal of retail dealers and employees licenses

(a) An applicant for renewal of a retail dealer license shall follow all of the same procedures required for the issuance of an initial license, including completion of form NJSP 641 and submission of a consent for mental health records form STS 1. Such applications shall be accompanied by a nonrefundable fee of $50.00 payable to the Superintendent and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c. 69).

(b) In addition to the licensee, all licensed employees who engage in the purchase or sale of firearms, ammunition or engage in gunsmithing, must also submit renewal applications to continue transacting business on behalf of the licensee, including completion of form NJSP 641 and submission of a consent for mental health records form STS 1. Such applications shall be accompanied by a nonrefundable fee of $5.00 payable to the Superintendent and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c. 69).

(c) Retail dealers and employees of dealers applying for license renewal, at the time of such renewal, shall:

1. Continue to be qualified for the issuance of a permit to purchase a handgun or a firearms purchaser identification card as provided by this chapter;

2. Meet the standards and qualifications of the Superintendent; and

3. Not pose a danger to the public health, safety or welfare.

13:54-3.11 Security required

Each retail dealer shall install a system for the prevention and detection of the theft of firearms or ammunition from the business premises in accordance with N.J.A.C. 13:54-6.

13:54-3.12 Requirements for sale of rifle, shotgun, antique cannon or receiver

Every purchaser, other than a licensed or registered retail or wholesale dealer or manufacturer, or law enforcement agency as

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provided by this chapter, must present a valid firearms purchaser identification card to the dealer who is required to confirm the identity of the purchaser. The purchaser must also sign a certificate of eligibility (NJSP 634), filled out by the dealer or his licensed employee, for each rifle, shotgun, antique cannon or receiver purchased. The certificate shall indicate that the purchaser presently complies with all of the requirements for obtaining an identification card, and shall set forth the purchaser's name, address and identification card number. The certificate shall be retained by the dealer.

13:54-3.13 Requirements for sale of a handgun or frame

(a) Every purchaser, other than a licensed or registered retail or wholesale dealer or manufacturer, or law enforcement agency as provided by this chapter, must present a valid permit to purchase a handgun to the dealer who is required to confirm the identity of the purchaser. A permit is valid for the purchase of one handgun or receiver. The dealer is also required to adhere to the following procedures:

1. Complete and keep a form of register, which is part of the permit to purchase a handgun (designated SP-671) for each handgun sold and obtain the information sought by the form of register and obtain the signature and address of the purchaser in the purchaser's own handwriting;

2. Complete in a legible manner the permit to purchase a handgun in the space provided on the form;

3. Deliver the handgun unloaded and securely wrapped;

4. Forward the permit to purchase a handgun and form of register copies to the respective individuals, as noted on the forms, within five days of the date of sale. If the issuing authority is the State Police, both the original and the second copy of the permit to purchase and the form of register are to be forwarded to the State Police; and

5. Retain the form of register and make it available for inspection by any law enforcement officer at reasonable hours.

13:54-3.14 Permanent record of receipt and disposition of firearms and ammunition

(a) Every retail dealer of firearms or gunsmith shall maintain a permanent record of each firearm acquisition and disposition, including firearm frames and receivers. The record shall be maintained in a bound form and shall be kept at the location where the business is being conducted. The purchase or other acquisition of a firearm by the licensed dealer must be recorded no later than at the close of the next business day following the date of such purchase or other acquisition. The record shall show the date each firearm was purchased or otherwise acquired, the type, manufacturer, importer, caliber or gauge, model, name and address of the person from whom received, and the serial number of the firearm. The sale or other disposition of a firearm must be recorded by the licensed dealer not later than the close of the next business day following the date of such sale or disposition. The record shall show the date of sale or other disposition of each firearm, the name and address of the person to whom the firearm was transferred, and the type, manufacturer, importer, caliber or gauge, model and the serial number of the firearm. The information prescribed for the record required by this subchapter shall be in addition to the maintenance of the form of register SP 671 and the certificate of eligibility NJSP-634.

(b) Every retail dealer of ammunition shall maintain a permanent record of ammunition acquisition and disposition. The record of purchase or acquisition shall consist of invoices or other commercial records which shall be filed in an orderly manner separate from other commercial records maintained. Such record shall show the name of the manufacturer, the type, caliber or gauge, quantity of the ammunition acquired in the transaction, the date of each acquisition and from whom received. The record of sale or disposition shall be maintained in a bound form and shall contain the date of the transaction, name of manufacturer, caliber or gauge, quantity of ammunition sold, name, address and date of birth of purchaser, and identification used to establish the identity of purchaser. The dealer shall confirm the age of the purchaser of rifle and shotgun ammunition as 18, and handgun ammunition as 21. No record need be maintained for the sale or disposition of shotgun or rifle ammunition. However, sales or other dispositions of ammunition intended for use in any other firearm and which may be interchangeable between rifles and handguns, as well as hollow-nosed or dum-dum ammunition, must be recorded. The records shall be maintained in chronological order by date of acquisition and disposition and shall be kept at the location the business is being conducted.

(c) The firearms and ammunition acquisition and disposition record as prescribed under this section need not be required, provided the dealer maintains an updated Federal firearms and ammunition record on firearms or ammunition purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter 1 "Commerce in Firearms and Ammunition", and to the extent that the information required by this section is included on such records. If not included, then the Federal records are to be supplemented so as to include all information required by this section.

(d) Body armor penetrating bullets shall only be sold to a Federally licensed collector of firearms and ammunition who possesses a valid Collector of Curios and Relics License as defined in Title 18 U.S.C. sec. 921(a)(13) or to the Armed Forces of the United States or the National Guard, law enforcement agencies and licensed firearms dealers.

1. Collectors will be limited to the purchase or acquisition of not more than three rounds of each distinctive variation of cartridges. Distinctive variation includes a different head stamp, composition, design or color.

2. The seller shall record all sales of such ammunition including the name of the purchaser, the agency represented, the authorizing chief of police or other authorized law enforcement officer, or the highest ranking authorized military officer, the date, time and amount of ammunition.

3. All of the above information shall be forwarded to the Superintendent of the State Police within 48 hours of the sale or disposition.

13:54-3.15 Sale of firearms to the military and to law enforcement officers

Retail dealers licensed by this chapter may sell firearms to the Armed Forces of the United States, the National Guard and to law enforcement agencies. Retail dealers must maintain records of sale or disposition of firearms to any of the aforementioned entities or agencies. The records shall include the name of the entity or agency, and a written authorization of purchase on the official letterhead of the Superintendent, chief of police or the law enforcement officer or military officer officially authorized to make such purchases on behalf of the agency or governmental entity. The records shall specify the type, manufacturer, importer, caliber or gauge, model and serial number of each firearm purchased. The records shall also indicate the name and rank of the law enforcement or military officer authorized to make the purchase, including the date and time of the sale or disposition. The dealers shall maintain such records for inspection by law enforcement officers at reasonable hours. Sales of assault firearms and machine guns shall be in accordance with N.J.A.C. 13:54-5.1 and copies of records of such sales shall be forwarded to the Superintendent within 48 hours of the sale.

13:54-3.16 Records available to Division of State Police

Records are to be retained by the dealer and shall, for administrative and law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-3.17 Records to Superintendent

Upon discontinuance, termination, expiration or revocation of a retail dealer license, the retail dealer license and any employee licenses shall be forwarded to the Superintendent within five business days.

13:54-3.18 Appeal

Any person making application for a retail dealer license, who is denied approval by a Superior Court judge of the county wherein the application was made, may file an appeal in accordance with law.

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SUBCHAPTER 4. WHOLESALE DEALERS, MANUFACTURERS AND WHOLESALE DEALERS AGENTS AND EMPLOYEES

13:54-4.1 General provisions

This subchapter prescribes standards and qualifications for registration of wholesale dealers and manufacturers of firearms and the rules for holders of registration certificates to conduct business. This subchapter also provides for the licensing of wholesale dealers' agents and employees.

13:54-4.2 Registration required

No person shall manufacture or sell at wholesale any firearm or part of a firearm unless he has been registered by the Superintendent under the provisions of this chapter.

13:54-4.3 Application for a certificate of registration

(a) Every person, partnership or corporation applying for a certificate of registration shall furnish such information and particulars required by the applications forms designated STS 280 and 280A. The forms may be obtained from the Firearms Investigation Unit, Division of State Police, Box 7068, West Trenton, New Jersey 08625. All corporations applying for registration shall, in addition to the applications, submit a valid copy of the most recent certificate of incorporation, or such other documentation establishing the corporation as a legal entity.

(b) Any person who possesses an actual or equitable controlling interest in the applicant shall complete the necessary application form and shall be fingerprinted.

(c) The completed application together with two sets of the applicant's fingerprints, a consent for mental health records search form STS-1, and a nonrefundable fee of $150.00 payable to the Superintendent, in addition to the fees as established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69), shall be submitted to the Superintendent.

13:54-4.4 Standards and qualifications

(a) Every individual proprietor, every member of a partnership and every officer and director of a corporation, registered as a wholesale dealer and/or manufacturer of firearms shall be over the age of 21 and shall possess the qualifications required to obtain a permit to purchase a handgun or a firearms purchaser identification card as provided in this chapter.

(b) No wholesale dealer or firearms manufacturer registered as provided in this subchapter shall permit any wholesale dealer's agents, employees or other persons to engage in the purchase or sale or offering for sale of firearms or finished parts of firearms, unless such agents, employees or persons are over the age of 18 and are licensed by the Superintendent. Such persons must submit to the Superintendent completed application form NJSP 641, two sets of fingerprints and consent for mental health records search form STS-1. The Superintendent shall issue licenses to such persons if they qualify to obtain a permit to purchase a handgun or to possess a firearms purchaser identification card as provided in this chapter, and would not pose a danger to the public health, safety or welfare. A nonrefundable fee of $5.00 shall be paid by the employer to the Superintendent for each agent, employee or person in addition to the fees established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L. 1985, c.69).

(c) An employee who is licensed by the Superintendent to engage in the purchase, sale or manufacture of firearms is licensed until such time as he or she terminates his or her employment with the wholesale dealer or manufacturer or becomes disabled as provided in this chapter.

(d) Should an employee be transferred from his or her licensed location to another location, by the same registered employer, that employee shall apply for a transfer of his or her employee license by submitting application form NJSP 641, consent for mental health records search form STS-1, and shall surrender his or her current employee license to the Superintendent.

(e) A wholesale dealer and/or manufacturer shall, within five days, return to the Superintendent any employee license for an employee who has been terminated, transferred or has become disqualified as provided by this chapter.

(f) No wholesale dealer and/or manufacturer shall conduct a business in a mobile or temporary facility ("Mobile" meaning a facility easily moved from one location to another. "Temporary" meaning not having indicia of permanency). A temporary facility includes, but is not limited to, places for garage sales, flea markets, gun shows and exhibits.

13:54-4.5 Exemptions for physical handicap

A physical handicap shall not disqualify an applicant to be registered as a wholesale dealer or manufacturer of firearms or an applicant to be licensed as an employee unless such handicap would make it unsafe for the applicant to handle firearms or would interfere with the activities of the applicant or employee to the extent that it would endanger the public health, safety and welfare.

13:54-4.6 Exceptions for corporations

(a) A public corporation whose stock is listed on a major stock exchange at the time of the filing of an application for registration as a wholesale dealer and/or manufacturer of firearms, shall not be required to furnish the personal data as set forth in the application form STS-280, for officers or directors of such corporation or for the stockholders of such corporation, unless such officers, directors or stockholders directly engage in the sale or purchase of firearms for the corporation.

(b) A certification shall be filed by the member or members holding an actual or equitable controlling interest in each corporation or partnership certifying that such member(s) shall take the appropriate action to inform all employees directly engaged in the sale, purchase or manufacture of firearms or ammunition of the pertinent laws and regulations governing the sale, purchase and manufacture of such firearms or ammunition.

13:54-4.7 Certification; security required

(a) The Superintendent of State Police shall cause the applicant for registration to be investigated and either approve or deny the application. The application shall be approved if the Superintendent is satisfied that the applicant can be permitted to engage in business as a wholesale dealer of firearms without any danger to the public safety, health or welfare, and if the applicant would qualify for the issuance of a permit to purchase a pistol or a firearms purchaser identification card. If the application is approved, the Superintendent shall issue a certificate of registration to wholesale and/or manufacture firearms or parts of firearms.

(b) Each registrant as a wholesale dealer and/or manufacturer shall install a system for the prevention and detection of the theft of firearms from the business premises in accordance with the provisions of N.J.A.C. 13:54-6.

13:54-4.8 Duration of certificate of registration

A certificate of registration shall expire three years from the date of issuance. If a certificate of registration is renewed, it shall be effective for three years from the date of the expiration of the initial or most recent application.

13:54-4.9 Renewal of certificate of registration and agents' and employees' licenses

(a) An applicant for renewal of a certificate of registration shall follow the same procedures as required for the issuance of initial registration, including completion of forms STS 280 and 280A and a consent for mental health records form STS 1. Renewal application(s) shall be accompanied with a nonrefundable fee of $150.00 payable to the Superintendent and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 53:1-20.5 et seq. (P.L.1985, c.69).

(b) In addition to the registrant, all licensed employees who engage in the purchase or sale of firearms or parts of firearms must also submit renewal applications on form NJSP 641 and a consent for mental health records form STS 1 in order to transact business on behalf of the registrant. Such applications shall be accompanied by a nonrefundable fee of $5.00 payable to the Superintendent and the fee established by N.J.A.C. 13:59 in accordance with N.J.S.A. 3:1-20.5 et seq. (P.L.1985, c.69).

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(c) Wholesale dealers and manufacturers and employees of such persons applying for renewal of a certificate of registration or license renewal, at the time of such renewal shall:

1. Continue to be qualified for the issuance of a permit to purchase a handgun or a firearms purchaser identification card;

2. Meet the standards and qualifications of the Superintendent; and

3. Not pose a danger to the public health, safety or welfare.

13:54-4.10 Revocation of certificate of registration

(a) Any certificate of registration may be revoked for breach of any of the conditions under which it was granted, or any conditions provided for in this chapter by the Superintendent.

(b) Any employee license may be revoked for breach of any conditions under which it was granted, or any conditions provided for in this chapter, by the Superintendent.

(c) Any certificate of registration or employee license shall be revoked if the holder no longer qualifies for the issuance of a permit to purchase a handgun or a firearms purchaser identification card, or if the person poses a danger to the public health, safety or welfare.

(d) Any person having knowledge that a person registered or licensed pursuant to this subchapter has violated any of the foregoing conditions or is otherwise unqualified to hold a registration or license may notify any law enforcement officer, who shall in turn notify the Superintendent, who may take such action as may be deemed appropriate.

13:54-4.11 Appeals

Any person who has been refused registration as a manufacturer or wholesale dealer or any person whose name has been removed from registration by the Superintendent or any person who has been denied an employee's license, may appeal to the Superintendent within 30 days. If the appeal is denied by the Superintendent, such person may appeal to the Appellate Division of the Superior Court.

13:54-4.12 Permanent record of receipt and disposition of firearms

(a) Each manufacturer and/or wholesale dealer of firearms shall record the type, model, caliber or gauge, and serial number of each complete firearm, frame or receiver he manufactures or otherwise acquires, and the date of manufacture or acquisition of such firearm, frame or receiver. This information shall be recorded no later than the close of the next business day following the date of manufacture or acquisition.

(b) A record of sale or other disposition of a firearm, frame or receiver must be recorded no later than the close of the next business day following the date of such sale or disposition. The record shall indicate the date of the sale or disposition of each firearm, frame or receiver, the type, model, caliber or gauge, and serial number of each firearm, and the name and address of the dealer to whom the firearm, frame or receiver was transferred.

(c) The firearms records as prescribed under this section need not be required providing the dealer maintains an updated federal firearms record on firearms manufactured, purchased or acquired and sold as prescribed in Title 26, Internal Revenue, Chapter I "Commerce in Firearms and Ammunition" to the extent that the information required by this section is included on such records. If not included, then the Federal records shall be supplemented so as to include all information required by this section.

13:54-4.13 Records available to law enforcement agencies

Records are to be retained by wholesale dealers and/or manufacturers and shall, for administrative and law enforcement purposes, be made available for inspection during reasonable hours to any member of the Division of State Police.

13:54-4.14 Records to Superintendent

Upon discontinuance or termination of a wholesale dealers and/or manufacturers certificate of registration, the certificate of registration and any employee licenses shall be forwarded to the Superintendent within five days.

13:54-4.15 Identification of firearms required

Each registered manufacturer of firearms shall legibly identify each firearm manufactured by engraving, casting, stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver or barrel thereof in a manner not susceptible to being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed on any other firearm manufactured and by engraving, casting, stamping, or otherwise conspicuously placing or causing to be engraved, cast, stamped or placed on the frame, receiver, or barrel thereof in a manner not susceptible to being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name of the manufacturer and also, the city wherein the registered manufacturer maintains his place of business. A firearm frame, receiver or barrel which is not a component part of a complete firearm at the time it is sold, shipped or otherwise disposed of by a registered manufacturer shall be identified as required by this subchapter.

SUBCHAPTER 5. MACHINE GUNS, ASSAULT FIREARMS AND LARGE CAPACITY MAGAZINES

13:54-5.1 Purchase or sale of assault firearms and machine guns

(a) No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase or otherwise acquire a machine gun or an assault firearm unless the purchaser, assignee, donee, receiver or holder:

1. Is licensed as a retail or wholesale dealer pursuant to this chapter;

2. Has first secured a license to purchase, possess or carry a machine gun or an assault firearm in accordance with N.J.S.A. 2C:58-5; or

3. Is the Armed Forces, the National Guard or a law enforcement agency employing persons who are authorized to possess and carry assault firearms and/or machine guns.

(b) Any retail dealer licensed pursuant to this chapter who sells or otherwise transfers a machine gun or an assault firearm shall confirm both the identity of the purchaser, and in the case of a licensee, the validity of the license. A machine gun or assault firearm shall be delivered unloaded and securely wrapped.

(c) In addition to the permanent records of receipt or disposition of firearms required by this chapter to be maintained by a wholesale or resale dealer, such dealers shall keep and maintain a separate ledger for the acquisition or receipt and sale or disposition of machine guns and assault firearms. This ledger shall be in the same form and contain the same information as provided for in N.J.A.C. 13:54-3.13, 3.14 and 3.15 and N.J.A.C. 13:54-4.12.

13:54-5.2 License to purchase, possess or carry a machine gun or assault firearm

(a) Licenses to purchase, possess or carry a machine gun or assault firearm shall be issued by a judge of the Superior Court in accordance with the provisions of N.J.S.A. 2C:58-5. The application for such license shall be referred to the county prosecutor for investigation, recommendation and preparation of a report.

(b) The report of the county prosecutor shall be served upon the Superintendent and the chief of police of every municipality in which the applicant intends to carry the machine gun or assault firearm. The Superintendent and/or the chief of police, or their designees, may personally appear and oppose the issuance of any license to acquire a machine gun or assault firearm. If the court issues a license, the Superintendent and/or chief of police, or their designees, may appeal that decision in accordance with the Rules of Court.

(c) Upon issuance of a license by a court, a true copy of such license shall be filed with the Superintendent and chief of police of the municipality where the licensee resides or has his place of business.

(d) At any time, the Superintendent, a chief of police, any law enforcement officer of this State or any other citizen may apply to the court which issued the license for revocation on the ground that the licensee is no longer qualified to possess such license by virtue of his inability to satisfy the statutory requirements of N.J.S.A. 2C:58-4 and 2C:58-5, or if revocation is necessary in order to protect the public safety and welfare.

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13:54-5.3 Disposition of machine gun or assault firearm upon death of licensee or registered holder

(a) If the holder of a license to purchase, possess or carry a machine gun or assault firearm dies, or if the owner of an assault firearm which has been registered pursuant to N.J.S.A. 2C:58-12 dies, then the heirs or estate of the deceased person shall have 90 days from the date of death to transfer the firearm to a licensed dealer or person or firm lawfully entitled to own or possess such firearm; voluntarily surrender the firearm pursuant to the provisions of N.J.S.A. 2C:39-12; or, only in the case of an assault firearm, render the firearm inoperable pursuant to the provisions of N.J.S.A. 2C:58-13. In the case of a machine gun, the heir or estate shall immediately deliver it to the chief of police, or Superintendent where there is no full time police department or where the heir or estate is a non-resident, until such time as it is sold or voluntarily surrendered. In the case of an assault firearm, it shall be immediately delivered to the appropriate chief of police or the Superintendent in the event that the heir does not hold, or qualify to hold, a firearms purchaser identification card or a permit to purchase a handgun. The chief of police or the Superintendent shall hold such firearms until they are disposed of in accordance with this section.

(b) For purposes of this section, "inoperable" shall mean that the firearm is altered in such a manner that it cannot be immediately fired and that the owner or possessor of the firearm does not possess or have control over the parts necessary to make the firearm operable. In the event that the firearm is rendered inoperable, the heir or estate shall file a certification on the form prescribed by the Superintendent, indicating the date on which the firearm was rendered inoperable. The certification shall be filed with either the chief of police of the municipality in which the heir resides, or if the municipality does not have a full time police department, or if the owner resides outside of this State, with the Superintendent.

13:54-5.4 Notification of ineligibility to possess assault firearm or machine gun

Any person having knowledge that a person is subject to any of the disabilities which would render such person ineligible to procure a license to purchase, possess or carry a machine gun or assault firearm, or to continue to be registered as an owner of an assault firearm, may notify the appropriate chief of police or the Superintendent, who may take such action as may be deemed appropriate.

13:54-5.5 Large capacity magazines

A retail or wholesale firearms dealer licensed pursuant to this chapter may maintain large capacity ammunition magazines at its licensed premises for sale or disposition to another dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to any of the afore-mentioned entities, including a description by make and model of the large capacity magazine. The record shall include the name of the purchasing agency, together with written authorization on the official letterhead of the Superintendent, chief of police or highest ranking officer of the agency or the appropriate ranking military officer, the name and rank of the law enforcement or military officer authorized to make the purchase, and the date and time of the sale or disposition. A copy of this record shall be forwarded by the seller to the Superintendent within 48 hours of the sale or disposition.

13:54-5.6 Advertising sale of machine gun, assault firearm or semi-automatic rifle

No retail dealer or wholesale dealer licensed pursuant to this chapter shall offer to sell a machine gun, semi-automatic rifle or assault firearm by means of an advertisement published in a newspaper circulating within this State, which advertisement does not state that the purchaser shall hold a valid license to purchase and possess a machine gun or assault firearm or, in the case of a semi-automatic rifle that is not an assault firearm, a valid firearms purchaser identification card.

13:54-5.7 Number and types of criminal offenses involving assault firearms

The chief of police of every municipality having a full time police department or, if the municipality does not have such a police department, the State Police station servicing that municipality, shall on a monthly basis provide to the Superintendent the number and types of criminal offenses involving assault firearms. The report shall also include the type of assault firearm utilized in the commission of the crime. The report shall be received by the Superintendent no later than five business days from the end of the prior month.

SUBCHAPTER 6. SECURITY SYSTEMS FOR DEALERS

13:54-6.1 Definition of "dealer"

The term "dealer," when used in this subchapter, means retail dealers as well as wholesale dealers and shall also include manufacturers of firearms unless the context clearly indicates otherwise.

13:54-6.2 Approval of plans by Superintendent

(a) The dealer shall submit a plan of the selected security system to the Superintendent.

(b) Upon approval of such plan by the Superintendent, the dealer shall install such system prior to maintaining any inventory of firearms, parts of firearms, or ammunition.

(c) A plan that is not approved will be returned to the applicant along with the reasons for such rejection.

(d) The applicant shall have the opportunity to submit a revised plan.

(e) All security systems shall be subject to inspections by a member of the Division of State Police at any time.

(f) If at any time the system is found to be defective, the dealer shall make the necessary repairs or adjustment to correct the defect within seven days.

(g) Failure of a dealer to comply with any of the security standards may result in the revocation of the license or registration of such dealer.

13:54-6.3 Systems to detect and protect firearms and ammunition in a business premises

(a) The following list of approved security systems has been formulated as a guide to the firearms dealer, any one of which may be acceptable upon investigation and approval by the Superintendent.

1. An alarm system designated to activate a bell, gong, horn or siren located on the outside of the business premises which is audible for a minimum distance of 500 feet. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-6.4;

2. Silent alarm system capable of automatically transmitting an alarm to a constantly attended central station alarm company and/or to a police department or headquarters providing full time service. The system shall be equivalent or greater to the minimum standards as outlined in N.J.A.C. 13:54-6.4;

3. A watchman or security guard on duty during nonbusiness hours;

4. A system other than those listed above proposed by a dealer which is acceptable by the Superintendent.

13:54-6.4 Minimum requirements for installation of a tape, contact or invisible ray alarm system

(a) The installation of a tape, contact or invisible ray alarm system must:

1. Completely protect all accessible windows, doors, transoms, skylights and other openings leading from the premises;

2. Protect with contacts only, all movable accessible openings leading from the premises, and which provides one or more invisible rays or channels of radiation, with the minimum overall length of the rays or radiation equivalent to the longest dimensions of the area or areas to detect movement through the channel at a rate of one step per second; or

3. Protect with contact only, all doors leading from the premises and provide a system of invisible radiation to all sections of the enclosed area so as to detect movement. The system shall respond

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to the movement of a person walking not more than four consecutive steps at a rate of one step per second.

13:54-6.5 Internal security of firearms and ammunition

(a) In addition to the alarm system, a dealer shall provide for the internal security of firearms and ammunition.

(b) The following is a list of approved internal security methods for the safeguarding of firearms and ammunition during nonbusiness hours. A dealer shall select the method(s) which is most compatible with his business:

1. Shotguns and rifles secured in a rack equipped with a locking device such as a metal bar or a steel cable;
2. Firearms and ammunition secured in a heavy gauge metal cabinet equipped with an adequate locking device;
3. Firearms and ammunition secured in a heavy gauge mesh wire cage equipped with an adequate locking device on the door(s);
4. Firearms and ammunition secured in a safe or vault;
5. Metal bars on all windows and on glass portion of door(s);
6. Other method(s) proposed by the dealer approved by the Superintendent.

(c) The method(s) selected by a dealer shall be included in the Security System form STS-61.

(d) Any other building(s) where firearms and/or ammunition are stored shall be subject to the same requirements as applicable to a business premise.

13:54-6.6 Report concerning theft of firearms

(a) Dealers are required to complete form STS-62 and such other forms as shall be required by the Superintendent, reporting the loss of firearm(s) and/or ammunition, as a result of a burglary, robbery or any other cause, from the business premise. The dealer shall forward the completed form to the Superintendent within 48 hours of the loss or theft of firearm(s) and/or ammunition. The police department where the business is located shall be notified by the dealer of the theft or loss of firearm(s) and/or ammunition as soon as such loss or theft is discovered.

(b) A complete description, including the type, make, model, barrel-length, caliber and serial number of the stolen/missing firearm(s) shall be given to the investigating law enforcement agency.

(c) Failure of the dealer to comply with any of the above requirements may result in the revocation of the registration or license of such dealer.

13:54-6.7 Regulations during a civil disturbance or declared emergency period

(a) In the interest of the public health, safety and welfare, firearms dealers shall discontinue the sale of firearms and ammunition upon notification by the Superintendent or the chief of police of the municipality where the firearms dealers' business is located, that a civil disturbance or other emergency exists.

(b) Those businesses affected shall not resume the sale of firearms or ammunition until such time as the Superintendent or the chief of police of the municipality determines that the civil disturbance or other emergency no longer exists.

(c) All dealers located in the area affected by such disturbance or emergency shall be required to comply with one of the following:

1. Arrange with the chief of police officer of the municipality for appropriate security of firearms and ammunition; or
2. Remove all firearms and ammunition from the business premises to a secure location.

(d) Failure of the dealer to comply with any of the above requirements may result in the revocation of the license of such dealer.

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PUBLIC NOTICES

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Notice of Action on Petition for Rulemaking

N.J.A.C. 2:24

Petitioner: Thomas P. Thatcher.

Take notice that on September 26, 1991, the Department of Agriculture received a petition for rulemaking concerning N.J.A.C. 2:24, the Department's rules on diseases of bees. Public notice of this petition was published in the November 4, 1991 New Jersey Register at 23 N.J.R. 3386(a).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberations. Deliberation is necessary so that the Department may determine legal liability of the State resulting from the implementation of the requested volunteer bee inspection program as well as time for the preparation of the possible proposed rules. The deliberations shall conclude on December 31, 1991.

Upon conclusion of the Department's deliberations, the decision will be mailed to the petitioner and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF PARKS AND FORESTRY
OFFICE OF NEW JERSEY HERITAGE

Notice of Availability of Grant Funds
Fiscal Year 1992 Historic Preservation Fund Matching Grants

Take notice that in compliance with N.J.S.A. 52:14B-34.4 et seq. (P.L. 1987, c.7), the Office of New Jersey Heritage announces the following availability of funds.

A. Name of the grant program that has funds available:
Fiscal Year 1992 Historic Preservation Fund.

B. Purpose for which the grant program funds shall be used: The Office of New Jersey Heritage has funds available for historic resources survey, preservation planning, and pre-development projects undertaken by Certified Local Governments. A limited amount of historic preservation survey, planning and pre-development funds are available to State agencies, county and municipal governments, academic institutions, private not-for-profit organizations, and individuals. Funding is available on a 50 percent Federal/50 percent local matching share basis.

C. Amount of money in the grant program: Approximately $55,000 of Federal matching funds is available for projects undertaken by Certified Local Governments. Approximately $25,000 of Federal Matching funds is available for projects undertaken by State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals.

D. Groups or entities which may apply for the grant program: State agencies, county and municipal governments, academic institutions, private and not-for-profit organizations, and individuals are eligible to apply for grants under the program. Only municipalities participating in the Certified Local Government program may apply for grants under the Certified Local Government grant program.

E. Qualifications needed by an applicant to be considered for the grant program: The Office of New Jersey Heritage uses a competitive selection process and awards grants to projects which best meet the criteria described in the application packet. The criteria for evaluating grant applications is as follows:

Criteria for evaluating grant applications:

1. Project's advancement of the goals and objectives of New Jersey's State-wide Comprehensive Historic Preservation Plan. Applicants must cite specific points from the Plan. (points 0-5)
2. Project's degree of outreach as demonstrated by applicant's ability to involve and impact new audiences and special constituencies. (points 0-5)
3. The degree to which the project will involve minorities, handicapped and/or under-represented communities and interests. (points 0-3)
4. The applicant demonstrates that the results of the proposed project will serve as a model for other communities within the State. (points 0-5)
5. Inclusion of a relevant archaeological component within a cultural resource survey. (points 0 or 1)
6. Degree to which the project will identify or protect historic resources threatened by development pressures. Development pressures may be the result from one or more of the following:
   —New economic or development activity (residential, commercial, industrial, transportation).
   —Population growth.
   —Abandonment or neglect.
   —Inappropriate or insensitive alterations.
   —Publicly funded encroachments such as transportation or public works projects. (points 0-5)
7. The degree to which the project is actively linked to environmental protection, natural resource or open space preservation, and/or public education activities, goals and objectives. The degree to which the project is an active component of the land use, environmental or community development and redevelopment planning process. (points 0-5)
8. Applicant's assurance that **qualified** personnel and adequate time will be allocated to administer the project. Contract or in-kind personnel should include:
   —Project Coordinator
   —Chief Financial Officer
   —Clerical staff
   (points 0-3)
9. Applicant's use of volunteers is not counted as part of the project match. (points 0 or 1)
10. Applicant documents that within the past two years it has undergone a successful audit of its finance or accounting system. (points 0 or 1)
11. Evidence that the project goals can be reached within the proposed time-frame and that the budget is appropriate to the scope of the project. (points 0-2)
12. The applicant has a demonstrated ability to properly manage the grant, for example, acceptable performance on prior subgrant or other historic preservation projects:
   —Fiscal documentation met program requirements
   —Completed the project on time and within budget
   —Interim reporting deadlines met consistently
   —Interim product deadlines met consistently
   (points –4 to +4)

ONJH funding priorities for FY 1992

The following funding priorities have been established for FY 1992 and are listed in their order of importance:

—County-wide Historic Resource Survey with a Preservation Plan (points 12)
—County-wide Historic Resource Survey (points 10)
—Municipal Historic Resource Survey with a Preservation Plan (points 5)
—Municipal Historic Resource Survey (points 3)
—Preservation Plan with a Re-Survey of County or Municipal Historic Resources (points 1)

F. Procedure for eligible entities to apply for grant funds:

Application forms, guidelines, and information on applicant and project eligibility are available from:

Office Of New Jersey Heritage
CN 404
Trenton, New Jersey 08625
(609) 292-2028

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G. Address of office receiving application:
Office of New Jersey Heritage
CN 404
Trenton, New Jersey 08625

H. Deadline by which applications must be submitted to the office:
The deadline for submission of Fiscal Year 1992 applications is 5:00 P.M., January 31, 1992.

I. Date by which applicants shall be notified whether they will receive funds under the grant program:
The Office of New Jersey Heritage will notify applicants of approval or disapproval by May 15, 1992.

(a)

DIVISION OF PARKS AND FORESTRY

Notice of Availability of Grants Open Lands Management Program

Take notice that in compliance with P.L. 1987, c.7, section 1 (N.J.S.A. 52:14-34.4), the Department of Environmental Protection and Energy hereby announces the availability of the following State grant funds:

Name of Program: Open Lands Management Program. Authority: Open Lands Management Act, P.L. 1983, c.560 (N.J.S.A. 13:1B-15.133 et seq.), and Open Lands Management rules, N.J.A.C. 7:2-12.

Purpose: The purpose of the Open Lands Management Program is to provide financial assistance and in-kind services for the development and maintenance of privately owned land for public recreational purposes. If an application for funding is approved, the landowner and the State sign an agreement known as an access covenant, which guarantees public access for a specified period of time, for specified recreational purposes, to a specific parcel of private land.

Amount of money in the program: The Department anticipates that $50,000 will be available for funding Open Lands Management projects in FY 1992, which ends on June 30, 1992.

Individuals or organizations who may apply for funding under this program: Any person, including, but not necessarily limited to, individuals, corporations, clubs, associations and non-profit organizations, who owns real property in fee simple, may apply for financial assistance under this program.

Qualifications needed by an applicant to be considered for the program: To be eligible for financial assistance under this program, the applicant must meet the following criteria in accordance with the provisions of N.J.A.C. 7:2-12-4:

1. The applicant must have a fee simple interest in real property, the property must include open space which is not dominated by buildings, structures or other man-made facilities; the property must be free of any known public health hazards; and the property must be free of liens or other clouds against title which would tend to interfere with the use and enjoyment of the property.

2. The applicant must specify a project to be funded. Eligible projects include:

a. Installation, repair or replacement of protective structures, such as fencing, water bars, berms or stiles;

b. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, interpretive signs, picnic areas, rest areas, portable sanitary facilities, boat or canoe launch areas, and signs stating ownership, and use;

c. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas;

d. Repair or restoration of any vandalized crops or improvements located on, or adjacent to agricultural land which is subject to an access covenant provided that the damage occurred as a result of the public use;

e. Installation, repair, replacement and maintenance of litter and trash control facilities;

f. Installation, repair or replacement of facilities which provide or improve recreational access for the handicapped;

g. Stocking of fish and wildlife to provide recreational fishing and hunting;

h. Purchase of additional liability insurance made necessary because of use of the property by the public;

i. Filing fees for access covenant and associated legal fees; and

j. Professional fees for design, survey and construction of project in accordance with the approved application.

3. The applicant must make the eligible real property available to the public for passive recreational activities. Such activities may include: trail use, water related activities, and other outdoor recreational use.

Procedure for application and review: The landowner, or landowner's agent designated by a properly executed Power of Attorney, shall submit an application for financial assistance on a form provided by the Department. During its review, the Department may meet with the applicant to discuss the proposed project, inspect the property and recommend any changes it deems necessary. Within 30 days of receipt of the application the Department will either deny the application citing the reasons for denial or grant preliminary approval.

Final approval shall be contingent primarily upon receipt of all permits required to implement the proposed project; execution of an agreement which states the terms and conditions by which financial assistance will be disbursed; and execution of an access covenant in accordance with the provisions of N.J.A.C. 7:2-12.10 which assures public access for a specified time period.

Address of the division, office or official receiving the application: Applications for Open Lands Management grants may be requested from, and completed and submitted to:

Celeste Tracy
Open Lands Management Program
Office of Natural Lands Management
Division of Parks and Forestry
New Jersey Department of Environmental Protection and Energy
CN 404
Trenton, New Jersey 08625-0404
(609) 984-1339

Deadline by which applications must be submitted: Applications for funding during FY 1992 must be submitted by February 14, 1992.

Date by which applicant shall be notified of preliminary approval or disapproval:
Within 30 days of receipt, the Department shall evaluate applications for funding under this program and either disapprove or grant preliminary approval of the application.

(b)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Notice of Receipt of Petition For Rulemaking N.J.A.C. 7:14B-1.6

Petitioner: Fuel Merchants Association of New Jersey.

Take notice that on August 30, 1990, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the amendment of the rules related to underground storage tanks.

The petitioner requests that the Department repeal the following definition of "tank capacity" appearing at N.J.A.C. 7:14B-1.6:

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing the same hazardous substance at the same site, the aggregate of the nominal tank sizes will be used to determine capacity.

The petitioner asserts that the Department's adoption of the definition was not in substantial compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; that the adoption of the definition is without authority because it contravenes and conflicts with the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (the "Act"); and that the definition is a misuse of the Department's regulatory authority because it is unnecessary to achieve the Department's regulatory objective. The petitioner further asserts that the Act is to be applied on a tank-by-tank basis, and that only the capacity of each tank is to be used in determining whether it is subject to regulation, without regard to the capacities of other tanks present on a particular property.

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(a)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Receipt of Petition For Rulemaking N.J.A.C. 7:29-1.4(a)5

Petitioner: Township of Waterford, Camden County, New Jersey.

Take notice that on September 17, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the amendment of the Department's regulations governing noise control.

The petitioner requests that the Department promulgate reasonable rules and regulations respecting the noise levels and noise control pertaining to motor vehicle race tracks in the State. Petitioner states that there is such a facility located in Waterford Township. The Department's current regulations governing noise control provide that the operational standards established in N.J.A.C. 7:29-1 do not apply to motor vehicle race tracks.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment, which was proposed by the Moorings at Sweetwater residential development, would designate Block 565, Lot 1238.10 and Block 567, Lots 1239, 1256.01 and 1279 in Mullica Township, Atlantic County, as "ground water discharge (under 20,000 gallons per day)" service area to serve 7 existing occupied one bedroom apartments and 17 proposed one bedroom apartments. The proposed wastewater flow for the total 24 units is 3,120 gallons per day. The project site lies within a Pinelands Village Management Area regulated by the Pinelands Commission. Approval of this amendment does not guarantee consistency with the Pinelands Comprehensive Management Plan.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the NJDEPE, Office of Regulatory Policy, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Bureau of Water Quality Planning at (609) 633-7026 or the Atlantic County Department of Regional Planning and Development at (609) 345-6700.

The Atlantic County Department of Regional Planning and Development will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, December 18, 1991, at 11:00 A.M. in the Fourth Floor Conference Rooms of the County Office Building in Atlantic City. Interested persons may submit written comments on the proposed amendment to Ms. Ava Goldman, the Director of Planning at the County Office Building address cited above with a copy sent to Mr. Ed Frankel, at the NJDEPE address cited above. All comments must be delivered within 15 days after the close of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered with respect to the amendment request. Atlantic County and the NJDEPE thereafter may approve and adopt this amendment without further notice. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. An amendment adoption shall be incorporated into the Atlantic County WQM Plan only upon adoption of an ordinance by the Atlantic County Board of Chosen Freeholders, and adoption of the amendment by the NJDEPE.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on October 3, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. The amendment was proposed by the Bald Eagle Industries Inc. This amendment updates the West Milford Township Wastewater Management Plan. The amendment allows for a new on-site groundwater disposal system to serve the proposed Bald Eagle Manor residential/commercial development in West Milford Township, Passaic County. The projected wastewater flow for this facility is 96,476 gallons per day.

HEALTH

(d)

DIVISION OF FAMILY HEALTH SERVICES

Notice of Availability of Grants Osteoporosis Intervention Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: Osteoporosis Intervention Program, Grant Program No. 92-89-GER.

Purpose: The purpose of the funding is to reduce the effects of osteoporosis in the three counties in New Jersey with the highest number of senior citizens. Funds are available to develop one county-wide osteoporosis intervention program in each of the following three counties: Bergen, Essex and Ocean.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department of Health. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for funding: Local health departments in Bergen, Essex and Ocean counties.

Qualifications needed by an applicant to be considered for a grant: Applicants must reflect a commitment to develop a county-wide osteoporosis intervention program for the elderly and have an established working relationship with their County Office on Aging. Written documentation and a Letter of Support from their respective Office on Aging must be provided.

Procedures for eligible entities to apply for grant funds: Complete and timely submission of application.

For information contact:

Helena Meade, ACSW
Public Health Consultant I
Division of Family Health Services
Gerontology Program
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7496

Deadline by which applications must be submitted: December 31, 1991.

Date by which applicant shall be notified whether they will receive funds: January 21, 1992.

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INSURANCE

(a)

THE COMMISSIONER

Notice of the Imposition of a Surcharge for Recoupment of the Property-Liability Insurance Guaranty Association Assessment

Take notice that, pursuant to N.J.S.A. 17:30A-16 and N.J.A.C. 11:1-6, the Commissioner of Insurance issued Order No. A91-324 on October 3, 1991 which provides that every member insurer of the New Jersey Property-Liability Insurance Guaranty Association (Association) which has paid an assessment to the Association due April 15, 1991 pursuant to N.J.S.A. 17:30A-8a(3) which has not been recouped as of September 3, 1991, may impose a surcharge in the amount of one third of one percent of the net direct written premiums for all kinds of insurance written by the member insurer, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance, and pet health insurance. The surcharge may be applied to policies which are issued or renewed on or after November 1, 1991. No member insurer may impose a surcharge on premiums of any policy to recoup assessments paid pursuant to N.J.S.A. 17:30A-8a(9) in accordance with N.J.S.A. 17:30A-16b.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Cigarette Tax
Tax Stamps/Decals

Notice of Revocation of Authorization to Use Stamp Metering Machines as Evidence of Proof of Payment of Cigarette Tax

Take notice that, effective July 1, 1992, authorization to use stamp metering machines as evidence of proof of payment of cigarette tax is revoked. N.J.A.C. 18:5-3.11(c). Authorized proof of payment shall henceforth be through the affixation of heat applied decals, either by hand or by machine. Information concerning the use of heat applied decals is available from the Division of Taxation, Revenue Accounting, CN 250, Trenton, N.J. 08646, or call (609) 984-2029.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the October 7, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT SEPTEMBER 16, 1991

NEXT UPDATE: SUPPLEMENT OCTOBER 21, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)	R.1991 d.513	23 N.J.R. 3133(a)
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)	R.1991 d.499	23 N.J.R. 2998(a)
1:5	Council on Affordable Housing hearings: extension of comment period	23 N.J.R. 2497(a)		
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)	R.1991 d.500	23 N.J.R. 2998(b)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)		
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)	R.1991 d.501	23 N.J.R. 2998(c)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)		
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)		

Most recent update to Title 1: TRANSMITTAL 1991-4 (supplement July 15, 1991)

AGRICULTURE—TITLE 2

Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)

BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 2208(b)	R.1991 d.523	23 N.J.R. 3133(b)
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-19	Consumer checking accounts: preproposed new rules	23 N.J.R. 2617(a)		
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)	R.1991 d.525	23 N.J.R. 3133(c)
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)		
3:18-10.3	Licensure of secondary mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)		
3:38-1.3	Licensure of mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)

Most recent update to Title 3: TRANSMITTAL 1991-7 (supplement August 19, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)	R.1991 d.498	23 N.J.R. 2999(a)
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		

Most recent update to Title 4A: TRANSMITTAL 1991-2 (supplement August 19, 1991)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.4	Uniform Fire Code: applicability of requirements	23 N.J.R. 2813(a)	R.1991 d.570	23 N.J.R. 3444(a)
5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8	Uniform Fire Code: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8	Uniform Fire Code life hazard uses and permit fees: administrative correction and extension of comment period	23 N.J.R. 2453(a)		
5:18-2.8	Uniform Fire Code: registration and permit fees	23 N.J.R. 2999(a)	R.1991 d.530	23 N.J.R. 3325(a)
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)		
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)		
5:18A-2.6	Fire Code enforcement: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:23-2.8, 2.17A, 2.24, 2.32	Uniform Construction Code: approval of completed work	23 N.J.R. 2236(a)	R.1991 d.509	23 N.J.R. 3001(a)
5:23-3.15, 3.21	Uniform Construction Code: plumbing; one and two family dwelling subcodes	23 N.J.R. 2619(a)	R.1991 d.571	23 N.J.R. 3444(b)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-7.6A	Barrier-Free Subcode enforcement	23 N.J.R. 2620(a)	R.1991 d.561	23 N.JR.. 3445(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:33-3	Tenants' Property Tax Rebate Program	23 N.J.R. 2183(a)	R.1991 d.484	23 N.J.R. 3002(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)		

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MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		

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EDUCATION—TITLE 6				
6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)		
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)		

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7:1 et al.	Centralized filing of requests for adjudicatory hearings: administrative changes	————	————	23 N.J.R. 3325(b)
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)	R.1991 d.487	23 N.J.R. 3005(a)
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)	R.1991 d.510	23 N.J.R. 3134(b)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1991 d.567	23 N.J.R. 3445(b)
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)	R.1991 d.568	23 N.J.R. 3446(a)
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)	R.1991 d.569	23 N.J.R. 3446(b)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)		
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)	R.1991 d.572	23 N.J.R. 3446(c)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-3A.17, 5.4	Medical waste exemptions; penalties for violations of Solid Waste Management Act: administrative corrections	————	————	23 N.J.R. 3138(a)
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		

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7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)	R.1991 d.562	23 N.J.R. 3450(a)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)	R.1991 d.529	23 N.J.R. 3452(a)
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13–1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(a)	R.1991 d.507	23 N.J.R. 3026(a)
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)		
8:31B	Hospital rate setting	23 N.J.R. 3097(a)		
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	Emergency (expires 11-15-91)	R.1991 d.506	23 N.J.R. 3042(a)
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)		
8:33-5.1	Certificate of Need moratorium	23 N.J.R. 2881(a)	R.1991 d.566	23 N.J.R. 3512(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)		

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8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)		
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)	R.1991 d.516	23 N.J.R. 3138(b)
8:61	AIDS prevention and control	23 N.J.R. 2245(b)	R.1991 d.538	23 N.J.R. 3332(a)
8:61	AIDS prevention and control: extension of comment period	23 N.J.R. 2882(e)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)	R.1991 d.539	23 N.J.R. 3334(a)
8:61-2	Participation in AIDS Drug Distribution Program: extension of comment period	23 N.J.R. 2883(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a), 2136(a), 2783(a))	23 N.J.R. 178(a)	R.1991 d.560	23 N.J.R. 3337(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1991 d.559	23 N.J.R. 3336(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1991 d.558	23 N.J.R. 3334(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)		

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9:4	County community colleges	23 N.J.R. 2467(a)	R.1991 d.517	23 N.J.R. 3143(a)
9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)		
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS): loan interest rates	———	———	23 N.J.R. 3180(c)
9:9-7.7	New Jersey College Loans to Assist State Students (NJCLASS) Program: repayment of loan	23 N.J.R. 2212(a)	R.1991 d.515	23 N.J.R. 3143(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:2	State and County Human Services Advisory Councils	23 N.J.R. 3259(a)		
10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)	R.1991 d.554	23 N.J.R. 3356(a)
10:7	Role of county adjuster	23 N.J.R. 2953(a)		
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)		
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)		

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10:51-5.6	PAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)		
10:66-1.6, 3	Independent Clinic Services: partial care	23 N.J.R. 2213(a)	R.1991 d.508	23 N.J.R. 3027(a)
10:69-5.1	HAAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:69A-1.2, 5.3, 5.6, 6.2, 6.10	PAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:69B-4.2	Lifeline Credit Program: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)		
10:72-1.1, 4.1	Medicaid eligibility: pregnant women and children	23 N.J.R. 2543(a)	R.1991 d.526	23 N.J.R. 3144(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)	R.1991 d.483	23 N.J.R. 3028(a)
10:72-6.1–6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)		
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)		
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)	R.1991 d.555	23 N.J.R. 3365(a)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:81-App. C	Public Assistance Manual forms: administrative correction	———	———	23 N.J.R. 3029(a)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)	R.1991 d.556	23 N.J.R. 3366(a)
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 2220(a)		
10:82-5.3	REACH child care voucher rates	23 N.J.R. 2989(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)	R.1991 d.522	23 N.J.R. 3144(b)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1–6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)	R.1991 d.521	23 N.J.R. 3155(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:87-12	Food Stamp Program: income eligibility, deductions, coupon allotments	———	———	23 N.J.R. 3030(a)
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10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)		

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10A:2-2	Inmate accounts	23 N.J.R. 1992(b)	R.1991 d.494	23 N.J.R. 3031(a)
10A:3	Security and control	23 N.J.R. 1259(a)	R.1991 d.503	23 N.J.R. 3031(b)

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10A:6-1.3, 2.5	Inmate access to courts: legal material and documents	23 N.J.R. 3268(a)		
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:17	Inmate social services	23 N.J.R. 3065(a)		
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)		

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11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)	R.1991 d.519	23 N.J.R. 3166(a)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC Health Care Coverage	23 N.J.R. 3066(a)		
11:4-16, 23 App.	Medicare supplement coverage: administrative corrections	_____	_____	23 N.J.R. 3515(a)
11:12	Legal services insurance	23 N.J.R. 2304(a)	R.1991 d.520	23 N.J.R. 3170(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		

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12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1992 rates	23 N.J.R. 2611(a)	R.1991 d.573	23 N.J.R. 3519(a)
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)		
12:55	Wage payments	23 N.J.R. 2939(a)		
12:56-1.2–1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)		
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)		
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)		
12:61-1	Wage collection	23 N.J.R. 2947(a)		
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)		
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)		
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)		
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)		
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12A:12-3.4	Tourism Matching Grants: application deadline	_____	_____	23 N.J.R. 3032(a)
12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)		
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		

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13:1A	Repeal Legislative Activities Disclosure Act rules (see 19:25-20)	23 N.J.R. 3077(a)		
13:18-11.3, 11.4, 11.5	Access to Division of Motor Vehicles records	23 N.J.R. 2857(a)	R.1991 d.575	23 N.J.R. 3520(a)
13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)		
13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:31-1	Board of Examiners of Electrical Contractors: administration and procedure	23 N.J.R. 2917(a)		
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)	R.1991 d.482	23 N.J.R. 3032(b)
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)	R.1991 d.565	23 N.J.R. 3520(b)
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)		
13:41-4.2–4.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:51	Chemical breath testing	23 N.J.R. 2248(b)	R.1991 d.505	23 N.J.R. 3032(c)
13:54	Regulation of firearms	23 N.J.R. 2250(a)	R.1991 d.564	23 N.J.R. 3521(a)
13:54	Regulation of firearms: extension of comment period	23 N.J.R. 2919(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-2.1	Thoroughbred racing: "advance wagers", "delay period", "early bird wagering"	23 N.J.R. 2266(a)	R.1991 d.546	23 N.J.R. 3340(a)
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)		
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)	R.1991 d.491	23 N.J.R. 3033(a)
13:70-29.55	Thoroughbred racing: cash-sell wagering system	23 N.J.R. 2266(b)	R.1991 d.547	23 N.J.R. 3340(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:70-29.59	Thoroughbred racing: cancellation of certain wagers	23 N.J.R. 2267(a)	R.1991 d.542	23 N.J.R. 3340(c)
13:70-29.60	Thoroughbred racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2267(b)	R.1991 d.543	23 N.J.R. 3341(a)
13:71-4.1	Harness racing: "advance wagers", "delay period", "early-bird wagering"	23 N.J.R. 2267(c)	R.1991 d.545	23 N.J.R. 3341(b)
13:71-23.8	Harness racing: first-time respiratory bleeders	23 N.J.R. 2919(d)		
13:71-27.47	Harness racing: daily double	23 N.J.R. 2004(a)	R.1991 d.490	23 N.J.R. 3034(a)
13:71-27.52	Harness racing: cash-sell wagering system	23 N.J.R. 2268(a)	R.1991 d.540	23 N.J.R. 3341(d)
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:71-27.57	Harness racing: cancellation of certain wagers	23 N.J.R. 2268(b)	R.1991 d.541	23 N.J.R. 3342(a)
13:71-27.58	Harness racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2269(a)	R.1991 d.544	23 N.J.R. 3341(c)
13:75-1.7, 1.23, 1.27	Violent Crimes Compensation Board: victim compensation	23 N.J.R. 2269(b)	R.1991 d.492	23 N.J.R. 3034(b)
13:75-1.24	Violent crimes compensation: transportation costs	23 N.J.R. 2482(a)	R.1991 d.514	23 N.J.R. 3170(b)

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14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:5	Electric service	23 N.J.R. 1519(a)		

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14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:10	Telephone utilities	23 N.J.R. 2270(a)	R.1991 d.489	23 N.J.R. 3035(a)
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)	R.1991 d.488	23 N.J.R. 3171(a)
14:12	Demand side management	23 N.J.R. 1283(a)	R.1991 d.549	23 N.J.R. 3368(a)
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-7.7	Cable television: telephone system performance	23 N.J.R. 2273(a)		
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

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ENERGY—TITLE 14A

14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		

Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)

STATE—TITLE 15

15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		

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16:28-1.38	Speed limit zone along Route 57 in Hackettstown	23 N.J.R. 3128(a)		
16:28-1.41	Middle Township Elementary School zone along U.S. 9, Cape May County	23 N.J.R. 2831(a)		
16:28A-1.6, 1.50, 1.57	Bus stop zones along Route 7 in Nutley, Route 166 in Dover Township, and U.S. 206 in Bordentown	23 N.J.R. 3129(a)		
16:28A-1.7, 1.20	Restricted stopping and standing along U.S. 9 in Port Republic and Route 29 in Hopewell Township	23 N.J.R. 3269(a)		
16:28A-1.28	No stopping or standing zone along U.S. 40 in Hamilton Township, Atlantic County	23 N.J.R. 2101(a)	R.1991 d.496	23 N.J.R. 3037(a)
16:28A-1.31, 1.55	Time limit parking zones along Route 45 in Harrison Township, and no stopping or standing zones along U.S. 202 in Morris Plains	23 N.J.R. 2484(a)	R.1991 d.518	23 N.J.R. 3176(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	23 N.J.R. 2101(b)	R.1991 d.497	23 N.J.R. 3037(b)
16:29-1.70, 1.71, 1.72	No passing zones along Route 50 in Atlantic County, Route 41 in Gloucester County, and Route 143 in Camden County	23 N.J.R. 3130(a)		
16:30-9.10	Prohibited pedestrian use of Barnegat Bay bridges in Dover Township	23 N.J.R. 3131(a)		
16:32-3.1, 3.6	Operation of 53-foot semitrailers in State	23 N.J.R. 2485(a)	R.1991 d.548	23 N.J.R. 3342(b)
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:44-1	Classification of contractors and prospective bidders	23 N.J.R. 3270(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)		
16:49-App.	Transportation of hazardous materials: physical qualifications of drivers	23 N.J.R. 2102(a)	R.1991 d.485	23 N.J.R. 3037(c)
16:53D-1.1	Zone of Rate Freedom for regular route autobus carriers: 1992 percentage maximums	23 N.J.R. 2004(b)	R.1991 d.486	23 N.J.R. 3038(a)
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)		

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16:79	NJ TRANSIT: background checks of prospective employees	23 N.J.R. 1775(a)	R.1991 d.495	23 N.J.R. 3038(b)

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17:1-12.9	County and municipality early retirement incentive program: deadline for filing participation resolutions	23 N.J.R. 2847(a)		
17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:12-2.11	Preference laws and out-of-State vendors	23 N.J.R. 2225(a)	R.1991 d.502	23 N.J.R. 3038(c)
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:25-1.1, 1.2, 1.3, 1.5, 1.11, 1.12	Collection of debts owed NJHEAA by employees in certain State, county, and municipal jurisdictions	23 N.J.R. 2226(a)		
17:29-1.5, 2.3, 2.4, 2.6, 2.7, 3.2, 3.4, 4.6	Local Public Employee Charitable Fund-Raising Campaign	23 N.J.R. 2228(a)	R.1991 d.493	23 N.J.R. 3040(a)

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18:2-2.7	Abatement of penalty and interest for failure to pay tax or file return	23 N.J.R. 1899(a)	R.1991 d.528	23 N.J.R. 3342(a)
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:12-5.1	Property tax appeals: extension of time to file due to late tax bills	23 N.J.R. 2230(a)	R.1991 d.511	23 N.J.R. 3177(a)
18:12-7.15	Homestead rebate: extension of filing date	23 N.J.R. 1464(a)	R.1991 d.527	23 N.J.R. 3345(a)
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:24-2.16	Sales and Use Tax: registration of amusement event promoters	23 N.J.R. 3275(b)		
18:24-9.11	Sales and Use Tax: exempt organizations carrying on trade or business	23 N.J.R. 2004(a)		
18:24-16.6, 16.7, 16.9, 17.1–17.4	Vending machine sales	23 N.J.R. 396(a)	R.1991 d.557	23 N.J.R. 3345(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)		

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TITLE 19—OTHER AGENCIES

19:3A-1.3	Hackensack Meadowlands Development Commission: petitions for rulemaking	23 N.J.R. 1917(a)	R.1991 d.553	23 N.J.R. 3346(a)
19:4-6.27, 6.29, 6.30	Hackensack Meadowlands Development Commission: District zoning and rule changes	23 N.J.R. 1917(a)	R.1991 d.553	23 N.J.R. 3346(a)
19:16	Labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:25-20	ELEC: lobbyists and legislative agents	23 N.J.R. 3077(a)		

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19:41-9.3	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:41-11.1	Vendor registration form	23 N.J.R. 2486(b)	R.1991 d.531	23 N.J.R. 3347(a)
19:42-5.9, 5.10	Underage gaming violations; affirmative defenses	23 N.J.R. 3084(a)		
19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)		
19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)		
19:45-1.1A, 1.15, 1.20, 1.25, 1.27, 1.31, 1.33, 1.34, 1.35, 1.39, 1.40, 1.40A, 1.41, 1.42, 1.43, 1.46A	Twenty-four hour gaming	23 N.J.R. 3243(a)		

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19:45-1.11, 1.12	Implementation of red dog	23 N.J.R. 2231(a)	R.1991 d.532	23 N.J.R. 3348(a)
19:45-1.11, 1.12	Implementation of sic bo	23 N.J.R. 2922(a)		
19:45-1.12A	Low limit table games: operation and conduct	23 N.J.R. 3250(a)		
19:45-1.25	Casino checks issued to patrons	23 N.J.R. 3087(a)		
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:45-1.38	Movement of slot machines and bill changers	23 N.J.R. 2920(a)		
19:45-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)		
19:45-1.40B	Annuity jackpot payouts	23 N.J.R. 2920(b)		
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
19:46-1.1, 1.6, 1.9, 1.16, 1.18, 1.19, 1.20	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:46-1.10	Additional wagers in blackjack	23 N.J.R. 3251(a)		
19:46-1.13A, 1.15, 1.16, 1.16A, 1.20	Implementation of sic bo	23 N.J.R. 2922(a)		
19:46-1.14, 1.17, 1.19	Implementation of red dog	23 N.J.R. 2231(a)	R.1991 d.532	23 N.J.R. 3348(a)
19:46-1.26	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:46-1.27	Density of slot machines: alternatives	23 N.J.R. 192(a)		
19:46-1.27	Slot machine denominations	23 N.J.R. 3252(a)		
19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6, 7.2, 8.2, 8.3	Optional variations in rules of table games	23 N.J.R. 1784(b)	R.1991 d.551	23 N.J.R. 3350(a)
19:47-2.2, 2.17	Additional wagers in blackjack	23 N.J.R. 3251(a)		
19:47-2.3	Payout odds for blackjack	23 N.J.R. 1781(a)	R.1991 d.534	23 N.J.R. 3351(a)
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)	R.1991 d.533	23 N.J.R. 3355(a)
19:47-2.6	Dealing "hole" card in blackjack	23 N.J.R. 1782(a)	R.1991 d.536	23 N.J.R. 3353(a)
19:47-2.8	Surrender option in blackjack	23 N.J.R. 1783(a)	R.1991 d.535	23 N.J.R. 3354(a)
19:47-2.11	Splitting pairs in blackjack	23 N.J.R. 1783(b)	R.1991 d.537	23 N.J.R. 3354(b)
19:47-3.3, 4.10, 7.3	Vigorish options in baccarat, minibaccarat, and baccarat-chemin de fer	23 N.J.R. 2926(a)		
19:47-6, 8.2	Implementation of red dog	23 N.J.R. 2231(a)	R.1991 d.532	23 N.J.R. 3348(a)
19:47-7.7, 7.8	Dealing of hands	23 N.J.R. 2927(a)		
19:47-8.2, 8.3	Rules of the games: notice of changes	23 N.J.R. 2613(a)	R.1991 d.552	23 N.J.R. 3354(c)
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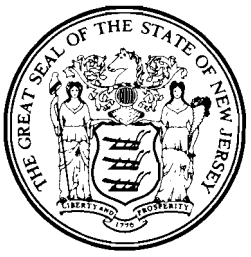

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