

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 17, 1987.
 See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED MARCH 16, 1987.

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **June 3, 1987**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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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Proposals	May 4
Adoptions	May 8
June 15 issue:	
Proposals	May 18
Adoptions	May 22
July 6 issue:	
Proposals	June 8
Adoptions	June 12
July 20 issue:	
Proposals	June 22
Adoptions	June 26

NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

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RULE PROPOSALS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

The following proposals are authorized by Ronald I. Parker, Acting Director, Office of Administrative Law.

Submit comments by June 3, 1987 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building No. 9
Quakerbridge Road
CN 049
Trenton, New Jersey 08625

(a)

Use of Appendices

Proposed Amendment: N.J.A.C. 1:30-1.2

Proposed New Rule: N.J.A.C. 1:30-2.8

Authority: N.J.S.A. 52:14F-5(f), (h), (i).

Proposal Number: PRN 1987-153.

The agency proposal follows:

Summary

The purpose of this proposal is to make the use of appendices uniform and consistent throughout the New Jersey Administrative Code.

Material considered appropriate to include in appendices is material which is supplemental, explanatory, or provides background information. Acceptable examples of appendices include: "model" forms of submissions; reprints of regulations, statutes, forms, etc. which originate elsewhere and which serve as an aid to understanding the rule(s); hypothetical situations used as examples; lists of addresses for regional offices and the hours business may be conducted; analyses or explanatory material regarding the adopted rule (which may contain a combination of material from the proposal summary, the comments received and the rationale for the rule).

The purpose of an appendix is to clarify a rule. Material which is regulatory is not appropriate to include in an appendix. Any element which controls behavior and is necessary to the regulated process, even though the element is not in the form of text, must be considered regulatory. Examples of material which would not be appropriate to include in an appendix are: lists of protected species of plants and animals; lists of controlled drugs; formulae required for the submission of data, and any requirements placed upon the regulated public.

The rule should be able to stand alone, without the use of the appendix. The appendix should function to assist all members of the regulated public to operate from a common basis of understanding.

Social Impact

The beneficial effect of this proposal is centered in the value as clarification of the regulatory process. Members of the regulated public should be able to more readily locate, interpret and follow the requirements made upon them, with regulatory material located in the rules and explanatory material located in the appendices. This may result in less time spent by agency staff in interpreting or explaining rules to the regulated public, and may result in a greater degree of overall compliance with regulations, as regulations should be more accessible to the public.

Economic Impact

Any economic impact of this proposal would derive from the degree to which the attendant structuring of the New Jersey Administrative Code furthers compliance with the particular rules. Costs based on contested cases and on time spent by staffing in explaining or clarifying rules may decrease, but the extent of the impact is not known.

Regulatory Flexibility Statement

This proposal does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposed amendment and new rule primarily affect state agencies in their rulemaking activities by clarifying the use of appendices in the context of administrative rules.

Full text of the proposed amendment and proposed new rule follows (additions shown in boldface **thus**).

1:30-1.2 Definitions

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

...

"Appendix" means any collateral nonregulatory material which serves to clarify, illustrate, or explain a rule.

...

1:30-2.8 Appendices

(a) Appendices shall include only material which serves to clarify or explain a rule. An appendix may include, but is not limited to:

1. Acceptable, or "model" forms;
2. Hypothetical cases used as examples;
3. Reprints of regulations, statutes, forms, etc., which originate elsewhere;
4. Lists of offices, their addresses and hours of business; and
5. Analyses or explanatory material regarding the rule, which may contain a rationale or derivation of the rule.

(b) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14B-7(f), determine the location of an appendix to a rule in the New Jersey Register and the New Jersey Administrative Code, and whether it should be published in the New Jersey Register and the New Jersey Administrative Code.

(b)

Additional Notice of Proposed Rulemaking

Proposed Amendment: N.J.A.C. 1:30-3.1

Authority: N.J.S.A. 52:14F-5(f), (h), (i).

Proposal Number: PRN 1987-154.

The agency proposal follows:

Summary

The OAL sought advice from the Office of the Attorney General regarding the additional notice requirement established by the Administrative Procedure Act at N.J.S.A. 52:14B-4(a)(1). Based on the Attorney General's advice, the OAL proposes to clarify the additional notice requirement. The proposed language, which expands upon the current text, requires that the additional notice include either the text of the proposed rule, a statement of the substance of the intended action, or a description of the subjects and issues involved; and information on the time, place and manner for comment. The OAL may suspend the processing of a proposal notice which does not fulfill the additional notice requirements.

In addition, the amendment to N.J.A.C. 1:30-3.1(a)5 specifies that a regulatory flexibility statement as required by N.J.S.A. 52:14B-16 et seq. must also be included as part of the proposal notice.

Social Impact

The proposed amendment serves to clarify the existing additional notice requirements which agencies must undertake when proposing a rule. The amendment will therefore, make the rule easier to understand and clarify the agencies' responsibilities.

The amendment adding the regulatory flexibility statement codifies into the rules the recently enacted statutory requirement that agencies undertake a small business impact analysis when proposing rules. The amendment will serve as a reminder to the agencies of this new requirement while at the same time providing notice to the public concerning the impact of the proposal on small businesses.

Economic Impact

The proposed amendment to N.J.A.C. 1:30-3.1(b) should have no economic impact since it merely clarifies the current practice of providing additional notice to interested parties.

The proposed amendment to N.J.A.C. 1:30-3.1(a) will have an economic impact on State agencies since they will now be required to expend administrative staff resources and time in preparing the statement.

Regulatory Flexibility Statement

The proposed amendment to N.J.A.C. 1:30-3.1(b) does not affect small businesses because it does not impose reporting, recordkeeping or other requirements on small businesses. The proposed amendment primarily affects State agencies during the rulemaking process by clarifying the additional notice requirements of the Administrative Procedure Act.

Although the proposed amendment to N.J.A.C. 1:30-3.1(a) does not impact small businesses as contemplated by the Act, small businesses are the primary beneficiaries of the new requirement.

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

1:30-3.1 Notice of proposed rule

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposed rule" and submit the notice to the OAL. The notice of proposed rule shall include:

1. A proposed N.J.A.C. citation of the new rule, amendment, repeal or reoption.

2. The name of the adopting agency head and agency and the signature of the adopting agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4.

3. A citation to the specific statutory authority for the proposed rule. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the summary.

4. An announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

i. When, where, and how persons may present their views orally or in writing.

ii. When and where persons may attend any formal rule adoption proceeding.

5. A brief statement for the proposed rule, which shall include:

i. A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:

(1) Who and what will be affected by the proposal;

(2) How, when and where the effect will occur; and

(3) What the proposal prescribes, proscribes or otherwise mandates; and

(4) What enforcement mechanisms and sanctions may be involved; and

(5) Any other relevant or pertinent information.

ii. A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefor.

iii. An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, particularly any segment of the public proposed to be regulated.

iv. A regulatory flexibility statement in accordance with N.J.S.A. 52:14B-16 et seq.

6. The full text of the proposed new rule, amendment, repeal or reoption, specifically indicating additions and/or deletions of any rule being repealed or renumbered.

[(b) Any proposed notice which does not meet the requirements in (a) above may be subject to the provisions of N.J.A.C. 1:30-1.12.]

[(c)] (b) Upon receipt of the proposed notice which conforms to these requirements:

1. The OAL shall submit the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposed rule in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any proposal notice which would be cumbersome, or unduly expensive to publish shall not be printed in full. Instead, such proposals shall be summarized in the Register. The proposing agency shall make available the proposed rule and provide in the notice the manner in which, and from where, copies may be obtained.

3. The agency shall mail the notice of proposed rule, as filed to those persons who have made timely request of the agency for notice of its rulemaking actions; and

4. The agency shall undertake an additional method of publicity, other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule. **The additional method of publicity shall include: the full text of the proposed rule or a statement of the substance of the intended action or a description of the subjects and issues involved; and information on the time, place and manner in which interested persons may present comments.**

(c) Any proposal notice which does not meet the requirements in (a) and (b)3 above or any additional notice which does not meet the requirements in (b)4 above may be subject to the provisions of N.J.A.C. 1:30-1.12.

(a)

**Rules for Agency Rulemaking
Emergency Rule Adoptions and Filing Adopted
Rules**

**Proposed Amendments: N.J.A.C. 1:30-4.5 and
1:30-4.1**

Authority: N.J.S.A. 52:14B-1 et seq. and 52:14F-5(f), (h) and (i).

Proposal Number: PRN 1987-155.

The agency proposal follows.

Summary

The Office of Administrative Law proposes to amend N.J.A.C. 1:30-4.5 which outlines the filing requirements for adopting an emergency rule. The purpose of the amendment is to clarify what documents must be filed with the OAL as part of an emergency adoption procedure. The rule is also amended to clarify the requirements for proposing and adopting a concurrent proposal of the emergency rule.

The proposed amendment is not a substantive departure from past practice but is simply intended to provide a clarification of filing requirements so that all State agencies will follow a uniform emergency adoption and concurrent proposal procedure.

N.J.A.C. 1:30-4.1(a)1 is also being amended to clarify that the Certificate of Proposal, Adoption and Promulgation must be submitted with each adopted rule filed.

Social Impact

By clarifying the filing requirements for adopting a rule on an emergency basis, the proposed amendment will benefit those State agencies which on occasion deem it necessary to undertake an emergency adoption of a rule. The detailed requirements of the proposed amendment will alleviate any confusion among State agencies concerning their responsibilities under the APA and the rulemaking rules. It is also hoped that the amendment will provide consistency and uniformity in the emergency adoption procedure.

The proposed amendment to N.J.A.C. 1:30-4.1 clarifies the requirements of filing a non-emergency adoption.

Economic Impact

Since the proposed amendment to N.J.A.C. 1:30-4.5 simply identifies those documents which are required as necessary for filing an emergency adoption, no economic impact is expected from this rulemaking. The clarification of the filing procedure may have an incidental economic impact in that only those documents which are required by the rule will be prepared and processed as part of the emergency adoption. No economic impact is expected from the amendment to N.J.A.C. 1:30-4.1.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or other requirements on, and therefore do not affect, small businesses. The amendments primarily affect State agencies during the rulemaking process by clarifying the requirements for filing adopted rules.

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

1:30-4.5 [Certificate for emergency adoption] **Emergency rule adoption and concurrent proposal**

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall [file the following documents with the OAL at the time of submitting the rule.] **comply with the requirements of the adoption procedure. The documents to be filed for an emergency rule adoption shall include:**

[1. The agency head's certified order adopting the emergency rule and concurrent proposal, if any.]

1. **A Certificate of Proposal, Adoption and Promulgation (form OAL/ARP-1 signed by the agency head adopting the emergency rule;**

2. (No change.)

3. [Statement] **A signed statement from the Governor [attesting] concurring as to the existence of an imminent peril which justifies the emergency rulemaking proceeding.**

4. **The text of the emergency rule.**

(b) (No change.)

(c) Upon filing with the [Director, the] Office of Administrative Law, **the OAL shall transmit [and the certificate of emergency] the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency rule to the President of the Senate and the Speaker of the General Assembly.**

(d) The provisions of an emergency rule may be readopted in compliance with the normal rulemaking requirements in order to continue in effect beyond the statutory limits of N.J.S.A. 52:14B-4(c), except that he readopted rule shall be effective upon filing of the notice of adoption with the Director. The provisions of an emergency rule may not be readopted as an emergency rule.]

(d) To continue the provisions of an emergency rule beyond the statutory 90-day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may separately propose the provisions of the emergency rule in a proposal which is filed with the OAL at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent proposal shall comply with N.J.A.C. 1:30-3.1 and may be adopted after the comment period. The adoption of the concurrent proposal shall be effective upon timely filing of the notice of adoption with the OAL. Any changes to the readopted rule shall be effective upon publication of the notice of adoption. The provisions of an emergency rule may not be readopted as an emergency rule.

1:30-4.1 Requirements for filing an adopted rule

(a) With each adopted rule submitted for filing the adopting agency shall include:

1. [Certification] A Certificate of Proposal, Adoption and Promulgation form OAL/ARP-1 signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter;

2.-8. (No change.)

(a)

**Procedures of the Office of Administrative Law
Petition for a Rule**

Proposed Readoption with Amendments: N.J.A.C.

1:31-1.2

Proposed Recodification: N.J.A.C. 1:31-1.2 to

1:31-2.1

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1987-156.

The agency proposal follows:

Summary

N.J.A.C. 1:31-1.2, Procedure to petition for a rule, will expire on August 12, 1987 pursuant to Executive Order No. 66(1978). In order to avoid the expiration of the rule and maintain its effectiveness, the OAL proposes to readopt the existing text of the rule with minor technical changes which more properly reflect the petition for a rule process. No substantive changes to the current procedure are proposed. The rule has, however, been recodified to N.J.A.C. 1:31-2.1 for organizational reasons.

The readoption of the petition rule is also undertaken to satisfy the requirements of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Social Impact

The proposed readoption of N.J.A.C. 1:31-1.2 (recodified as 1:31-2.1) will have a beneficial social impact in that it will continue to provide the necessary information and specify the procedural requirements which must be followed for the proper submission of rulemaking petitions from interested persons to the Office of Administrative Law.

Economic Impact

The proposed readoption of the petition rule will have no discernible economic impact on the general public, state agencies or the Office of Administrative Law since the rule simply outlines a procedure which must be followed in the event an interested person petitions the OAL for a rulemaking.

Regulatory Flexibility Statement

The proposed readoption of the OAL petition rule does not require a small business regulatory flexibility analysis since the rule does not specifically apply or impact on small businesses as contemplated by the Act.

Full text of the proposed readoption with amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

SUBCHAPTER 2. PROCEDURES OF THE OFFICE OF ADMINISTRATIVE LAW

[1:31-1.2] **1:31-2.1** Procedure to petition for a rule

(a) An interested person may [apply to] petition for the promulgation, amendment or repeal of any rule of the Office of Administrative Law. A petition shall be in writing, shall be legible and intelligible and shall be signed by the petitioner. Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The statutory authority under which the Office of Administrative Law may take the requested action.

(b) The Office of Administrative Law shall immediately date stamp and log each document submitted as a petition. Upon [acceptance] filing, the Office of Administrative Law shall forthwith [file the document for publication as a] publish the notice of petition for a rule in the New Jersey Register pursuant to the requirements of N.J.A.C. 1:30-3.6(a).

(c) No later than 30 days after receiving a petition, the Office of Administrative Law shall mail to the petitioner and file for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b). The notice of action shall include either:

1. A statement denying the petition;
2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the Register; or
3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a date certain. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the Register.

BANKING

(b)

DIVISION OF BANKING

Qualified Bank Acquisition of Underwritten Securities

Proposed New Rules: N.J.A.C. 3:6-16

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9A-28.2.

Proposal Number: PRN 1987-150.

Submit comments by June 3, 1987 to:

Roger F. Wagner
Deputy Commissioner
Division of Banking
CN 040

Trenton, New Jersey 08625

The agency proposal follows:

Summary

With the passage of Senate Bill No. 2065 (P.L. 1987, c.69), the legislature has stipulated that a qualified bank (one with trust powers) may purchase up to a maximum of 50 percent of an issue of State, county or municipal securities which the qualified bank, or any of its affiliates, in their commercial banking capacity has acted as the underwriter thereof or as a member of an underwriting syndicate thereof. Prior to the passage of this bill, such purchases were prohibited.

With the increasing incidence of mergers and acquisitions, the number of banks underwriting the aforementioned securities has been shrinking. Further, most of those which continue to underwrite securities operate major trust departments. Historically, with a larger volume of bank underwriters, managers of trust accounts of one bank, desiring to invest in local issues, could easily invest in issues underwritten by another bank. With mergers and consolidations, the market has narrowed. Recognizing this restriction, the legislature passed the aforementioned legislation which will now allow trust departments of a bank which underwrites an issue to purchase up to 50 percent of that issue.

As a part of the legislation, the Commissioner of Banking was directed to implement regulations prescribing the manner in which and the extent to which qualified banks could purchase securities which had been under-

written by the commercial department of the same bank or any of the banks affiliated with that bank. The proposed new rules establish standards relative to purchases of underwritten securities, note the limitations on such purchases and establish recordkeeping requirements relative to these purchases.

Social Impact

Passage of this legislation should expand the market for local security issues. Since banks will now be able to market securities they underwrite to trust accounts within their own bank or affiliated banks, these banks should be more willing to bid for the underwriting of these securities. With this expanded market, local entities may be more willing to proceed with local projects which should enure to the benefit of the general public.

Economic Impact

By encouraging major banks to participate in the underwriting of local issues, the State of New Jersey and its communities will benefit economically through these funds being reinvested in New Jersey issues rather than in out of state markets. With an expanded market, local units may be willing to proceed with projects that might otherwise be deferred. Here again, the New Jersey economy stands to be spurred by these additional ventures.

With increased bidding for their securities, the rate local units will have to pay for funding should decline. This should benefit local taxpayers. On the other hand, trust customers will have the opportunity of investing in these highly regarded local New Jersey issues.

Regulatory Flexibility Statement

The proposed rules will have no reporting, recording or compliance requirements for small businesses. The underwritten security issues, which are the subject of these rules, generally run into the millions of dollars. Such transactions are normally handled by commercial banks which are dominant in the banking field and have assets in excess of a billion dollars and have in excess of a thousand employees.

Full text of the proposed new rule follows:

CHAPTER 6 GENERAL PROVISIONS

SUBCHAPTER 16. QUALIFIED BANK ACQUISITION OF UNDERWRITTEN SECURITIES

3:6-16.1 Definitions

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

"Trust account" means any account, relationship or arrangement administered by a qualified bank acting in any capacity as defined by N.J.S.A. 17:9A-28.

"Affiliate bank" means a bank at least 90 percent of whose issued and outstanding stock is owned by the same corporation.

"Issuer" means a qualified bank which acts either by itself or with others as an underwriter of securities.

"Qualified bank" means a qualified bank as defined in subsection (12), Section 1 of The Banking Act of 1948.

"Securities" means:

1. Bonds, notes or other obligations of or guaranteed by, this State or any agency, authority or instrumentality of this State; and

2. Bonds, notes or other obligations of any county, municipality, or other governmental unit or subdivision of this State, or any agency, authority, instrumentality of any county, municipality or other governmental unit or subdivision of this State.

3:6-16.2 Conditions placed on a qualified bank acquiring certain underwritten securities

(a) A qualified bank may acquire securities, for one or more of its trust accounts, from itself, another member of the underwriting syndicate of the security, or from an affiliate bank, when the qualified bank or affiliate holds the security or securities as a result of its being the underwriter or a member of the underwriting syndicate of the security, provided the following conditions are met with respect to each acquisition:

1. The acquisition is a prudent and appropriate investment for each of the trust accounts for which it is acquired;

2. The price paid is fair as established by market quotation of the security or of securities of similar quality, yield and maturity or as established by independent appraisal; and

3. A notification of such acquisition shall be given by the qualified bank to all beneficially interested parties with respect to the trust account for which the acquisition is made. The notification shall be in writing

and may be sent as an individual notice by regular mail or it may be included as part of the next periodic statement. In the case of a common trust fund, notification shall be disclosed in the annual financial report of such fund.

3:6-16.3 Limitations

A qualified bank shall not retain or purchase for its trust accounts or retain or sell to any of its affiliate banks for their trust accounts, securities which in the aggregate will exceed a total of more than 50 percent of an issue of securities regarding which it or any affiliate bank is an issuer.

3:6-16.4 Required records

(a) To support compliance with the provisions of N.J.A.C. 3:6-16.2, a qualified bank shall retain its records relative to the transaction for two years from the date of the acquisition, which records shall include at a minimum:

1. The quality rating of the issue of the security;
2. The price, yield and term of the security;
3. Any and all fees and/or commissions paid;
4. The portion of the total issue of the security acquired by the qualified bank for its trust accounts and the trust accounts of any affiliated bank; and
5. The date or dates of purchase.

3:6-16.5 Exemption provision

Nothing contained within the provisions of this subchapter shall be deemed to prohibit a qualified bank from acquiring any securities as permitted by other applicable law or regulation.

COMMUNITY AFFAIRS

(a)

DIVISION ON AGING

Congregate Housing Services Program

Proposed Readoption with Amendments: N.J.A.C. 5:70

Authorized By: Leonard S. Coleman, Jr., Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-184.

Proposal Number: PRN 1987-152.

Submit comments by June 3, 1987 to:

Ann Zahora, Director

Division on Aging

CN 807

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:70-1.1 et seq. expires on August 16, 1987. The Division on Aging has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order.

The Congregate Housing Services Program has been in operation since the rules were originally adopted on August 16, 1982. The program provides a supportive environment to frail elderly tenants living in subsidized housing facilities. In addition, the program provides subsidies to those meeting the income eligibility guidelines formulated under the rules of the program.

The proposed readoption and amendments represent the product of experience since implementation of the program in 1982. Proposed amendments will modify and refine income eligibility guidelines for determining the level of financial assistance to eligible tenants who need services, but, who have been unable to purchase them under the current income eligibility guidelines. In addition, the amendments will increase the flexibility in program management and local operations within the subsidized housing projects.

Amendments which would have the effect of modifying costs include: the addition of an additional subsidy level to assure more equitable treatment of participants, the adjustment of categories of disposable income to reflect increases in Social Security benefits in the last three years, and the expectation of an annual adjustment of Social Security benefits to continue to assure indexing of participants will not occur.

Social Impact

A growing and major social problem is the need to plan for the health and welfare of hundreds of thousands of "young old" people who moved into the many senior citizen housing projects developed during the 1960's and 1970's and who are still residing in these housing projects. These people now into their late 70's and 80's and some are approaching or are in their 90's.

Approximately half of the tenants using congregate housing services could be defined as pre-nursing home candidates, and at least 25 percent of the tenants would likely be Medicaid eligible for nursing home entry if not maintained in their independent setting. The mobility of these tenants is often impaired; fewer than half can walk without a cane, walker, or wheelchair. These physically impaired elderly are forced to enter nursing homes or other medically oriented facilities when they become unable to care for themselves and their living unit without assistance.

The Congregate Housing Services Program is having a profound impact upon the management of subsidized housing facilities. There is growing evidence that persons can now be admitted to these facilities with a higher degree of frailty than was previously possible and can, therefore, remain in their apartments longer.

In addition, tenants are able to return to the facility after a hospital or nursing home stay because of the availability of the services of the program.

The building managers and congregate services coordinators report a growing positive relationship with families of these tenants and acceptance of the program among other residents of the facility.

Economic Impact

The economic impact of the financial subsidy formula amendments will be on the older tenant living in subsidized housing facilities who is receiving congregate housing services or who will be eligible for a subsidy because of the expansion of the service subsidy levels.

The proposed amendments modify the financial subsidy formula to decrease the share of program cost borne by the tenant. Currently an individual with a monthly disposable income (net income minus rent) above \$506 is ineligible for any subsidy. Under the proposed amendments, individuals with disposable incomes up to \$595 will be eligible for subsidies equal to 20 percent of the program cost. The amendments also add another service subsidy level giving some subsidized participants greater financial assistance in meeting the program cost. The subsidy formula shall be adjusted annually on January 1 on the basis of the percentage increase in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415, immediately preceding the calendar year. Each income category set forth will be multiplied by each percentage increase.

Regulatory Flexibility Statement

This proposal applies to qualified housing agencies under the Congregate Housing Services Act. Such agencies include nonprofit and limited dividend housing sponsors which qualify as small businesses.

The proposal requires such agencies to prepare and maintain the same type of reports and records as have been required under the Department's existing rules for the Congregate Housing Services Program. These reports and records concern: (1) the individuals receiving program subsidies for certain living expenses they incur while residing at housing projects owned and operated by such agencies; and (2) the manner in which such agencies utilize Program funds in defraying the costs of providing certain services to such individuals. Preparation of certain of the required reports, that is, financial audits, will require the agencies to obtain professional accounting assistance.

Based upon the Department's prior experience in administering the Program, it is not anticipated that any initial capital costs will have to be incurred either by agencies which have participated in the Program in the past or by agencies which may become participants in the Program in the future. Further, based upon the Department's past administration of the Program, the Department estimates that the annual cost of compliance with the continuing reporting and recordkeeping requirements will be minimal. Agencies which have participated in the Program have not indicated any significant costs incurred in this regard beyond those costs normally incurred for the bookkeeping and record keeping activities required by their business activities.

To the extent that any nonpublic agencies may experience any adverse economic impact by virtue of the rules' recordkeeping and reporting requirements, the Department would consider providing Program funds under the Act to assist such agencies in dealing with any such impact.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:70.

Full text of the proposed amendments to the readoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

5:70-1.2 Purpose

The purpose of the Congregate Housing Services Program is to [establish] **provide** a supportive environment for [certain low-income frail elderly] persons of **low income or suffering economic hardships** through the provision of selected services in order to avoid premature institutionalization in nursing homes or similar medically oriented facilities.

5:70-2.1 Definitions

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

"Congregate meals" shall mean **at least one** [or two] hot or other [appropriate] **nutritious** [meals] **meal** served in a community dining room and conforming to the standards established in N.J.A.C. 5:70-4.3.

"Facility" shall mean **any specially designed subsidized housing for the elderly and handicapped.**

"R.D.A." shall mean **Recommended Dietary Allowance.**

5:70-3.3 Grant application and approval

(a) As a precondition to approving a grant application for the implementation of a congregate housing services program, or the continuation of a program, the following information shall be submitted to the Division on Aging:

1. Description of services to be provided **and the relationship of each service to the needs and characteristics of the project residents who are to receive the services**, source of each service, and method of delivery;

2.-4. (No change.)

5. **The projected starting date of supportive services once the application has been approved;**

6. **Availability and adequacy of local social services in assisting project residents to maintain independent living and avoid unnecessary institutionalization.**

5:70-4.1 General requirements

(a) [Congregate housing services shall include a program of supportive services that includes the provision of meals, housekeeping and personal assistance.]

The provision of Congregate Housing Services under the Act shall include a program of supportive services including the provision of meals, housekeeping assistance and personal care assistance. However, if one or more of these supportive services is provided at an eligible facility by another agency or program, the Division may, upon application of the program sponsor, waive the aforesaid requirement that the sponsor provide such service or services as part of the sponsor's congregate housing services program.

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

5:70-4.2 Administration

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

(c) The responsibilities of the Congregate Services Coordinator shall include, but not be limited to:

1.-11. (No change.)

12. Regularly attend the periodic training sessions sponsored by the Division on Aging.

(d)-(e) (No change.)

5:70-4.3 Meals

(a) [Either one or two appropriate meals will be available, at least one of which should be hot.] **At least one hot or other nutritious meal will be available.**

(b) (No change.)

(c) [Weekly/monthly cycle menus shall be submitted to the Division on Aging's Congregate Housing Services Coordinator three weeks prior to the serving date and must meet the approval of a qualified nutritionist.] **Weekly/monthly cycle menus must be approved by a qualified nutritionist. Menus must be submitted with the proposal application. Copies of the menu must be kept on file for housing services staff.**

(d) (No change.)

(e) [The meals shall be served in a community setting, such as a dining room, preferably at tables seating 4-6 people. If meals are served cafeteria style, provisions must be made for those participants requiring assistance

in carrying food to the tables.] At least one meal shall be served in a community setting, such as a dining room, preferably at tables seating four to six people, unless a waiver has been granted by the Division on Aging. If meals are served cafeteria style, provisions must be made for those participants requiring assistance in carrying food to the table.

(f)-(g) (No change.)

(h) If suitable on-site food preparation facilities are not available, or their use would not be economically feasible, alternatives to food preparation by the sponsor may include contracting for the delivery of congregate meals from other sources, pending approval of the menus by [the Division on Aging] a qualified nutritionist. Such meals, their preparation and delivery, must meet the provisions of this subchapter and of all State and local health and sanitation codes.

5:70-4.4 Housekeeping and personal services

(a) (No change.)

(b) Personal services shall be available for a minimum number of hours per month as determined by the project with the approval of the Division on Aging. Such services may include:

1.-4. (No change.)

5. Delivery of meals to living units on a limited basis when necessary because of temporary incapacity due to illness or injury.

(c) (No change.)

5:70-5.1 Program costs

(a) (No change.)

(b) [Other additional direct costs which are related to the delivery of services, but which are not included in the total program costs when determining participant costs may be allowable with the approval of the Division on Aging.] A portion of the coordinator's salary will be charged as a separate line item in the budget. The amount shall be determined by the Division on Aging on an annual basis.

(c) Other additional direct costs including the remainder of the Coordinator's salary which are related to the delivery of services may be included in determining participant costs with the approval of the Division on Aging.

5:70-6.1 General

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

(d) [The service subsidy may not exceed the amount shown in the formula for determining disposable income (DI).]

No individual shall receive a service subsidy in excess of that provided in N.J.A.C. 5:70-6.3(e) unless permission is obtained from the Director, Division on Aging.

(e) (No change.)

5:70-6.3 Income, program costs, and service subsidy formula

(a)-(d) (No change.)

(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:

STEP I

NET INCOME — RENT = DISPOSABLE INCOME
(N.I.) (R) (D.I.)

1. The following STEP II shall be operative until December 31, 1987:
STEP II

D.I. of \$0.00-\$159.00: Service Subsidy = 95 percent of Program Cost
D.I. of \$160.00-\$224.00: Service Subsidy = 75 percent of Program Cost
D.I. of \$225.00-\$269.00: Service Subsidy = 60 percent of Program Cost
D.I. of \$370.00-\$506.00: Service Subsidy = 20 percent of Program Cost

2. The following formula shall become operative on January 1, 1988:

STEP II

D.I. of \$0.00 to \$159.00: Service Subsidy = 95 percent of Program Cost
D.I. of \$160.00 to \$268.00: Service Subsidy = 80 percent of Program Cost
D.I. of \$269.00 to \$377.00: Service Subsidy = 60 percent of Program Cost
D.I. of \$378.00 to \$468.00: Service Subsidy = 40 percent of Program Cost
D.I. of \$487.00 to \$595.00: Service Subsidy = 20 percent of Program Cost

(f) [The ceiling on the amount of disposable income for determination of eligibility for service subsidy is based upon current Office of Management and Budget (O.M.B.) Poverty Level Income Guidelines.]

The categories of disposable income set forth in 2 above, for example, \$0.00 to \$159.00, for use in determining percentage levels of program service subsidies shall be adjusted annually on January 1. The adjustment shall be made on the basis of the percentage increase in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415 for the

immediately preceding calendar year. Each income category set forth above will be multiplied by such percentage increase. The Division on Aging shall ensure that appropriate notification of each such annual adjustment is properly made.

5:70-7.1 Establishment of the Professional Assessment Committee (PAC)

(a) The PAC shall be utilized in the determination of participant eligibility for the Congregate Housing Service Program.

1.-2. (No change.)

3. The PAC shall:

i. (No change.)

ii. To the extent possible, evaluate and assess the remaining resident population and establish written procedures for maintaining a waiting list of potential participants for the program.

iii. When feasible evaluate and assess [all] new applicants who apply for admission to the housing project to determine their immediate needs.

4.-7. (No change.)

5:70-7.3 Residents Ineligible for Service Subsidy

[Residents in need of congregate housing services whose disposable income exceeds 125 percent of the current O.M.B. poverty levels are not eligible for financial assistance, but may receive the available services by paying the total program costs.]

Residents ineligible for service subsidy under N.J.A.C. 5:70-6.3(e) may receive the available services by paying the total program costs.

5:70-9.2 [Quarterly Financial Reports]

[(a) Interim expenditure reports shall be submitted quarterly to facilitate payment in accordance with grant agreements.

(b) A monthly reporting form shall be maintained at the project for use in determining at the time of final audit by the Department of Community Affairs the validity of the subsidies.

(c) The Division on Aging may terminate the grant agreement if the sponsor has not delivered congregate housing services to eligible recipients of services within six months after funding approval is granted, or if the sponsor has failed to submit two consecutive quarterly financial reports.]

Reports

(a) Monthly and Quarterly Report Forms will be supplied to each project at the inception of the contract period.

(b) Monthly reports shall be submitted by the 15th of the month. A copy must be maintained at the project for use in determining at the time of final audit by the Division on Aging of the validity of the subsidies.

(c) Quarterly performance reports shall be submitted within 15 days of the end of each quarter in order to facilitate payment.

(d) Additional reports, as required, shall be submitted in accordance with a schedule determined by the Division on Aging.

(e) The Division may terminate the grant agreement if the sponsor has not delivered congregate housing services to eligible recipients of services within six months after funding approval is granted, or if the sponsor has failed to submit two consecutive quarterly financial reports.

5:70-9.3 [Performance Reports: Quarterly and Annual] (Reserved)

[(a) Performance (progress) reports shall be submitted within 15 days of the end of each month, and within 15 days after completion of each contract period.

(b) The report submitted at the end of the contract period shall include:

1. a list of all subsidized and non-subsidized participants in the program during the contract period.

2. services provided to each participant and the time enrolled in the program.

3. reasons for participant's discontinuation or termination from program.

(c) Quarterly and Annual Report Forms will be supplied to each project at the inception of the contract period.]

ENVIRONMENTAL PROTECTION**(a)****DIVISION OF HAZARDOUS WASTE MANAGEMENT
Environmental Cleanup Responsibility Act Rules****Proposed Repeal: N.J.A.C. 7:1-3 and 4****Proposed New Rules: N.J.A.C. 7:26B**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1K-6 et seq., specifically N.J.S.A. 13:1K-10.

DEP Docket No. 013-87-04.

Proposal Number: PRN 1987-159.

Public hearings concerning this proposal will be held on:

June 4, 1987 at 9:00 A.M.

New Jersey State Library
First Floor Conference Room
185 West State Street
Trenton, New Jersey

June 9, 1987 at 9:00 A.M.

Rutgers, the State University, Newark
Campus Center—Multipurpose Room West
350 Doctor Martin Luther King Boulevard
Newark, New Jersey

Submit written comments by June 17, 1987 to:

Howard Geduldig, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department adopted the Interim Environmental Cleanup Responsibility Act Rules (Regulations) in order to implement the Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.) (Act), by emergency proceedings, pursuant to N.J.S.A. 52:14B-4(c) as implemented by N.J.S.A. 1:30-4.5. These Regulations became effective on December 30, 1983 and were published at 16 N.J.R. 151(a). Subsequently, the Regulations were readopted twice, effective March 5, 1986 and February 27, 1987. The Department proposed its Fee Schedule for Environmental Cleanup Responsibility Act (Fee Schedule) at 17 N.J.R. 1622(a) on July 1, 1985 and adopted the Fee Schedule at 17 N.J.R. 2260(a), effective September 16, 1985 and operative on October 1, 1985.

The Department proposes this new, expanded rule (this chapter) to provide greater precision and clarity in order to enhance compliance by the regulated community and to ensure greater certainty on the part of the regulated community of its obligations and responsibilities under the Act. This chapter reflects the Department's experience in implementing the Regulations over the past three years and represents sufficient change to warrant proposed repeal of the Regulations at N.J.A.C. 7:1-3, along with the Fee Schedule at N.J.A.C. 7:1-4, concurrently with proposal of the new rule at N.J.A.C. 7:26B. An extended comment period of 44 days is provided to avoid the necessity for entertaining any requests for reopening the comment period.

The Act and this chapter provide an effective means of mitigating the inherent danger to the citizens, property and natural resources of this State posed by the generation, manufacture, refining, transportation, treatment, storage, handling, and disposing of hazardous substances and wastes by industrial establishments. The Act and this chapter reflect the philosophy that the mitigation of this danger is most properly achieved through the use of private funds. The Act and this chapter impose a cleanup plan or negative declaration precondition on the closing, terminating or transferring operations of certain industrial properties. The cleanup precondition is the execution of an approved cleanup plan which details the measures necessary to detoxify the property, and any other properties contaminated by discharges emanating or that have emanated from the subject property. The negative declaration precondition is the approval by the Department of a declaration that there has been no discharge of hazardous substances and wastes on or emanating or that

has emanated from the property or that any such discharge has been cleaned up in accordance with procedures approved by the Department and that there remains no contamination on the property(ies).

Highlights from each subchapter of this chapter follow:

N.J.A.C. 7:26B-1 provides clarity and needed guidance to the regulated community with an expanded definitions section at N.J.A.C. 7:26B-1.3 defining such terms as "corporate reorganization not substantially affecting ownership," "dissolution of corporate identity," "majority interest," and "sale or transfer of the controlling share of the assets" found, but not defined, in the Act or the existing Regulations. To end the confusion in the regulated community, the definition of "cleanup plan" makes clear that the cleanup plan must address both on-site contamination and off-site contamination emanating from or which has emanated from the industrial establishment. An expanded applicability section at N.J.A.C. 7:26B-1.5 clarifies with greater precision what transactions are subject to the Act. A new Initial Notice triggers section at N.J.A.C. 7:26B-1.6 identifies the event in connection with an applicable transaction requiring the owner or operator of an industrial establishment to submit an Initial Notice to the Department. A section at N.J.A.C. 7:26B-1.8 lists those facilities and transactions not subject to the Act, including new primary SIC group numbers 4712 (Freight Forwarding), 4784 (Fixed Facilities for Handling Vehicles Transportation, Not Elsewhere Classified) to cover toll roads, 4811 (Telephone Communication), 4941 (Water Supply) to cover potable water treatment works, 4952 (Sewage Systems) to cover sewage treatment systems, and 7622 (Radio and Television Repair Shops), as well as Lawn Mower Repairs under existing SIC group number 7699, that the Department has determined pose no threat to the health and safety of the public or the environment or are adequately regulated by the Department through other programs. A new section at N.J.A.C. 7:26B-1.9 allows those owners or operators of facilities which are not subject to the Act to receive a letter from the Department confirming the inapplicability of the Act to their transaction. A section at N.J.A.C. 7:26B-1.10 establishes a new fee schedule to cover the costs of administering the program to better reflect actual program costs for the various fee categories. A new section at N.J.A.C. 7:26B-1.12 provides for right of entry and inspection, and a new section at N.J.A.C. 7:27B-1.13 specifies the form of execution required on key submissions to the Department under the Act and this chapter.

N.J.A.C. 7:26B-2 establishes the procedures by which a person may petition the Department to exempt a subgroup, or class of operations within a subgroup, within the subject Standard Industrial Classification (SIC) major groups. The purpose of this provision is to allow for exemptions from the Act of those classes or subgroups of industrial establishments whose operations do not pose a threat to the public health or environment from the release of hazardous substances and wastes.

N.J.A.C. 7:26B-3 clarifies the Initial Notice filing procedures. N.J.A.C. 7:26B-3.1 provides for a pre-notice filing conference upon request of the owner or operator to discuss compliance with the Act and this chapter. N.J.A.C. 7:26B-3.2 continues the list of required items for submittal set forth at N.J.A.C. 7:1-3.7 in the existing Regulations.

N.J.A.C. 7:26B-4 sets forth the procedures for implementing the sampling plans and mandates how the sampling results are to be prepared and submitted. N.J.A.C. 7:26B-4.3 requires the owner or operator to submit the sampling results with either a proposed negative declaration, a proposed cleanup plan, or a revised sampling plan to further delineate the nature and extent of contamination.

N.J.A.C. 7:26B-5 continues to require the owner or operator to submit either a negative declaration or a cleanup plan. The proposal provides greater specificity and clarity regarding the criteria for approval by the Department of proposed cleanup plans and proposed negative declarations, including a listing of the support documents the owner or operator is required to submit for a negative declaration approval. Pursuant to N.J.A.C. 7:26B-5.4, the negative declaration is valid for a period not to exceed 60 days, and only to the extent the information submitted therein remains unchanged, following Department approval of a proposed negative declaration. If no transaction occurs 60 days subsequent to Department approval of the proposed negative declaration, the owner or operator may request one extension of the negative declaration, for a period not to exceed 60 days, where there have been no new discharges of hazardous substances and wastes.

N.J.A.C. 7:26B-6 continues to require the owner or operator to provide and maintain a bond or letter of credit and a standby trust agreement. The owner or operator has the additional option to self bond or obtain a fully funded trust. The Wording of Instruments Document provides the required language for each type of acceptable financial assurance instrument and is located in Appendix A of this chapter.

N.J.A.C. 7:26B-7 establishes an administrative procedure allowing the closing, terminating or transferring of an industrial establishment, pursuant to an administrative consent order (ACO), to proceed prior to the submittal of a proposed negative declaration or a proposed cleanup plan. ACOs were developed to avert severe economic hardships on the owners or operators of industrial establishments and their employees that could result from delay in completing transactions. Additionally, ACOs allow for the Act's continued coverage of stock transactions without conflict with existing Federal law.

N.J.A.C. 7:26B-8 provides a detailed confidentiality procedure for those owners or operators who desire confidential treatment for any information submitted pursuant to the Act or this chapter. The procedure is proposed in response to numerous requests for confidential treatment for such items as notices of pending mergers or stock buy-outs, sales agreements, and trade secrets involving process descriptions. The proposal describes procedures to be followed by the applicant to claim confidentiality and procedures to be followed by the Department to protect any information deemed confidential.

N.J.A.C. 7:26-9 clarifies the Department's position regarding penalty settlement offers by establishing a schedule of the minimum penalty amounts acceptable to the Department for each listed violation.

N.J.A.C. 7:26B-10 establishes criteria and procedures by which an industrial establishment may be exempt from the Act because the operation(s) involves amounts of hazardous substances posing no danger to the public health or the environment.

N.J.A.C. 7:26B-11 continues the provisions of existing N.J.A.C. 7:1-3.15. Minimum standards for cleanups shall be established on a case-by-case basis.

N.J.A.C. 7:26B-12 is a new provision which will eliminate the duplication of functions regarding sites that are covered by both the Act and other Federal or New Jersey statutes, particularly the Solid Waste Management Act, N.J.S.A. 13:1D-1 et seq. In cases where an industrial establishment is closing or terminating operations, compliance with the Act will not be required for those portions of the facility considered hazardous waste management units and that are adequately regulated by other environmental laws.

N.J.A.C. 7:26B-13 allows owners to convey as much as 20 percent of their real property without the owner conducting a complete review of the industrial establishment pursuant to the Act. Previously, the Department did not allow an owner to sell any portion of an industrial establishment without first subjecting the entire industrial establishment to review pursuant to the Act. The Department was concerned that an owner could sell off all the clean, vacant property (comprising a majority of the assets) while retaining only the contaminated portion. When the remaining, contaminated portion became subject to cleanup (pursuant to the Act, upon decommissioning or transfer, or pursuant to another statute) private assets, including those from the prior sale of the clean, vacant property, would be unavailable, and cleanup would have to be effected using public moneys. The Society for Economic and Environmental Development (SEED) petitioned the Department to allow a one time sale of up to 20 percent of the real property. The Department has modified the SEED proposal to allow multiple sales, provided that the sum of the percentages attributed to all limited conveyances during the period of ownership by the applicant does not exceed 20 percent. The Department is basing this limited conveyance on the appraised value of the entire industrial establishment and the sales price of the actual portion(s) of property to be conveyed. This modification is a compromise that the Department believes will provide a useful mechanism for owners to sell a portion(s) of their property, yet will not allow the sale of the portion comprising a majority of the tangible assets of the industrial establishment. N.J.A.C. 7:26B-13 sets forth the procedure to follow to apply for and receive a certificate of limited conveyance. The Department may require sampling of the portion proposed for conveyance.

Social Impact

The proposal will allow the Department to continue, in full force and effect, the successful program pursuant to the Act, requiring adequate preparation and subsequent implementation of acceptable cleanup procedures as a precondition to the closing, terminating or transferring of industrial establishments in New Jersey. The proposal is expected to clarify the procedures to be followed and result in more efficient implementation of the Act. Thus, the proposal will continue this important and innovative program and further minimize the exposure of the citizens, property and natural resources of the State to the inherent dangers from operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes.

Economic Impact

Compliance with the Act has caused additional cost to real estate and business transactions. However, the Legislature intended, and the Department believes, that the owner or operator of industrial establishments should properly incur these expenses as a precondition to closure or sale rather than the citizens and taxpayers of New Jersey at some later date. The Department has also taken steps to decrease case processing time and thereby reduce some of the adverse economic impacts of compliance with the Act. In addition, the availability of ACOs that allow transactions to proceed before the Department has approved the proposed negative declaration or cleanup plan, should reduce the costs of compliance. In some cases, the fees charged by the Department will increase; however, the Department has redefined "small business" in such a way as to increase the number of industrial establishments that will fall into that category and will be charged a lesser fee.

Environmental Impact

The proposal will have a positive environmental impact by continuing without interruption the regulatory framework necessary to implement the benefits of the Act. The Department asserts that the Regulations have had a major positive environmental impact for the citizens, property, and natural resources of New Jersey. The Regulations have provided the Department with an important, effective remedial tool to significantly reduce the occurrence of future contaminated site problems throughout the State.

Regulatory Flexibility Statement

The proposal would apply to those places of business which fall into the major Standard Industrial Classification number groups of 22-39, 46-49, 51, or 76, involved in the generation, manufacture, treatment, storage, or disposal of hazardous substances and wastes, that are closing, terminating, or transferring operations. It is estimated that of the total number of businesses (approximately 1300) that would be affected by the proposal each year, approximately 700 would be "small businesses" as defined by the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). In order to comply with this proposal, the small businesses subject to the Act and this chapter will often require the services of an environmental consultant to perform the mandatory environmental assessment of the subject facility and, if necessary, to implement the required cleanup plan. In developing the proposal, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and has determined that to minimize the impact of the proposal on small businesses would endanger the environment, public health, and public safety. Therefore, no exemption is provided for "small businesses" as defined in the New Jersey Regulatory Flexibility Act. Notwithstanding the above, the fee schedule at N.J.A.C. 7:26B-1.10 of the proposal provides for reduced fees for small businesses complying with the Act and this chapter.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:1-3 and 4.

Full text of the proposed new rule follows.

CHAPTER 26A (RESERVED)

CHAPTER 26B ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:26B-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Environmental Cleanup Responsibility Act, P.L. 1983 c.330 (N.J.S.A. 13:1K-6 et seq.). The provisions of any law, rule or regulation to the contrary notwithstanding, the closing, terminating, or transferring of operations of an industrial establishment is subject to the provisions of this chapter and the Act.

7:26B-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act.

7:26B-1.3 Definitions

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

"ACO" means an Administrative Consent Order.

"Act" or "ECRA" means the Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.).

"Authorized agent" means the person authorized to represent the owner or operator, or both, for matters covered by the Act and this chapter, except where an authorized officer or management official is required to act pursuant to this chapter.

"Cleanup plan" means a plan for the cleanup of an industrial establishment and any contamination, including any off-site contamination which has emanated or is emanating from the industrial establishment, approved by the Department pursuant to this chapter, as required at N.J.A.C. 7:26B-5.3, including, but not limited to, a description of the location, types, and quantities of any and all hazardous substances and wastes that will remain at the industrial establishment and those hazardous substances and wastes to be removed; a description of the types, volume, and location of any storage vessels, surface impoundments, or landfills or any other structures, vessels, contrivances, or units containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; a reasonable time schedule for cleanup plan implementation; and an accurate and detailed cost estimate to implement the cleanup plan. If the evaluation of an industrial establishment for cleanup purposes necessitates additional information, a cleanup plan may also include, at the discretion of the Department, graphic and narrative descriptions of the geographic, geologic, and hydrogeologic characteristics at the industrial establishment and an evaluation of all residual soil, groundwater, and surface water contamination.

"Closing, terminating, or transferring operations" means the cessation of all or substantially all the operations of an industrial establishment which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes; any changes in operations sufficient to change the primary Standard Industrial Classification number of the industrial establishment from an SIC number that is subject to the Act to one that is not subject to the Act; any temporary cessation of all or substantially all the operations at an industrial establishment for a period of not less than two years; any incident, transaction or proceeding through which an industrial establishment becomes non-operational for health or safety reasons; termination of a leasehold interest at an industrial establishment by the owner or operator of the industrial establishment; any change in ownership of the industrial establishment including, but not limited to, transfer by any means of shares of a corporation which results in a change in the majority interest in the owner or operator, the sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, conveyance of the real property, transfer of real property through condemnation proceedings, dissolution of corporate identity, reorganization and liquidation in bankruptcy or insolvency proceedings, except for corporate reorganization not substantially affecting ownership. See also N.J.A.C. 7:26B-1.5.

"Consolidation" means the combination of two or more corporations into a newly created corporation whereby the two or more constituent corporations are extinguished.

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the board of directors or the shareholders of a corporation, which does not result in a change of ownership or control, termination of the corporate business, or liquidation and distribution of corporate assets, where the purpose is merely to correct illegalities or defects in the original corporation, to broaden the scope of the powers of the organization including the amendment as well as extension or revival of charters, or to place the corporation on a sound management and financial basis that enables it to take care of its obligations, and which involves only one corporation which merely changes its form and results in the same board of directors and stockholders.

"Department" means the New Jersey Department of Environmental Protection.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances and wastes into the waters or onto the lands of the State or into waters outside the jurisdiction of the State, when damage may result to the lands, waters, or natural resources within the jurisdiction of the State. The term discharge shall include spills.

"Dissolution of corporate identity" means the termination of the corporation's corporate existence including, but not limited to, the ending of the capacity of the corporation to act as such and a liquidation and extinguishment of all legal relations existing with respect to the corporate enterprise.

"GIS" means General Information Submission described at N.J.A.C. 7:26B-3.2.

"Hazardous substances" means those elements and compounds, including petroleum and petroleum products including, but not limited to, heating fuels and lubricating oils, which are, or have been, defined as hazardous substances by the Department after public hearing, including, but not limited to, the "List of Hazardous Substances" set forth in Appendix A of N.J.A.C. 7:1E, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. §1321) as amended by the Clean Water Act of 1977 (33 U.S.C. §§1251 et seq.) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to Section 307 of that Federal act (33 U.S.C. §1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of the Act and this chapter.

"Hazardous substances and wastes" means hazardous substances, hazardous wastes, or both.

"Hazardous waste" means any solid waste designated as hazardous waste pursuant to N.J.A.C. 7:26-8, or as otherwise provided by Federal or State law.

"Industrial establishment" means any activity or place of business, or both, having the primary SIC major group number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in, and determined in accordance with, the procedures described in the SIC manual and engaged in operations after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-1.8.

"Initial Notice" means both the completed GIS and the completed SES described at N.J.A.C. 7:26B-3.

"Majority interest" means the shareholder or those shareholders holding the majority of issued and outstanding stock who are entitled to (1) have the right and power in the management of the corporation; (2) the right and power to represent the corporation and perform functions which can bind dissenting or minority stockholders; or (3) to elect, appoint, or remove the officers or agents that represent the stockholders and act for the corporation. Holder(s) of 50 percent or less of the issued and outstanding stock of a corporation can be considered holders of majority interest if they have control of the organization through any of the above powers.

"Merger" means the absorption of one corporation by another, the latter retaining its own name and identity and acquiring the assets, liabilities, franchises and powers of the former, whereby the absorbed corporation ceases to exist as a separate business entity.

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment.

"Negative declaration" means an affidavit approved by the Department which is executed by an authorized officer or management official of the industrial establishment stating that there has been no discharge of hazardous substances and wastes on or from the industrial establishment, or that any such discharge on or from the industrial establishment has been cleaned up in accordance with procedures approved by the Department, and that there remain no hazardous substances and wastes at the industrial establishment except those that, upon written Department approval, will remain as part of the normal industrial or commercial operation pursuant to any written agreements, lease arrangements, or other contracts as part of the change in ownership or operation.

"Person" means corporations, companies, associations, societies, firms, partnerships, joint stock companies, and individuals.

"Sale or transfer of the controlling share of the assets" means a transfer or sale not in the ordinary course of business of more than 50 percent of the assets, including real property, held by a corporation or partnership or other business entity; or the transfer of assets requiring board of directors or shareholder approval.

"SES" means the Site Evaluation Submission described at N.J.A.C. 7:26B-3.2.

"SIC" means Standard Industrial Classification.

"SIC manual" means the most recent edition of the Standard Industrial Classification manual, prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

7:26B-1.4 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operations to the subchapter, section, subsec-

tion, 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.

7:26B-1.5 Applicability

(a) Owners or operators who plan to close, terminate or transfer operations of an industrial establishment shall submit an Initial Notice in accordance with the time requirements set forth at N.J.A.C. 7:26B-1.6.

(b) Unless otherwise provided in this chapter, closing, terminating, or transferring operations includes, but is not limited to, the following events;

1. Sale or transfer of stock in a corporation which directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates, an industrial establishment that results in any form of a merger or consolidation;

2. Sale or transfer of stock in a corporation which results in a change in the person holding the majority interest of a corporation which directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates an industrial establishment;

3. Sale or transfer of the controlling share of the assets of an industrial establishment, whether in one or several independent transactions;

4. Sale or transfer of title to an industrial establishment unless otherwise provided at N.J.A.C. 7:26B-13;

5. Sale or transfer of title to any real property of an industrial establishment unless otherwise provided at N.J.A.C. 7:26B-13;

6. Dissolution of a corporation which directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates an industrial establishment;

7. Receivership action under N.J.S.A. 14A:14-1 et seq. or bankruptcy proceedings under chapters 7, 11, or 13 of the Federal Bankruptcy Act, 11 U.S.C., §§101 et seq., by or against the owner or operator of an industrial establishment;

8. Condemnation proceedings directed at an industrial establishment unless the transfer is a limited conveyance as provided at N.J.A.C. 7:26B-13;

9. Sale of an industrial establishment or sale or transfer of the controlling share of the assets of the industrial establishment pursuant to a foreclosure;

10. Sale or transfer of the controlling interest of a partnership owning or operating an industrial establishment;

11. Sale or transfer of title to an industrial establishment by exercising an option to purchase;

12. Sale or transfer of title to any real property of an industrial establishment by exercising an option to purchase;

13. Sale, transfer, or termination of a lease which results in the cessation of operations by the landlord or tenant of an industrial establishment;

14. Any incident or event, or series of incidents or events, as a result of which an industrial establishment becomes non-operational for health or safety reasons, whenever the Department determines that such an incident or event, or series of incidents or events, has caused significant discharges or releases of hazardous substances and wastes;

15. Cessations of all or substantially all operations at an industrial establishment that are:

i. Permanent;

ii. For a period of two years or longer; or

iii. For a period of less than two years where there is a significant interruption in the continued employment relationship between the pre-cessation work force and the industrial establishment;

16. Transfer of an industrial establishment to a trust, except where grantor and beneficiary are identical or members of the same family. As used in this paragraph, "family" means an individual's siblings, spouse, children, grandchildren, parents, and grandparents;

17. Execution of a lease for a period of 99 years or longer; and

18. A change in the primary SIC number of an industrial establishment to a primary SIC number that is not subject to the Act or this chapter.

(c) Any industrial establishment which ceased operations prior to December 31, 1983 and which remains under the same ownership as prior to December 31, 1983, and upon or at which remain containers, tanks, surface impoundments, landfills, or other types of storage facilities containing hazardous substances and wastes after December 31, 1983 shall be subject to the Act and this chapter upon the closing, terminating, or transferring of operations of the industrial establishment.

7:26B-1.6 Initial Notice triggers

(a) The owner or operator shall submit the GIS of the Initial Notice required by N.J.A.C. 7:26B-3 no more than five days subsequent to any of the following events:

1. The signing of an agreement or sale for the industrial establishment or the real property of the industrial establishment or the conveyance of title in the absence of an agreement of sale;

2. The dissolution of a corporation;

3. The actual closure of all or substantially all of the operations, or the public release by the owner or operator of the decision to close all or substantially all of the operations, of an industrial establishment, whichever occurs first;

4. Notice of the sale, transfer or termination of any lease involving an industrial establishment or the actual sale, transfer, or termination of any lease involving an industrial establishment, whichever event occurs first;

5. A change in the primary SIC number of an industrial establishment to a primary SIC number that is not subject to the Act or this chapter;

6. The exercise of an option to purchase an industrial establishment or the real property of an industrial establishment;

7. The tendering of the majority of stock of a corporation which directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates, an industrial establishment pursuant to a tender offer;

8. Merger or consolidation, or the execution of a merger or consolidation agreement, whichever occurs first, by a corporation which directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates, an industrial establishment;

9. The conveyance, or the execution of an agreement conveying, whichever occurs first, of the majority interest of a corporation, a controlling interest of any noncorporate business entity, or sale of the controlling share of assets of an industrial establishment;

10. Receipt by the owner or operator of an offer letter issued in connection with a condemnation proceeding;

11. Receipt of the determination by the Department that an incident or event, or series of incidents or events, has caused significant discharges or releases of hazardous substances and wastes;

12. The permanent or temporary cessation of operations at the industrial establishment under the circumstances set forth at N.J.A.C. 7:26B-1.5(b)15; and

13. The bringing of a receivership action by or against the owner or operator pursuant to N.J.S.A. 14A:14-1 et seq. or the filing of a voluntary petition or the granting of an involuntary petition, in accordance with the Federal Bankruptcy Act, 11 U.S.C. §§101 et seq..

(b) The owner or operator required to submit the GIS shall submit the SES as required in N.J.A.C. 7:26B-3.

7:26B-1.7 Liability for ECRA compliance

(a) Notwithstanding the provisions of N.J.A.C. 7:26B-3.2(d) and 7:26B-5.5(d), both the owner and operator of the industrial establishment shall be strictly liable without regard to fault, jointly and severally, for compliance with the Act and this chapter except as provided in (b) below.

(b) In the case of a hostile tender offer which results in a person obtaining a majority interest or a short form merger, the person initiating the hostile takeover shall be strictly liable without regard to fault, jointly and severally, for compliance with the Act and this chapter.

7:26B-1.8 Operations and transactions not subject to ECRA

(a) Operations or transactions not subject to the provisions of this chapter include, but are not limited to, the following:

1. Those portions of solid waste or hazardous waste facilities currently subject to an in compliance with operational closure or post-closure maintenance requirements pursuant to permit or closure plan approval issued under the following:

i. The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

ii. The Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., or

iii. The Solid Waste Disposal Act, 42 U.S.C. §6901 et seq., the Resource Conservation and Recovery Act of 1976, Pub.L. 94-580, and the Hazardous and Solid Waste Amendments of 1984, Pub.L. 98-616;

2. Any central administrative office located on a separate tax lot and block, established prior to December 31, 1983, from the industrial establishment it serves and engaged in general administrative, personnel, supervisory, accounting, personnel, engineering and systems planning, advertising, legal, financial or related management functions performed centrally and not producing any products nor providing any services for the general public, other business entities, or the government;

3. Any business entity engaged in the production or distribution of agricultural commodities;

4. Corporate reorganization not substantially affecting the ownership or control of the industrial establishment;

5. Any individual stock transaction that does not, or series of stock transactions that do not, change the majority interest in the stock of a corporation that directly owns or operates, or indirectly through its subsidiaries, no matter how remote in the chain of corporate ownership, owns or operates, an industrial establishment;

6. A sale or transfer of assets of an industrial establishment that is in the ordinary course of business;

7. A planned cessation for a period of less than two years of all or substantially all operations at an industrial establishment for maintenance, repairs, modifications, renovations, or normal business cycle furloughs, where there is no significant interruption in the continued employment relationship between the pre-cessation work force and the industrial establishment;

8. Execution of a lease for a period of less than 99 years;

9. Transfers made to confirm or correct any deficiencies in the recorded title of an industrial establishment;

10. Transfers releasing a contingent or reversionary interest;

11. Retail gasoline stations with a SIC major group number of 55;

12. Automobile repair and automobile body shops with a SIC major group number of 59;

13. Agricultural land and associated structures;

14. Virgin, undeveloped, and unused land provided no industrial establishment has operated or is operating on the site or any portion of the site;

15. Facilities engaged in the retail sale of fuel oil with a SIC major group number of 59;

16. Execution of any mortgage, filing of any lien, granting of any security interest, assignment of a lease to secure a loan, or refinancing of any debt not including a sale and lease back, by the owner or operator of an industrial establishment;

17. Facilities engaged in the retail sale of goods with a SIC major group number of 52-59;

18. Sale of single and multi-family houses used primarily for residential purposes;

19. Transfer of an industrial establishment by devise or intestate succession;

20. Transfer of an industrial establishment where the transferor or the transferee are members of the same family. As used in this paragraph, "family" means a person's siblings, spouse, children, grandchildren, parents, and grandparents;

21. Transfer to a beneficiary pursuant to the terms of a trust;

22. Operations engaged in the wholesale distribution of durable goods with a SIC major group number of 51 including, but not limited to, the following:

i. Motor vehicles and automotive parts;

ii. Furniture;

iii. Lumber;

iv. Metals;

v. Electrical goods;

vi. Sporting goods;

vii. Hardware;

viii. Machinery; and

ix. Jewelry;

24. Granting an easement on or a license to that portion of an industrial establishment that is not and has not been involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes; and

25. Construction loans obtained by the owner or operator of an industrial establishment.

(b) The following subgroups or classes of operations within those subgroups in the Standard Industrial Classification major group numbers 22-39 inclusive, 46-49 inclusive, 51 or 76 are exempt from the provisions of this chapter:

SIC
INDUSTRY
NUMBER

Description

1. 4712 Freight Forwarding
2. 4722 Arrangement of Passenger Transportation
3. 4723 Arrangement of Transportation of Freight and Cargo
4. 4784 Fixed Facilities for Handling Motor Vehicles Transportation, Not Elsewhere Classified

5. 4811 Telephone Communication (Wire or Radio)
6. 4821 Telegraph Communication (Wire or Radio)
7. 4832 Radio Broadcasting
8. 4833 Television Broadcasting
9. 4899 Communication Services, Not Elsewhere Classified
10. 4941 Water Supply
11. 4952 Sewage Systems
12. 4971 Irrigation System
13. 5111 Wholesale Distribution of Printing & Writing Paper
14. 5112 Wholesale Distribution of Stationery Supplies
15. 5113 Wholesale Distribution of Industrial & Personal Service Paper
16. 5133 Wholesale Distribution of Woven Fabrics
17. 5134 Wholesale Distribution of Notions & Other Dry Goods
18. 5136 Wholesale Distribution of Men's and Boys' Clothing
19. 5137 Wholesale Distribution of Women's Children's & Infants' Clothing
20. 5139 Wholesale Distribution of Footwear
21. 5141 Wholesale Distribution of Groceries, General Line
22. 5142 Wholesale Distribution of Frozen Food
23. 5143 Wholesale Distribution of Dairy Products
24. 5144 Wholesale Distribution of Poultry Products
25. 5145 Wholesale Distribution of Confectionery
26. 5146 Wholesale Distribution of Fish
27. 5147 Wholesale Distribution of Meats
28. 5148 Wholesale Distribution of Fresh Fruits and Vegetables
29. 5149 Wholesale Distribution of Groceries and Related Products, Not Elsewhere Classified
30. 5152 Wholesale Distribution of Cotton
31. 5153 Wholesale Distribution of Grain
32. 5154 Wholesale Distribution of Livestock
33. 5159 Wholesale Distribution of Farm Products, Raw Materials, Not Elsewhere Classified
34. 5181 Wholesale Distribution of Beer & Ale
35. 5182 Wholesale Distribution of Wine
36. 5199 Wholesale Distribution of Nondurable Goods, Not Elsewhere Classified
37. 7622 Radio and Television Repair Shops
38. 7631 Watch, Clock & Jewelry Repair
39. 7699 Repair Shops & Related Services, Not Elsewhere Classified (Only the following repair services under 7699 are exempt from the Act and this chapter. All other repair services under 7699 not listed below remain subject to the Act and this chapter):
 - i. Awning Repair
 - ii. Bicycle Repair Shops
 - iii. Binoculars and Other Optical Goods Repair
 - iv. Caliper, Gauge and Other Machinists Precision Instrument Repair
 - v. Camera Repair
 - vi. Fountain Pen Repair Shops
 - vii. Harness Repair Shops
 - viii. Horseshoeing
 - ix. Key Duplicating Shops
 - x. Lawn Mower Repair Shop
 - xi. Leather Goods Repair Shops
 - xii. Lock Parts Made to Individual Order
 - xiii. Locksmith Shops
 - xiv. Luggage Repair Shops
 - xv. Musical Instrument Repair Shops
 - xvi. Organ Tuning & Repair
 - xvii. Piano Tuning & Repair
 - xviii. Picture Framing to Individual Order (Not Connected with Retail Stores)
 - xix. Pocketbook Repair Shops
 - xx. Precision Instrument Repair
 - xxi. Renedling Work
 - xxii. Repair of Optical Instruments
 - xxiii. Repair of Photographic Equipment
 - xxiv. Repair of Speedometers
 - xxv. Rug Repair Shops (Not Combined with Cleaning)
 - xxvi. Saddlery Repair Shops
 - xxvii. Scale Service Repair
 - xxviii. Sewing Machine Repair
 - xxix. Tent Repair Shops
 - xxx. Tuning of Pianos & Organs

- xxxi. Typewriter Repair (Including Electric)
- xxxii. Umbrella Repair Shops
- xxxiii. Venetial Blind Repair Shops
- xxxiv. Window Shade Repair Shops

7:26B-1.9 Applicability determinations

(a) A person may request a determination from the Department concerning the applicability of the Act or this chapter to a specific site by:

1. Submission of a fully completed, executed, and notarized applicability determination form available from the Department, to the address specified at N.J.A.C. 7:26B-1.11;
2. Execution of the applicability determination form by the owner or operator;
3. Submission of the fee set forth at N.J.A.C. 7:26B-1.10 required for applicability determinations; and

4. Granting written permission allowing the Department to enter and inspect the site and operations for which the applicability determination is requested pursuant to N.J.A.C. 7:26B-1.12.

7:26B-1.10 Fee schedule

(a) The owner or operator shall pay all applicable fees required by this section prior to issuance by the Department of any negative declaration approval, sampling plan approval, cleanup plan approval, final site cleanup approval, applicability determination, de minimus quantity exemption, Certificate of Limited Conveyance or ACO, except as provided at (c)4i and (c)5i below.

(b) All fees required by this section shall be paid by certified check, attorney check, or money order, or by personal check if received 60 days prior to the issuance of any document specified in (a) above. Checks and money orders shall be made payable to "New Jersey Department of Environmental Protection." All fees shall be mailed to the address specified at N.J.A.C. 7:26B-1.11.

(c) Fees for those Departmental services listed below shall be as follows:

	Standard	Small Business
1. Initial Notice Review		
i. Without Sampling Plan	\$ 1,400.00	\$ 250.00
ii. With Sampling Plan that includes only underground storage tank analysis without ground water monitoring	2,400.00	1,250.00
iii. With Sampling Plan other than ii above or iv below	3,900.00	2,750.00
iv. With Sampling Plan that includes any ground water monitoring	5,400.00	4,250.00
2. Sampling Data Review	500.00	500.00
3. Negative Declaration Review	200.00	100.00
4. Cleanup Plan Review (based on cost of cleanup)		
i. \$1-\$9,999	500.00	500.00
ii. \$10,000-\$99,999	1,000.00	1,000.00
iii. \$100,000-\$499,000	2,000.00	2,000.00
iv. \$500,000-\$999,999	6,000.00	6,000.00
v. Over \$1,000,000	10,000.00	10,000.00
5. Oversight of Cleanup Plan Implementation (based on cost of cleanup)		
i. \$1-\$9,999	\$ 500.00	\$ 500.00
ii. \$10,000-\$99,999	1,000.00	1,000.00
iii. \$100,000-\$499,000	6,000.00	6,000.00
iv. \$500,000-\$999,999	8,000.00	8,000.00
v. Over \$1,000,000	10,000.00	10,000.00
6. Applicability Determination	100.00	100.00
7. De minimus Quantity Exemption	250.00	250.00
8. Limited Conveyance Review	500.00	250.00
9. Administrative Consent Orders	1,000.00	1,000.00

(d) Small business means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees.

(e) The schedule for submission of fees shall be as follows:

1. The Initial Notice review fee based upon the applicable sampling plan category shall be submitted with the Site Evaluation Submission (SES).
2. Any sampling data submitted to the Department shall be accompanied by the appropriate fee.
3. Any negative declaration submission shall be accompanied by the appropriate fee.

4. Any draft cleanup plan submitted shall be accompanied by the cleanup plan review fee based upon the estimated cleanup cost contained in the draft cleanup plan.

i. If the approved cleanup plan cost estimate or actual cleanup cost is in a higher fee category, the owner or operator shall submit a payment for the difference in the fees within 30 days of issuance of cleanup plan approval or with the final report on cleanup implementation, whichever is appropriate. If the actual cleanup cost is in a lower fee category, a refund will be issued by the Department within 90 days of issuance of a letter of full compliance.

5. The cleanup plan oversight fee shall be paid within 14 days from the receipt of the Department's cleanup plan approval letter and shall be based upon the estimated cleanup cost contained in the cleanup plan.

i. If the actual cleanup cost is in a higher fee category, the owner or operator shall submit a payment for the difference in the fees with the final report on cleanup implementation. If the actual cleanup cost is in a lower fee category, a refund will be issued by the Department within 90 days of issuance of a letter of full compliance.

6. Any request for an applicability determination shall be accompanied by the appropriate fee.

7. Any request for a de minimus quantity exemption shall be accompanied by the appropriate fee.

8. Any request for a Certificate of Limited Conveyance shall be accompanied by the appropriate fee.

9. Any request for an ACO shall be accompanied by the appropriate fee.

(f) Any owner or operator asserting a confidentiality claim shall submit:

1. For the first 50 pages for which a confidentiality claim is asserted: \$250.00;
2. For each page thereafter: \$1.00.

7:26B-1.11 Forms

Any forms, fees or other information required to be submitted by this chapter shall be obtained from and returned to the Department of Environmental Protection, Industrial Site Evaluation Element, CN 028, Trenton, New Jersey 08625. Courier and hand deliveries may be made to 401 East State Street, 5th Floor East, Trenton, New Jersey 08608.

7:26B-1.12 Right of entry and inspection

(a) The owner or operator of the industrial establishment making any submission to the Department pursuant to the Act and this chapter shall allow the Department and its authorized representative(s), upon the presentation of credentials, to enter the industrial establishment to inspect the site, buildings and records and to take samples from the site, photograph the site and the buildings, and to make copies of the records.

(b) The buyer or transferee of the industrial establishment that has been sold subsequent to obtaining an approved cleanup plan or Administrative Consent Order from the Department shall:

1. Allow the Department and its authorized representative(s), upon the presentation of credentials, to enter the transferred premises to inspect the site, buildings and records, and to take samples from the site, photograph the site and the buildings and to make copies of the records;
2. Allow access to be transferred premises by the authorized representative(s) of the seller or transferor to implement a duly approved cleanup plan or comply with the conditions of an ACO.

(c) The owner, operator, or other person implementing a cleanup plan or who is a party to an ACO shall:

1. Have appropriate technical, scientific, and engineering representative(s) accompany the Department and its authorized representative(s) during the inspection; and
2. Provide all assistance through appropriate technical, scientific and engineering representative(s) to the Department and its authorized representative(s) of the Department during any site inspection.

7:26B-1.13 Certification and signatories

(a) The following documents required to be submitted to the Department shall be executed and certified as set forth in (b) below:

1. GIS (see N.J.A.C. 7:26B-3.2);
2. SES (see N.J.A.C. 7:26B-3.2);
3. Corrected information on a GIS or SES (see N.J.A.C. 7:26B-3.2(g));
4. Affidavit of withdrawal (see N.J.A.C. 7:26B-3.3);
5. Affidavit for a negative declaration, changes to an approved negative declaration, and requests for extensions of negative declarations (see N.J.A.C. 7:26B-5.2 and 5.4);
6. Proposed cleanup plan and corrections thereto (see N.J.A.C. 7:26B-5.3);

7. Final cleanup plan report and corrections thereto (see N.J.A.C. 7:26B-5.7);

8. Affidavit for a de minimus quantity exemption, including the translator's affidavit (see N.J.A.C. 7:26B-10.1); and

9. Application and affidavit for a Certificate of Limited Conveyance see N.J.A.C. 7:26B-13.1).

(b) All documents listed in (a) above shall contain the following signatures and two-part certification which provides the following:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines or imprisonment, or both. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-8."

i. The certification required by (a)1 above shall be signed by the highest ranking corporate, partnership, or governmental officer or official stationed at the site to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines or imprisonment, or both. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-8."

i. The certification required by (b)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole partnership, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(c) The following documents required to be submitted to the Department shall be executed and certified as set forth in (d) below:

1. Applicability determination form (see N.J.A.C. 7:26B-1.9);

2. Sampling plan results (see N.J.A.C. 7:26B-4.3);

3. Cleanup plan progress reports (see N.J.A.C. 7:26B-5.6);

4. Affidavit from chief financial officer, certified audit of the corporation, certified public accountant report, and self-bonding agreement. (see N.J.A.C. 7:26B-6.5(d), (f) and (g)); and

5. Application for an ACO (see N.J.A.C. 7:26B-7.2).

(d) All documents listed in (c) above shall be signed by a person described in (b)2i above who shall make the certification set forth in (b)2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (b)2i above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the site or activity, such as the position of plant manager, or a superintendent or person of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

3. The written authorization is submitted to the Department;

4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection shall be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

5. A duly authorized person shall make the following certification:

i. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines or imprisonment, or both, for violations. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6 et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-8."

(e) All signatures required by this section shall be notarized.

SUBCHAPTER 2. EXEMPTION PROCEDURES

7:26B-2.1 Procedure for obtaining SIC exemptions from ECRA

(a) Any person may petition the Department in writing for an exemption as a sub-group or class of operations within those sub-groups within the Standard Industrial Classification major group numbers 22-39 in-

clusive, 46-49 inclusive, 51 or 76 from the requirements of the Act and this chapter. In support of the petition, such person shall submit all relevant supporting documentation and any other evidence to the Department.

(b) Upon a finding that a SIC sub-group or class of operations within those subgroups above does not pose a risk to the public health, safety, or the environment, the Department may, in response to an exemption petition or on its own initiative, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., exempt the sub-group or class of operations within those subgroups from the provisions of the Act and this chapter through amendment to the list at N.J.A.C. 7:26B-1.8(b).

(c) Exemptions shall not be granted for a specific industrial establishment but shall only be available for a subgroup or class of operations within a subgroup.

SUBCHAPTER 3. INITIAL NOTICE SUBMISSIONS

7:26B-3.1 Pre-Notice filing conference

The Department will, upon request of any owner or operator with an impending transaction or a closing which will render the industrial establishment subject to ECRA, meet with representatives of the owner or operator of the industrial establishment to discuss compliance with the provisions of the Act and this chapter.

7:26B-3.2 Initial Notice requirements

(a) Any owner or operator of an industrial establishment who is closing, terminating, or transferring the industrial establishment may initiate the ECRA process by submitting the General Information Submission (GIS) and the Site Evaluation Submission (SES) described in (b) and (c) below. The owner or operator of the industrial establishment is encouraged to file the GIS and SES prior to the decision to close or terminate operations or execution of an agreement to sell or transfer the industrial establishment. The owner or operator of any industrial establishment who submits an Initial Notice in anticipation of closing, terminating or transferring operations shall comply with all of the provisions of this chapter, except for the submittal of the sales agreement.

(b) The owner or operator of an industrial establishment subject to the Act and this chapter shall submit to the Department the GIS of the Initial Notice containing all the information in this subsection, no more than five days subsequent to the occurrence of an ECRA trigger (see N.J.A.C. 7:26B-1.6) and may submit any additional information required in (c) below available at that time. All information shall be submitted in triplicate on GIS forms available from the Department at the address specified at N.J.A.C. 7:26B-1.11. The owner or operator of the industrial establishment shall include the following information on the GIS:

1. Identification of the subject industrial establishment:

i. Name and location of the industrial establishment, including street address, municipality, county and zip code;

ii. Tax block and lot numbers of the industrial establishment;

iii. Applicable SIC number of the subject industrial establishment;

iv. Real property owner, including name, address and telephone number;

v. Business operator of the industrial establishment, including name, address and telephone number;

vi. Business owner of the industrial establishment, including name, address and telephone number; and

vii. Identification of any previous ECRA submissions made for the industrial establishment or any prior industrial establishments occupying any of the same tax block and lot number including date, ECRA case number, and current status.

2. Description of the transaction requiring compliance with the Act and this chapter;

3. The date of public release of the closure or termination decision and a copy of the appropriate public announcement, if any;

4. The date of executive of the agreement of transfer, sale or option to purchase, the name and address of the other parties to the transfer or sale, and a copy of the agreement of transfer or sale or option to purchase agreement, as applicable;

5. The proposed date for closing, terminating or transferring operations; and

6. The name, address and telephone number of the authorized agent. The owner or operator shall notify the Department in writing of any change of identity, address, or telephone number of the authorized agent. Where the Department is required by this chapter to notify or otherwise communicate with an owner or operator, notice to or communication with the authorized agent by the Department shall be sufficient.

(c) The owner or operator of an industrial establishment subject to ECRA and this chapter shall submit to the Department the SES of the Initial Notice containing all the information in this subsection no more than 45 days subsequent to the occurrence of an ECRA trigger (see N.J.A.C. 7:26B-1.6). All information shall be submitted in triplicate on SES forms available from the Department at the address specified at N.J.A.C. 7:26B-1.11. The owner or operator of the industrial establishment shall include the following information on the SES:

1. To the extent available from diligent inquiry, the site history since January 1, 1940 including:

- i. Names of owners and operators;
- ii. Dates of ownership of each owner;
- iii. Dates of operation of each operator;
- iv. Current addresses of each owner and operator; and
- v. Brief description of each past operation conducted.

2. A list of all Federal and State environmental permits applied for or received, or both, for the site since 1960, including:

- i. Application date;
- ii. Date of approval, denial, or status of application;
- iii. Reason for denial, revocation or suspension if applicable;
- iv. Permit expiration date;
- v. Permit identification number; and
- vi. Reason for permit;

3. Copies of all Departmental or other enforcement actions for violations of any applicable Federal, State or local environmental laws or regulations occurring during the period of ownership of the current owner, and operations by the current operator of the industrial establishment, and a list of each enforcement action including:

- i. Type of enforcement action;
- ii. Date of enforcement action;
- iii. Description of violation; and
- iv. Final resolution or current status of the enforcement action if not resolved;

4. A scaled site map identifying:

- i. All areas in, on, or under the industrial establishment where hazardous substances or wastes have been or currently are generated, manufactured, refined, transported, treated, stored, handled or disposed;
- ii. All containers, tanks, surface impoundments, landfills, septic systems, or any other structure, vessels, contrivance or unit that contain or previously contained hazardous substances and wastes;
- iii. All known areas of discharges that occurred during current and past operations; and
- iv. Property boundaries, site improvements and adjacent land usage;

5. A detailed description of all current and all known past operations and processes occurring at the industrial establishment designed to guide the Department step-by-step through plant operations, with particular emphasis on areas of the process stream where hazardous substances and wastes are or were generated, manufactured, refined, transported, treated, stored, handled or disposed, at the industrial establishment above and below ground;

6. The current and historical means of heating the facility, including dates and description of any fuel oil tank decommissioning;

7. Identification of all current and previous sanitary and industrial discharges to a publicly owned treatment works, or community or on-site disposal system, including the dates and nature of such discharges, and the name and address of the public or community collection, disposal or treatment system;

8. A description of the types, ages, dimensions and locations of containers, tanks, surface impoundments, landfills, septic systems or any other structure, vessel, contrivance or unit that contain or previously contained hazardous substances and wastes;

9. A complete and current inventory, description and location of hazardous substances and wastes generated, manufactured, refined, transported, treated, stored, handled or disposed at the industrial establishment above and below ground, and a description of the location, types and quantities of hazardous substances and wastes used or generated on an annual basis, and a description of the location, types, and quantities of hazardous substances and waste that will remain subsequent to the transfer or sale of the industrial establishment;

10. A detailed description of any known discharge of hazardous substances and wastes that occurred during current and past operations of the site and a detailed description of any remedial actions undertaken to handle any discharge of hazardous substances and wastes;

11. A detailed sampling or other environment evaluation measurement plan, including soil, ground water, surface water, sediment, hazardous waste, chip, wipe and air sampling, proposed as appropriate for the

industrial establishment by the owner or operator of the industrial establishment for review and approval by the Department. A sampling plan shall be designed to determine the presence of and delineate any contamination, including any off-site contamination which is emanating or has emanated from the industrial establishment. The sampling plan shall take into consideration the site history and the current use and shall include, but not be limited to, the following:

i. Graphic and narrative descriptions of geographic, soil, geologic, and hydrogeologic characteristics of the industrial establishment and any proposed evaluation of all environmental media;

ii. Environmental setting of the industrial establishment including, but not limited to:

(1) A United States Geological Survey quad map marked to identify the specific site location;

(2) A description of local land use;

(3) A scaled site map;

(4) An overview of the history of the industrial establishment as related to intended sampling activities;

(5) A description of soils, topography and drainage of the industrial establishment; and

(6) A description of hydrogeology of the area;

iii. A discussion of each area of potential environmental concern including, but not limited to, intended sampling locations, sampling frequency, and analytical parameters;

iv. A description of quality assurance/quality control practices which shall be employed during implementation of the sampling plan including, but not limited to:

(1) Sampling equipment, procedures and sample handling;

(2) The identity of the analytical laboratory, certified in accordance with N.J.A.C. 7:18 or recognized by the Department; and

(3) The identity of the laboratory procedures, methods and detection limits certified in accordance with N.J.A.C. 7:18 or recognized by the Department;

v. A detailed discussion of health and safety practices to be employed during implementation of the sampling plan; and

vi. A schedule of activities, including a schedule for submission of status reports on the progress of sampling and analytical activities leading up to the submittal of sampling results in accordance with N.J.A.C. 7:26B-4.3.

12. A detailed description of the procedures to be used to decontaminate, or decommission, or both, equipment and buildings involved with the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes including the name and location of the ultimate disposal facility;

13. Copies of all soil, sediment, chip, wipe, air emission, ground water, and surface water sampling results, including effluent quality monitoring, conducted at the industrial establishment, on-site or off-site, during the period of ownership by the owner or period of operations by the operator, and a detailed description of the location, methodology, analyses, identity of laboratory, and other factors involved in preparation of the sampling results. If the data would be exceedingly voluminous to submit, contact the Department for instructions; and

14. Other information requested in writing by the Department for the purpose of implementing the Act and this chapter.

(d) In the case of leased property, the owner of the real property of the industrial establishment shall have the primary responsibility for submittal of the Initial Notice except as provided below:

1. If the operator of an industrial establishment plans to close, terminate or transfer its operations at an industrial establishment for which it is the tenant, the operator of the industrial establishment shall have the primary responsibility for submittal of the Initial Notice;

2. If the operator of an industrial establishment gives written notice of termination of the lease agreement, the operator of the industrial establishment shall have the primary responsibility for submittal of the Initial Notice; and

3. If the operator of an industrial establishment files a petition in bankruptcy or brings a receivership action, or if a bankruptcy petition or receivership action is filed against the operator, the operator of the industrial establishment shall have the primary responsibility for the submittal of the Initial Notice.

(e) If the person bearing primary responsibility as set forth in (d) above fails to comply with N.J.A.C. 7:26B-3, the other person(s) liable under the Act and this chapter shall comply.

(f) The owner or operator of an industrial establishment may propose to the Department that no sampling plan need be developed and implemented for the industrial establishment pursuant to N.J.A.C.

7:26B-3.2(c)11 by providing full documentation of the justification to the Department for review and approval with the SES. The Department shall not approve the proposal on the basis of economic considerations.

(g) The Department shall notify the owner or operator of the industrial establishment of any deficiencies in the GIS or SES. The owner or operator of the industrial establishment shall correct the deficiencies within the time frame specified by the Department.

(h) The Department shall notify the owner or operator of the industrial establishment when the GIS and SES are administratively complete.

7:26B-3.3 Withdrawal procedure

If, after filing the GIS or SES, or both, the owner or operator does not close, terminate or transfer operations, the owner or operator may notify the Department and withdraw from the ECRA review process. Notice for such withdrawal must be in the form of an affidavit stating the reason(s) for the withdrawal and executed by the owner or operator.

7:26B-3.4 Department inspection and records review

(a) In accordance with N.J.A.C. 7:26B-1.12, the department shall schedule and conduct site inspections of any industrial establishment submitting an Initial Notice pursuant to this subchapter.

(b) The Department may conduct a review of its records and the available records of the United States Environmental Protection Agency, other State agencies, and the appropriate county and municipal files pertaining to the industrial establishment to confirm and further supplement the information submitted concerning the history, operations and practices of the industrial establishment.

SUBCHAPTER 4. IMPLEMENTATION OF SAMPLING PLAN COORDINATION

7:26B-4.1 Sampling plan approval

(a) After the Department's review of the sampling plan required by N.J.A.C. 7:26B-3, the Department will send a letter to the owner or operator of the industrial establishment concerning the adequacy of the sampling plan submitted pursuant to N.J.A.C. 7:26B-3.2(c)11.

(b) The owner or operator of the industrial establishment shall develop and resubmit any revision or addendum of a sampling plan required by the Department to the Department for final review and approval in the time frame specified by the department after consultation with the owner or operator.

7:26B-4.2 Sampling plan implementation

(a) After written Departmental approval of the sampling plan and prior to submission of the negative declaration or cleanup plan, the owner or operator of the industrial establishment shall implement the sampling plan for the industrial establishment. The Department will be available to advise the owner or operator of the industrial establishment concerning such plan implementation.

(b) The owner or operator of the industrial establishment shall provide the Department with notice and site access to observe all sampling.

(c) The Department may obtain samples as it determines to be necessary during the implementation of the sampling plan and the owner or operator shall not prohibit or otherwise prevent the Department from taking such samples. The Department shall provide split samples to the owner or operator upon request by the owner or operator of the industrial establishment.

7:26B-4.3 Submission of sampling results

(a) The owner or operator of the industrial establishment shall submit to the Department the sampling results performed in accordance with the approved sampling plan. The results shall be accompanied by:

1. A proposed negative declaration;
2. A proposed cleanup plan; or
3. A revised sampling plan to further delineate the extent and degree of contamination on or from the industrial establishment.

(b) If the Department determines that additional sampling and analysis is necessary, the owner or operator shall complete the additional sampling and analysis in the time frame specified by the Department prior to the approval of its proposed negative declaration or proposed cleanup plan.

SUBCHAPTER 5. CRITERIA FOR NEGATIVE DECLARATION AND CLEANUP PLAN APPROVAL AND DEFERRAL OF CLEANUP

7:26B-5.1 Timing of cleanup plan or negative declaration submission

(a) The owner or operator of the industrial establishment may submit a proposed negative declaration or proposed cleanup plan for review after the Department conducts its preliminary site inspection.

(b) The Department shall not approve any proposed cleanup plan or proposed negative declaration submitted pursuant to this chapter until the requirements of N.J.A.C. 7:26B-3 and 7:26B-4 have been satisfied and an inspection of the industrial establishment has been conducted by the Department.

7:26B-5.2 Requirements for proposed negative declaration submission; approval

(a) A proposed negative declaration shall be an affidavit signed by an authorized officer or management official of the industrial establishment indicating the location, and tax block and lot number of the industrial establishment, transaction, and buyer and seller, if applicable, and stating that there has been no discharge of hazardous substances and wastes on or from the industrial establishment or that any such discharge on or from the industrial establishment has been cleaned up to the current satisfaction of the Department. In the case of a sale or transfer of an industrial establishment, if any hazardous substances and wastes are to remain at the industrial establishment, the purchaser or transferee shall provide the Department with a letter accepting ownership of, and liability for, the hazardous substances and wastes.

(b) The proposed negative declaration shall include the following information;

1. Description of cleanup actions taken at the industrial establishment including, but not limited to, activities involving the removal of hazardous substances and wastes, copies of completed manifest forms, name and address of disposal site utilized, quantities and descriptions of hazardous substances and wastes removed, and itemization of costs incurred;
2. Any sampling results from the detailed soil, ground water, surface water, sediment, hazardous waste, chip, wipe and air sampling prepared by the owner or operator of the industrial establishment, if not submitted previously to the Department; and
3. Any other information required by the Department to review the proposed negative declaration.

(c) The department shall within 45 days of submission of a proposed negative declaration approve or disapprove the proposed negative declaration after evaluation of the proposed negative declaration, the initial notice, inspection reports, existing Departmental records, or any other information available to the Department.

(d) If the proposed negative declaration is disapproved by the Department, the owner or operator or both of the industrial establishment shall be notified by the Department of the reason(s) for disapproval.

1. Any deficiencies in the proposed negative declaration shall be corrected and a revised negative declaration shall be submitted to the Department in the time frame specified by the Department in the disapproval.

2. If the Department determines that a cleanup plan is required, a draft cleanup plan shall be submitted to the Department by the owner or operator for review in the time frame specified by the Department.

7:26B-5.3 Requirements for proposed cleanup plan submission; approval

(a) A proposed cleanup plan shall be submitted to the Department for written approval with the following information:

1. A description of the location, types, and the quantities of any and all hazardous substances and wastes that will remain on the industrial establishment and those hazardous substances and wastes to be removed;
2. A description of the types, volume, and location of any containers, tanks, surface impoundments, landfills, or any other structures, vessels, contrivances, or units containing hazardous substances and wastes;
3. The sampling results from the sampling plan prepared by the owners or operators of the industrial establishment;
4. An evaluation of sampling plan findings, migration paths and exposure routes of any discharges of hazardous substances and wastes;
5. An evaluation of remedial measures including proposed actions to remediate any contamination, including any off-site contamination which is emanating or has emanated from the industrial establishment, and recommendations regarding the most practicable method of cleanup;
6. Cleanup levels to be achieved for all environmental media in accordance with the cleanup plan;
7. A schedule of activities for completion of the cleanup including milestones, progress reports from cleanup plan approval through completion and post remediation monitoring;
8. An accurate and detailed estimate of costs of implementation of proposed cleanup plan including, but not limited to:
 - i. Capital costs;
 - ii. Operation and maintenance costs;
 - iii. Monitoring system costs;
 - iv. Laboratory costs;

- v. Engineering, legal and administrative costs; and
 - vi. Contingency costs; and
9. Additional information required by the Department including, but not limited to:

- i. Graphic and narrative descriptions of the geographic, geologic and hydrogeologic characteristics at the industrial establishment; and
- ii. An evaluation of all residual soil, ground water, and surface water contamination.

(b) The Department shall evaluate the proposed cleanup plan, the Initial Notice, inspection reports, existing Departmental records, and any other information available to the Department prior to approval or disapproval of a proposed cleanup plan.

(c) If the Department disapproves the proposed cleanup plan, the Department shall notify the owner or operator of the industrial establishment of its reasons for disapproval. The owner or operator shall correct any deficiencies in the time frame specified by the Department.

7:26B-5.4 Issuance and duration of negative declaration approval

(a) If the Department determines that the requirements of N.J.A.C. 7:26B-5.2 have been satisfied, the Department will issue a written approval of the negative declaration.

(b) A negative declaration approval shall be effective only for so long as all the information submitted pursuant to N.J.A.C. 7:26B-3.2 remains unchanged but, in any event, shall not be effective for a period to exceed 60 days.

(c) When there is a change in the information required in the Initial Notice prior to the expiration of the 60-day period, the owner or operator of the industrial establishment shall immediately notify the Department of the change and request an amended negative declaration approval.

(d) Upon submission of an affidavit that there have been no new discharges of hazardous substances and wastes, the Department will grant one extension of the negative declaration approval for a period not to exceed 60 days.

7:26B-5.5 Issuance of cleanup plan approval and implementation

(a) If the Department determines that the requirements of N.J.A.C. 7:26B-5.3 have been satisfied, the Department may issue a written approval of the cleanup plan. The subject transaction may proceed upon receipt of the written cleanup plan approval.

(b) Within 14 days after receipt of notice from the Department that the cleanup plan is approved, the industrial establishment shall obtain and furnish to the Department financial assurance in conformance with N.J.A.C. 7:26B-6 in an amount equal to or greater than the cleanup plan cost estimate approved by the Department.

(c) Upon receipt of written approval of the cleanup plan from the Department, the owner or operator of the industrial establishment, except as provided in (d) below, shall begin and complete implementation of the cleanup plan according to the schedule for implementation contained therein, unless implementation of the cleanup plan has been deferred pursuant to N.J.A.C. 7:26B-5.8 or the industrial establishment obtains the prior written approval of the Department to modify the schedule in the cleanup plan.

(d) With the approval of the Department, the cleanup plan may be implemented by a purchaser, transferee, mortgagee, or other party to a transfer of an industrial establishment; such party shall be strictly liable, jointly and severally with the owner or operator, for implementation of the cleanup plan.

(e) The owner or operator of an industrial establishment may request a modification of the cleanup plan schedule. The Department shall approve or disapprove the modification within 30 days of receipt of the request.

7:26B-5.6 Cleanup plan progress reports

(a) The owner or operator of the industrial establishment shall submit cleanup plan progress reports to the Department in the time frame specified by the cleanup plan approval letter.

(b) The progress reports shall contain, but not be limited to, the following information:

1. Any changes in the approved cleanup plan schedule;
2. Actual costs of cleanup incurred to date;
3. Completed cleanup work to date;
4. Percent of total cleanup work completed to date; and
5. Cleanup plan work outstanding.

7:26B-5.7 Inspection and approval of cleanup

(a) The Department shall conduct inspections of the industrial establishment that is subject to a cleanup plan to determine compliance with the cleanup plan.

(b) After the cleanup plan is fully implemented, the owner or operator of the industrial establishment shall submit a final report to the Department. The final cleanup report shall:

1. Detail the actual cleanup actions performed and final cleanup costs;
2. Compare the proposed cleanup actions scheduled in the cleanup plan and actual actions undertaken to perform the cleanup; and
3. Detail dates of cleanup activities, additional sampling results and other pertinent information.

(c) If the Department determines that the cleanup plan has not been fully complied with, the owner or operator of the industrial establishment shall correct any deficiencies, and amend the final report, in the time frames specified by the Department.

(d) The Department, upon satisfactory completion of (a) through (c) above and submittal of all fees required by N.J.A.C. 7:26B-1.10, shall notify in writing the owner or operator of the industrial establishment that the cleanup plan has been fully implemented.

(e) The Department shall release the financial assurance required pursuant to N.J.A.C. 7:26B-6 after the letter approving the implementation of the cleanup has been issued.

7:26B-5.8 Deferral of implementation of cleanup plan

(a) If the industrial establishment will be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer, the owner or operator of the industrial establishment may apply in writing to the Department for approval to defer implementation of the cleanup plan until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes, terminates or transfers operations.

(b) The owner or operator of the industrial establishment applying for a deferral as described in (a) above shall submit an affidavit signed by the person(s) identified in N.J.A.C. 7:26B-1.13(d) and an affidavit by the other party(ies) to the transfer and both shall be certified in accordance with N.J.A.C. 7:26B-1.13(d) stating that the industrial establishment shall be subject to substantially the same use by any other party(ies) to the transfer and detailing the proposed operations of that other party(ies).

(c) The Department shall, within 60 days of the owner's or operator's compliance with the financial assurance requirements for the cleanup plan pursuant to N.J.A.C. 7:26B-5.5 and the written certification required in (b) above, either approve, conditionally approve, or disapprove the written certification for the deferral of implementation of the cleanup plan.

(d) If the Department approves the deferral application, the owner or operator of the industrial establishment may defer implementation of the cleanup plan until the use of the industrial establishment changes, until any other party(ies) to the transfer closes, terminates or transfers operations, or until the Department determines that continued deferral of cleanup plan implementation poses a threat of actual or potential harm to the public health or environment.

(e) The Department shall not approve the deferral of cleanup plan implementation until the owner or operator proves to the satisfaction of the Department that the deferral of cleanup plan implementation poses no threat of actual or potential harm to the public health or the environment.

(f) The Department's authority to defer implementation of the cleanup plan set forth in this section shall not be construed to limit, restrict or prohibit the Department from directing cleanup nor limit the liabilities of the owner or operator or past owners or operators under any other statute, rule or regulation or order, but shall be solely applicable to the obligations of the owner or operator of the industrial establishment pursuant to the Act and this chapter.

(g) If the Department denies a deferral, the owner or operator of the industrial establishment shall immediately implement the cleanup plan pursuant to the provisions of this chapter and the Act.

SUBCHAPTER 6. FINANCIAL ASSURANCE

7:26B-6.1 General requirements

(a) Within 14 days after receipt of written notice from the Department that the cleanup plan is approved or as specified in an ACO, the owner or operator of the industrial establishment shall obtain and provide to the Department financial assurance in the form of a surety bond, performance bond, letter of credit, self bonding, or fully funded trust fund, in accordance with Appendix A of this chapter and in the amount equal to or greater than the cleanup cost estimate in the cleanup plan or the amount specified in an ACO. For a surety bond, performance bond, and letter of credit, a standby trust agreement is also required.

(b) The financial assurance required by this subchapter is the responsibility of the owner or operator of the industrial establishment except that the purchaser, transferee, mortgagee or other parties to the transfer may

assume the financial assurance requirements for cleanup as specified in this subchapter upon the Department's prior written approval of any appropriate agreement to be executed between the parties in accordance with N.J.A.C. 7:26B-5.5

7:26B-6.2 Surety bond guaranteeing payment into a standby trust fund
(a) An owner or operator of an industrial establishment may satisfy the requirements of this subchapter by obtaining a surety bond guaranteeing payment into a standby trust fund which conforms to the requirements of this section and by having the bond delivered to the Department by certified mail, courier service or hand delivery, within 14 days after receipt of notice from the Department of the cleanup plan approval or as specified in an ACO.

1. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury which is published annually on July 1 in the Federal Register.

(b) The wording of the surety bond shall be identical with the wording in the "Wording of Instruments" document specified in Appendix A of this chapter.

(c) The owner or operator of an industrial establishment who uses a surety bond to satisfy the requirements of this subchapter shall also establish a standby trust fund by the time the bond is submitted to the Department. Under the terms of the surety bond, all payments made thereunder shall be deposited directly into the standby trust fund in accordance with instructions from the Department. The wording of the standby trust fund shall be identical with the wording in the "Wording of Instruments" document specified in Appendix A of this chapter. A copy of the executed trust agreement shall be submitted to the Department with the surety bond. The owner or operator shall establish the trust fund with a nominal initial payment by the time the bond and trust fund agreement are submitted to the Department.

(d) The surety bond shall guarantee that if the Department determines that the owner or operator has failed to perform the obligations of this chapter, the surety shall fund the standby trust fund in an amount equal to the penal sum of the bond.

(e) The surety shall be liable on the bond obligation when the Department determines that the owner or operator has failed to perform the obligations under this chapter as guaranteed by the bond. Following the Department's determination that the owner or operator has failed to perform the obligations under this chapter as guaranteed by the bond, the surety shall deposit the amount of the penal sum of the bond into the standby trust fund.

(f) The penal sum of the bond shall be in an amount equal to or greater than the cost estimate approved by the Department in the cleanup plan or as specified in an ACO.

(g) Whenever the cleanup plan cost estimate increases as specified in N.J.A.C. 7:26B-5 to an amount greater than the amount of the surety bond, the owner or operator shall, within 60 days after the increase, cause the amount of the surety bond to be increased to an amount at least equal to the new estimate and submit evidence of such increase to the Department, obtain additional financial assurance as specified in this subchapter at least equal to the increase, or obtain alternative financial assurance as specified in this subchapter at least equal to the new cleanup plan cost estimate. Whenever the cleanup plan cost estimate decreases, the owner or operator may file a written request to the Department to decrease the amount of the surety bond. Thereafter, the surety bond may be decreased to the amount of the new estimate only upon written approval by the Department to the surety. Notice of an increase or decrease in the amount of the surety bond shall be sent by the surety to the Department by certified mail within 60 days after the change.

(h) The bond shall contain the following provisions concerning cancellation:

1. The surety shall not, in the absence of a request by the owner or operator, cancel or otherwise terminate the bond unless the surety sends a written notice of cancellation by certified mail to the owner or operator and to the Department at least 120 days prior to cancellation.

2. The surety shall not, on the basis of a request from the owner or operator, cancel the bond until it has received written approval of the Department to do so.

(i) Within 30 days after receipt of a notice of cancellation, the owner or operator shall provide alternative financial assurance in accordance with this subchapter. In the event that the owner or operator does not provide alternative financial assurance within 60 days after receipt of the notice of cancellation, the Department may thereafter instruct the surety to place the penal sum of the bond in the standby trust fund.

(j) The owner or operator shall not cancel the bond until the Department has given written approval to do so.

(k) The Department will return the original surety bond to the issuing institution for termination after:

1. The owner or operator substitutes alternative financial assurance for cleanup of the industrial establishment as specified in this subchapter; or

2. The Department provides written notification to the owner or operator that the owner or operator is no longer required to maintain financial assurance for cleanup of the industrial establishment.

7:26B-6.3 Surety bond guaranteeing performance (performance bond)

(a) An owner or operator of an industrial establishment may satisfy the requirements of this subchapter by obtaining a surety bond guaranteeing performance (a performance bond) which conforms to the requirements of this section and by having the bond delivered to the Department by certified mail within 14 days after receipt of notice from the Department that the cleanup plan is approved or as specified in an ACO.

1. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury which is published annually on July 1 in the Federal Register.

(b) The wording of the performance bond shall be identical with the wording in the "Wording of Instruments" document specified in Appendix A of this chapter.

(c) The owner or operator of an industrial establishment who uses a performance bond to satisfy the requirements of this subchapter shall also establish a standby trust fund by the time the bond is submitted to the Department. Under the terms of the performance bond, all payments made thereunder shall be deposited directly into the standby trust fund, in accordance with instructions from the Department. The wording of the standby trust fund shall be identical with the "Wording of Instruments" document specified in Appendix A of this chapter. A copy of the executed trust agreement shall be submitted to the Department with the performance bond. The owner or operator shall establish the trust fund with a nominal initial payment by the time the bond and trust fund agreement are submitted to the Department.

(d) The performance bond shall guarantee that the owner or operator of an industrial establishment shall perform the cleanup in accordance with the approved cleanup plan.

(e) The surety shall become liable on the bond obligation when the Department determines that the owner or operator has failed to perform the obligations under this chapter as guaranteed by the bond. Following the Department's determination that the owner or operator has failed to perform the obligations under this chapter as guaranteed by the bond, the surety shall implement the cleanup plan or shall deposit the amount of the penal sum of the bond into the standby trust fund.

(f) The penal sum of the bond shall be in an amount equal to or greater than the cost estimate approved by the Department in the cleanup plan or as specified in an ACO.

(g) Whenever the cleanup plan cost estimate increases as specified in N.J.A.C. 7:26B-5 to an amount greater than the amount of the performance bond, the owner or operator shall, within 60 days after the increase, cause the amount of the performance bond to be increased to an amount at least equal to the new estimate and submit evidence of such increase to the Department, obtain additional financial assurance as specified in this subchapter at least equal to the increase, or obtain alternative financial assurance as specified in this subchapter at least equal to the new cleanup plan cost estimate. Whenever the cleanup plan cost estimate decreases, the owner or operator may file a written request to the Department to decrease the amount of the performance bond. Thereafter, the performance bond may be decreased to the amount of the new estimate only upon written approval by the Department to the surety. Notice of an increase or decrease in the amount of the surety bond shall be sent by the surety to the Department by certified mail within 60 days after the change.

(h) The bond shall contain the following provisions concerning cancellation:

1. The surety shall not, in the absence of a request by the owner or operator, cancel or otherwise terminate the bond unless the surety sends a written notice of cancellation by certified mail to the owner or operator and to the Department at least 120 days prior to cancellation.

2. The surety shall not, on the basis of a request from the owner or operator, cancel the bond until it has received the written approval of the Department to do so.

(i) Within 30 days after receipt of a notice of cancellation, the owner or operator shall provide alternative financial assurance in accordance with this subchapter. In the event that the owner or operator does not provide alternative financial assurance within 60 days after receipt of the notice of cancellation, the Department may thereafter instruct the surety to place the penal sum of the bond in the standby trust fund.

(j) The owner or operator shall not cancel the bond until the Department has given written consent to do so.

(k) The surety will not be liable for deficiencies in the performance of cleanup by the owner or operator after the owner or operator has been notified by the Department that the owner or operator is no longer required by this subchapter to maintain financial assurance for cleanup of the facility.

(l) The Department will return the original performance bond to the issuing institution for termination after:

1. The owner or operator substitutes alternative financial assurance for cleanup of the industrial establishment as specified in this subchapter; or

2. The Department provides written notification to the owner or operator that the owner or operator is no longer required to maintain financial assurance for cleanup of the industrial establishment.

7:26B-6.4 Letter of credit

(a) An owner or operator may satisfy the requirements of this subchapter by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and by having it delivered to the Department by certified mail within 14 days after receipt of notice from the Department that the cleanup plan is approved or as specified in an ACO.

(b) The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(c) The wording of the letter of credit shall be identical to the wording in the "Wording of Instruments" document specified in Appendix A of this chapter.

(d) An owner or operator who uses a letter of credit to satisfy the requirements of this subchapter shall also establish a standby trust fund by the time the letter of credit is submitted to the Department. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited promptly and directly by the issuing institution into the standby trust fund. The wording of the standby trust fund shall be identical to the wording in the "Wording of Instruments" document specified in Appendix A of this chapter. A copy of the executed trust agreement shall be submitted to the Department with the letter of credit. The owner or operator shall establish the trust fund with a nominal initial payment by the time the letter of credit and trust fund agreement are submitted to the Department.

(e) The letter of credit shall be irrevocable, issued for a period of at least one year, and shall be automatically extended for a period of at least one year. In the event that the issuing institution is subject to Title 17 of the Revised Statutes of New Jersey, the letter of credit shall not be automatically renewable, but shall be renewable yearly by the owner or operator or alternative financial assurances as specified in this subchapter shall be obtained.

(f) If the issuing institution decides not to extend or renew the letter of credit beyond the then-current expiration date, it shall notify both the owner or operator and the Department by certified mail of that decision at least 120 days before the then-current expiration date. The 120-day period shall begin on the date of receipt by the Department as shown on the signed return receipt.

(g) The letter of credit shall be issued for an amount equal to or greater than the cost estimate approved by the Department in the cleanup plan or as specified in an ACO.

(h) Whenever the cleanup plan cost estimate as specified in N.J.A.C. 7:26B-5 increases to an amount greater than the amount of the letter of credit, the owner or operator shall, within 60 days after the increase, cause the amount of the letter of credit to be increased to an amount at least equal to the new estimate and submit evidence of such increase to the Department, obtain additional financial assurance as specified in this subchapter at least equal to the increase, or obtain alternative financial assurance as specified in this subchapter at least equal to the new cleanup plan cost estimate. Whenever the cleanup plan cost estimate decreases, the owner or operator may file a written request to the Department to decrease the amount of the letter of credit. Thereafter, the letter of credit may be decreased to the amount of the new estimate only upon written approval by the Department to the issuing institution. Notice of an

increase or decrease in the amount of the letter of credit shall be sent by the issuing institution to the Department by certified mail within 60 days after the change.

(i) Following the Department's determination that the owner or operator has failed to perform the obligations under this chapter, the Department may draw upon the letter of credit and the issuing institution shall deposit the amount of the letter of credit into the standby trust fund.

(j) The letter of credit shall contain the following provisions concerning cancellation:

1. The issuing institution shall not, in the absence of a request by the owner or operator, cancel or otherwise terminate the letter of credit unless the issuing institution sends a written notice of cancellation by certified mail to the owner or operator and to the Department at least 120 days prior to cancellation.

2. The issuing institution shall not, on the basis of a request from the owner or operator, cancel the letter of credit until it has received the written approval of the Department to do so.

(k) Within 30 days of receipt of a notice of termination or cancellation or the like, the owner or operator shall provide alternative financial assurance as specified in this subchapter. In the event that the owner or operator does not provide alternative financial assurance within 60 days after receipt of the notice, the Department may draw upon the letter of credit, and the issuing institution shall deposit the amount of the letter of credit into the standby trust fund.

(l) The Department will return the original letter of credit to the issuing institution for termination after:

1. The owner or operator substitutes alternative financial assurance for cleanup of the industrial establishment as specified in this subchapter; or

2. The Department provides written notification to the owner or operator that the owner or operator is no longer required to maintain financial assurance for cleanup of the industrial establishment.

7:26B-6.5 Self-bonding

(a) A corporate owner or operator of an industrial establishment may satisfy the requirements of this subchapter by complying with (b), (c), (d), (f), and (j) below within 14 days after receipt of notice from the Department that the cleanup plan is approved or as specified in an ACO.

(b) A corporate owner or operator may qualify for self-bonding only if it meets the following financial test:

1. The approved cleanup plan cost estimate or financial assurance amount specified by an ACO is less than or equal to five percent of tangible net worth;

2. The corporation has net working capital at least six times the approved cleanup plan cost estimate or six times the financial assurance amount specified by an ACO;

3. The corporation has assets located in the United States amounting to at least 90 percent of total assets or at least six times the approved cleanup plan cost estimate or six times the financial assurance amount specified by an ACO;

4. The ratio of net worth to total liabilities is greater than 0.5;

5. The ratio of current assets to current liabilities is greater than 1.5; and

6. The ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities is greater than 0.1.

(c) A parent corporation may be the self-bonder for a subsidiary only if the parent corporation owns at least 50 percent of the voting stock of the subsidiary corporation, meets the financial test provided at (b) above, and submits the documentation required by (d) below for the parent corporation.

(d) The owner or operator shall demonstrate that the corporation can meet the financial test described at (b) above submitting the following items to the Department:

1. An affidavit from the chief financial officer (CFO) which:

i. Certifies that the corporation meets or exceeds the levels of the required financial test as provided for at (b) above and as supported by the corporation's attached independently audited year end financial statements for the corporation's most recently completed fiscal year;

ii. Lists all operations in the United States owned or operated by the corporation involved in any form of environmental cleanup or closure and the associated approved cleanup or closure plan costs for these operations; and

iii. Contains a corporate resolution stating that the CFO or his or her successor has continuing authority to make payments from the corporation to the Department if the Department determines that the owner or operator has failed to perform the obligations under this chapter.

2. A certified audit, conducted by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants, documenting the corporation's financial statements for the latest completed fiscal year; and

3. A comparison report from an independent certified public accountant stating:

i. That he or she has compared the affidavit of the CFO with the independently audited, year-end financial statements for the latest fiscal year and with the financial requirements of the Department's self-bonding policy; and

ii. That in connection with the comparison at i above, no matters have come to his or her attention which cause him or her to believe that the data specified by the CFO should be adjusted.

(e) If the independent certified public accountant's opinion contained in his or her comparison report on examination of the corporation's financial statements is an adverse opinion or contains a disclaimer of opinion as to the future stability of the corporation, the corporation shall not be allowed to use self-bonding to comply with the financial assurance requirements. The Department may also disallow use of self-bonding based on any other adverse qualifications expressed in the independent certified public accountant's opinion.

(f) The owner or operator shall execute a self-bonding agreement available from the Department.

(g) To continue to utilize self-bonding as a financial assurance mechanism, the owner or operator shall submit the following reports to the Department:

1. An affidavit from the CFO that the corporation meets or exceeds the levels of the required financial test every six months;

2. Every year the company shall renew its self-bonding by complying with (b), (c), (d), above and (j) below within 90 days subsequent to the end of the corporation's fiscal year.

(h) Upon the request of the Department, the corporation shall immediately submit a review of the corporation's financial status to determine the ability of the corporation to continue self-bonding.

(i) Upon determining that the owner or operator has failed to perform its obligations under this chapter, the Department shall give written notice to the corporation, and, within five days of receipt of the notice, the owner or operator shall pay to the Department the current cleanup plan cost estimate.

(j) In determining whether to accept self-bonding in satisfaction of the financial assurance requirements, the Department may consider the competency reliability and integrity of the corporation and its parent corporation. Notwithstanding the provisions of (a) through (i) above, the Department may disallow the use of self-bonding where it determines that a corporation or its parent corporation lacks adequate competency, reliability or integrity.

7:26B-6.6 Fully funded trust fund

(a) An owner or operator may satisfy the requirements of this subchapter by establishing a fully funded trust which conforms to the requirements of this section and by having an originally signed duplicate of the trust agreement delivered to the Department by certified mail within 14 days of receipt of notice from the Department that the cleanup plan is approved or as specified in an ACO.

(b) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency.

(c) The wording of the fully funded trust agreement shall be identical with the "Wording of Instruments" document specified in Appendix A of this chapter, and shall be accompanied by a certification of acknowledgment as specified in Appendix A of this chapter.

(d) The fully funded trust shall be in an amount equal to or greater than the cost estimate approved by the Department for the cleanup plan or as specified in ACO and for a term not less than the actual duration of cleanup plan implementation.

(e) Whenever the cleanup plan cost estimate increases as specified in N.J.A.C. 7:26B-5 to an amount greater than the amount of the fully funded trust, the owner or operator shall, within 60 days after the increase, cause the amount of the fully funded trust to be increased to an amount at least equal to the new estimate and submit evidence of such increase to the Department, obtain additional financial assurance as specified in this subchapter at least equal to the increase, or obtain alternating financial assurance as specified in this subchapter at least equal to the new cleanup plan cost estimate. Whenever the cleanup plan cost estimate decreases, the owner or operator may file a written request to the Department to decrease the amount in the fully funded trust. Thereafter, the fully funded trust may be decreased to the amount of the

new estimate only upon written approval by the Department to the trustee. Notice of an increase or decrease in the amount of the fully funded trust shall be sent by the trustee to the Department by certified mail within 60 days after the change.

(f) The owner or operator, or the trustee, or both, shall not cancel or otherwise terminate the fully funded trust until the Department has given written approval to do so.

(g) The trustee shall release to the owner or operator only such funds as the Department specified in writing.

(h) The trustee will not be liable for deficiencies in the performance of cleanup by the owner or operator after the owner or operator has received written notification by the Department that the owner or operator is no longer required by this subchapter to maintain financial assurance for cleanup of the industrial establishment.

(i) Following a written determination that the owner or operator has failed to perform its obligations under this chapter, the Department may draw on the fully funded trust.

(j) The Department will return the original fully funded trust agreement to the issuing institution for termination after:

1. The owner or operator substitutes alternative financial assurance for cleanup of the industrial establishment as specified in this subchapter; or

2. The Department notifies the owner or operator that the owner or operator is no longer required to maintain financial assurance for cleanup of the industrial establishment.

7:26B-6.7 Standby trust

(a) An owner or operator who uses a surety bond or letter of credit to satisfy the requirements of this subchapter shall also establish a standby trust and deliver a copy of the executed standby trust agreement to the Department by certified mail within 14 days after receipt of notice from the Department of the cleanup plan approval or as specified in an ACO.

(b) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency.

(c) The wording of the standby trust agreement shall be identical with the "Wording of Instruments" document specified in Appendix A of this chapter, and shall be accompanied by a formal certification of acknowledgement as specified in Appendix A of this chapter.

(d) Under the terms of any surety bond or letter of credit, all payments made thereunder shall be deposited by the surety or the issuing institution, as applicable, directly into the standby trust fund in accordance with instructions from the Department.

(e) Where the surety has funded the standby trust or the issuing institution has deposited the amount of the letter of credit into the standby trust fund, the owner or operator shall, within 30 days after Departmental notice of an increase of the cleanup plan cost estimate, additionally fund the standby trust in the amount of the increase. Notice of an increase in the amount of the standby trust fund shall be sent by the trustee to the Department by certified mail within 60 days after the change.

(f) The trustee shall not cancel or otherwise terminate the standby trust until the Department has given written approval to do so.

(g) The Department will send written notification to the trustee releasing the trustee from the obligations of the standby trust agreement after:

1. The owner or operator substitutes alternative financial assurance for cleanup of the industrial establishment as specified in this subchapter; or

2. The Department notifies the owner or operator that the owner or operator is no longer required by this subchapter to maintain financial assurance for cleanup of the industrial establishment.

(h) The Department may draw on the standby trust fund at such time that it is funded by any surety bond or letter of credit.

SUBCHAPTER 7. ADMINISTRATIVE CONSENT ORDERS

7:26B-7.1 Criteria

(a) In the circumstances listed in (a)1 through 9 below, the Department may, in its discretion, enter into an ACO with the owner or operator of an industrial establishment so that the closing, terminating or transferring of operations may occur provided that compliance with the Act and this chapter is assured as specified in the ACO.

1. If there is a stock tender offer, either friendly or hostile;

2. If there is a public offering of securities traded or to be traded on federally regulated stock exchanges;

3. If the industrial establishment is required to develop a detailed sampling or cleanup plan, or both, and it is determined by the Department that a negative declaration or cleanup plan approval pursuant to

N.J.A.C. 7:26B-5 will not be granted within six months from the time the Initial Notice is submitted;

4. If the owner or operator demonstrates that bankruptcy or insolvency is likely to occur if this transaction does not take place prior to implementation of the provisions of the Act and this chapter;

5. If the owner or operator demonstrates that layoffs of employees by either the seller or buyer are likely to occur if the transaction does not take place prior to implementation of the provisions of the Act and this chapter;

6. If there is a sale involving an industrial establishment in New Jersey that is part of the sale of multiple facilities some of which are outside of New Jersey;

7. If financing is provided by the New Jersey Economic Development Authority or other governmental department, authority or agency;

8. If a tenant requests an ACO due to lease termination by its landlord in which the tenant has fewer than 180 days notice of termination; or

9. If a landlord requests an ACO due to lease termination by its tenant in which the landlord has fewer than 180 days notice of termination.

(b) The applicant shall demonstrate that the circumstances described in (a) above will occur or have occurred and, therefore, that an ACO is necessary or advisable.

7:26B-7.2 Application forms

The owner or operator of an industrial establishment, or the purchaser, transferee, mortgagee, or other party to the transfer, shall submit an application for an ACO on forms available from the Department and accompanied by fees as described at N.J.A.C. 7:26B-1.10.

7:26B-7.3 ACO financial assurance requirements

(a) The owner or operator of an industrial establishment, or the purchaser, transferee, mortgagee, or other party to the transfer, shall provide financial assurance in accordance with N.J.A.C. 7:26B-6 in an amount equal to or greater than the Department's current estimate of the cost cleanup.

(b) In no case shall the amount of financial assurance for an ACO be less than \$100,000, unless the Department determines the cost of cleanup is less than \$100,000 based upon the submission of sampling data.

7:26B-7.4 Stipulated penalties

(a) All ACOs shall contain a provision for the payment of stipulated penalties in the amounts and for the violations set forth in N.J.A.C. 7:26B-9; for violations of this chapter, the Act, or the ACO which are not listed at N.J.A.C. 7:26B-9, the stipulated penalties shall not be less than \$1000.00 nor more than \$5000.00 per day per violation.

(b) The party(ies) to the ACO shall waive their rights to contest the Department's discretion concerning the amount of stipulated penalties assessed by the Department under stipulated penalty provision of the ACO.

7:26B-7.5 ACO signatories and liability

(a) All ACO's must be signed by the owner or operator of the industrial establishment.

(b) In the Department's discretion, a purchaser, transferee, mortgagee, or other party to the transaction may sign an ACO with the Department and the owner or operator; however, the owner or operator, as well as any other non-Department signatories, shall be strictly liable, jointly and severally, for compliance with this chapter, the Act, and the ACO.

(c) If a signatory to an ACO is executing the ACO on behalf of an entity other than that individual, the ACO shall be accompanied by documentary evidence (such as a corporate resolution, a partnership resolution, a power of attorney, or the like) authorizing the signatory to bind the entity to the provisions of the ACO.

7:26B-7.6 Site access

The owner or operator of an industrial establishment who enters into an ACO shall provide to the Department appropriate documentation that the purchaser, transferee, mortgagee or other party to the transaction shall allow access by the Department to the industrial establishment for all purposes of the Act and this chapter.

SUBCHAPTER 8. PROTECTION OF CONFIDENTIAL INFORMATION

7:26B-8.1 Confidentiality claims

(a) Any owner or operator of an industrial establishment required to submit any information pursuant to the Act or this chapter which in the owner's or operator's opinion constitutes trade secrets, proprietary information or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter and by paying the fee set forth in N.J.A.C. 7:26B-1.10(f).

(b) Any owner or operator submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One document shall contain all the information required by the Act or this chapter including any information which the owner or operator alleges to be entitled to confidential treatment. The second document shall be identical to the first except that it shall contain no information which the owner or operator alleges to be entitled to confidential treatment. The second document can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first document containing the information which the owner or operator alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first document which the owner or operator alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first document, containing the information which the owner or operator alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential document (which may or may not be enclosed in a separate envelope, at the option of the owner or operator), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided at N.J.A.C. 7:26B-1.11.

7:26B-8.2 Access to information; non-disclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to Department employees, representatives, and contractors, whose activities necessitate such access and as provided at N.J.A.C. 7:26B-8.5 and 8.8.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the owner or operator who supplied it to the Department.

7:26B-8.3 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:26B-8.4.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information; or
2. Desires to determine whether information in its possession is entitled to confidential treatment; or
3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the owner or operator who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An owner or operator who wishes to contest a determination by the Department shall, within 30 days of notification of the determination,

submit evidence to support the owner's or operator's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

- i. The period of time for which confidential treatment is desired by the owner or operator (for example, until a certain date, until the occurrence of a specified event, or permanently);
- ii. The measures taken by the owner or operator to guard against undesired disclosure of the information to others;
- iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and
- iv. The extent to which disclosure of the information would result in substantial damage to the owner or operator, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the relationship between disclosure and the damage.

4. Failure of an owner or operator to furnish timely comments or exceptions waives the owner's or operator's confidentiality claim.

5. The owner or operator may assert a confidentiality claim to any information submitted to the Department by an owner or operator as part of its comments pursuant to 3 above.

6. The Department may extend the time limit for submitting comments pursuant to 3 above for good cause shown by the owner or operator and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the owner or operator by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the owner or operator of the written notice.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by the Act and this subchapter. The owner or operator shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:26B-8.4 Substantive criteria for use in confidentiality determinations

(a) When the owner or operator satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The owner or operator has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;
2. The owner or operator has shown that reasonable measures have been taken to protect the confidentiality of the information and that the owner or operator intends to continue to take such measures;
3. The information is not, and has not been, available or otherwise disclosed to other persons without the owner's or operator's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);
4. No statute specifically requires disclosure of the information; and
5. The owner or operator has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

7:26B-8.5 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section or N.J.A.C. 7:26B-8.7.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
2. The request sets forth the official purpose for which the information is needed;
3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency; and
5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in N.J.A.C. 7:26B-8.7, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency;
2. The date on which disclosure was made;
3. The name of the agency to which disclosed; and
4. A description of the information disclosed.

7:26B-8.6 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information shall be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents and representatives shall use the information only for the purpose of carrying out the work required by the contract, shall not disclose the information to anyone not authorized in writing by the Department, shall store the information in locked cabinets in secure rooms, and shall return to the Department copies of the information, and any abstracts or extracts therefrom, upon request by the Department or whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in "Debarment, Suspension and Disqualification from Department Contracting," N.J.A.C. 7:1-5, in addition to whatever other remedies may be available to the Department at equity or law.

7:26B-8.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the owner or operator to such disclosure.

(b) The giving of consent by an owner or operator to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:26B-8.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the owner or operator such shorter comment period (N.J.A.C. 7:26B-8.3(c)4), post-determination waiting period (N.J.A.C. 7:26B-8.3(d)1), or both, as it finds necessary under the circumstances; or
2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it of itself be grounds for any determination that information is no longer entitled to confidential treatment.

7:26B-8.9 Security procedures under ECRA

(a) Submissions to the Department pursuant to the Act and this chapter will be opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:26B-1.11.

(c) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:26B-8.3 shall be stored by the Department or its contractors only in locked cabinets.

(d) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:26B-8.10 Wrongful access or disclosure; penalties

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.
2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

SUBCHAPTER 9. VIOLATIONS AND PENALTY PROVISIONS

7:26B-9.1 Voiding of the sale or transfer of an industrial establishment by the transferee or the Department

(a) Failure of the owner or operator of an industrial establishment to comply with any of the provisions of the Act or this chapter shall be grounds for the transferee's voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith.

(b) Failure of an owner or operator of an industrial establishment to submit a negative declaration or cleanup plan pursuant to the provisions of the Act, this chapter, or an ACO shall be grounds for the Department's voiding the sale or transfer of the industrial establishment or any real property utilized in connection therewith.

7:26B-9.2 Recovery of damages; liability for cleanup and removal costs and damages

(a) The transferee shall be entitled to recover damages from the transferor due to the voiding of the sale.

(b) Failure to comply with any provisions of the Act or this chapter shall render the owner or operator of an industrial establishment strictly liable, without regard to fault, jointly and severally, for all cleanup and removal costs and for all direct and indirect damages resulting from the failure to implement any cleanup plan necessary.

7:26B-9.3 Civil penalties

(a) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this chapter shall be liable for a civil penalty of not more than \$25,000 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

(b) Penalties shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(c) Any officer or management official who knowingly directs or authorizes the violation of any provision of the Act or this chapter shall be personally liable for any penalties provided by the Act or this chapter.

(d) The schedule in 1 to 7 below indicates the amounts which the Department may accept for the following violations:

1. Unless otherwise provided in 2 to 7 below:

Days from date required to date received	Notification/ Submissions required by Regulations/ Legislation (per day)	Submissions Required by letter(s) from DEP pursuant to the Regulations/ Legislation (per day)	Violations of any ACO Requirement (per day)
1-14 Days	\$ 250.00	\$ 500.00	\$1,000.00
15-29 Days	500.00	1,000.00	2,000.00
30-44 Days	750.00	1,500.00	3,000.00
45-59 Days	1,000.00	2,000.00	4,000.00
more than 59	1,250.00	2,500.00	5,000.00;

2. Failure to allow the Department access: \$2,500 per day;
3. Failure to secure and maintain the required financial assurance: \$5,000 per day;
4. Failure to implement an approved sampling plan: \$15,000 per day;
5. Failure to implement an approved cleanup plan: \$25,000 per day;
6. Failure to fund the standby trust fund or fully-funded trust fund: \$25,000 per day; and
7. Failure to pay the Department in accordance with N.J.A.C. 7:26B-6.5(i): \$25,000 per day.

(e) In its discretion, the Department may compromise and settle any claim for a penalty pursuant to the Act or this chapter.

(f) Nothing in (d) above shall limit or otherwise prohibit the Department from seeking the maximum penalties provided by the Act for the violations listed in (d) above or for any other violation of the Act, this chapter, or an ACO not listed in (d) above, in a summary action under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 10. DE MINIMUS STANDARDS

7:26B-10.1 De minimus quantity exemption

(a) The owner or operator of an industrial establishment who is granted a de minimus quantity exemption from the Department shall be exempt from the provisions of the Act and this chapter except as provided at N.J.A.C. 7:26B-1.10 based on de minimus quantities of hazardous substances stored or handled at the industrial establishment.

(b) The de minimus quantity exemption shall be granted by the Department only if (c) below and all of the following criteria at 1 to 6 below are met:

1. In the case of a mixture of hazardous substances stored or handled at the industrial establishment:

- i. The total quantity of hazardous substances stored or handled at any one time is not in excess of one percent of the mixture, with the total quantity of hazardous substances not in excess of 500 pounds;
- ii. Any mixture containing hazardous substance is present in the same form and concentration as a product packaged for distribution or use by the general public and this mixture is used by the industrial establishment in a manner similar to that of the general public;
- iii. Any mixture containing hazardous substances is used solely in routine office operations; or
- iv. Any mixture containing hazardous substances is in final product form for wholesale or retail distribution.

2. Any paints and varnishes containing hazardous substances are used for buildings and grounds maintenance purposes only and are not used as part of the business operations;

3. The quantity of paints, inks, adhesives and varnishes containing hazardous substances that are used annually in the business operations of the industrial establishment amount to five gallons or less;

4. The quantity of lubricating and hydraulic oils used for maintenance purposes shall not be more than 55 gallons per year, and the total quantity present at the industrial establishment shall not be more than 110 gallons at any one time;

5. The quantity of petroleum products, other than lubricating and hydraulic oils, stored at the industrial establishment at any one time shall not be more than 11 gallons; and

6. The quantity of pesticides stored or used annually for on-site maintenance purposes shall not exceed one quart.

(c) The de minimus quantity exemption shall be granted only if:

i. The owner or operator of the industrial establishment has been and continues to be the sole and original owner or operator of the industrial establishment from the date of construction of the facility on the property;

ii. The most recent prior owner of the real property of the industrial establishment received a negative declaration, a cleanup plan approval, or a de minimus quantity exemption from the Department and thereafter continued as an industrial establishment; or

iii. The owner or operator of the industrial establishment has obtained and submitted to the Department an affidavit from his or her transferor that the transferor was the sole and original owner or operator at the industrial establishment from the date of construction of the facility on the property and that the transferor met the criteria set forth in (b) above, for the entire period of ownership or operation by the transferor.

(d) To apply for a de minimus quantity exemption, the owner or operator shall submit an affidavit on forms available from the Department along with the appropriate fee specified in N.J.A.C. 7:26B-1.10.

SUBCHAPTER 11. ECRA CLEANUP STANDARDS

7:26B-11.1 Standards for detoxification

Until adoption of the minimum standards required pursuant to Section 5(a) of the Act, N.J.S.A. 13:1K-10, the Department shall review, approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, ground water and surface water quality necessary for the cleanup of the industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and the environment is minimized to the maximum extent practicable, taking into consideration the location of the industrial establishment, surrounding ambient conditions, and other relevant factors.

SUBCHAPTER 12. ECRA AND HAZARDOUS WASTE FACILITY COORDINATION

7:26B-12.1 General requirements

(a) In cases where an industrial establishment is also a treatment, storage or disposal facility for hazardous wastes and is regulated by N.J.A.C. 7:26, the following specifies the requirements for any hazardous waste management units to be included in the ECRA review of the industrial establishment. For the purposes of this subchapter, a hazardous waste management unit is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank yard and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

1. If the industrial establishment is closing or terminating operations, the industrial establishment shall close or terminate operations in accordance with N.J.A.C. 7:26 rather than this chapter.

2. If the industrial establishment is transferring ownership without ceasing operations, compliance with the Act and this chapter shall be required for the entire industrial establishment, including any hazardous waste management units thereon.

(b) In cases where an industrial establishment is in the process of implementing an approved corrective action program under 40 CFR 264.100, compliance with the Act and this chapter is not required for any activities at the hazardous waste management units undertaken pursuant to said corrective action.

(c) In cases where an industrial establishment has previously conducted and completed a corrective action program under 40 CFR 264.100, the Department shall determine on a case-by-case basis which requirements pursuant to the Act and this chapter need to be satisfied for the facility.

SUBCHAPTER 13. LIMITED CONVEYANCE

7:26B-13.1 Certificate of Limited Conveyance

(a) A conveyance of title to a portion of an Industrial Establishment may be allowed only pursuant to a Certificate of Limited Conveyance issued by the Department. The granting of a Certificate of Limited Conveyance allows the conveyance to occur without the owner conducting a complete review of the entire industrial establishment pursuant to the Act and this chapter.

(b) The Certificate of Limited Conveyance shall be granted only where:

1. The sales price of the real property to be conveyed is not more than 20 percent of the total appraised value of the real property of the industrial establishment;

2. The appraisal has occurred as close to the application for a Certificate of Limited Conveyance from the Department as possible, but in no case more than 60 days prior to submittal of the application for the Certificate of Limited Conveyance;

3. The real property conveyed pursuant to this subchapter is not any portion of an industrial establishment that has been involved in the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes on-site, above or below ground.

(c) The owner(s) may convey any number of parcels of real property provided that the sum of the percentages attributed to each limited conveyance determined in accordance with (b)1 above shall not exceed 20 percent during the period of ownership by the applicant.

(d) To apply for a Certificate of Limited Conveyance the owner or operator shall submit the following to the Department:

1. Appropriate application form available from the Department;

2. A map delineating total area of the industrial establishment as of December 31, 1983, areas previously conveyed pursuant to this limited conveyance provision, and total acreage presently proposed for conveyance;

3. A copy of the sales agreement specifying the agreed upon price for the real property presently proposed for conveyance;

4. An affidavit from the owner of the industrial establishment stating current appraised value of the real property of the industrial establishment;

i. Appraisals shall be conducted by a designated Member, Appraisal Institute (American Institute of Real Estate Appraisers), Senior Real Estate Analyst (Society of Real Estate Appraisers), or Senior Member (American Society of Appraisers);

5. An affidavit that the portion to be conveyed has never been used in the operations of the industrial establishment;

6. Copies of all prior Certificates of Limited Conveyance(s) if any, issued for the subject industrial establishment;

7. The fee specified at N.J.A.C. 7:26B-1.10; and

8. Any other information as required by the Department.

(e) The Department may require a sampling plan for the portion of the industrial establishment proposed for conveyance. The Department may issue a Certificate of Limited Conveyance only where the results of an approved sampling plan indicate that there is no contamination from hazardous substances and wastes on the portion being conveyed, or emanating from or that has emanated from the portion to be conveyed, or where the Department has made a determination that no sampling plan is necessary.

SUBCHAPTER 14. ADDITIONAL REQUIREMENTS

7:26B-14.1 Additional requirements

(a) Nothing in the Act or this chapter shall be construed to limit, restrict, or prohibit the Department from directing immediate cleanup under any other statute, rule or regulation.

(b) No obligations imposed by the Act or this chapter shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding.

(c) All obligations imposed by the Act or this chapter shall constitute continuing regulatory obligations imposed by the State of New Jersey for the purpose of 11 U.S.C. 362 §(b)(4).

(d) Nothing in the Act or this chapter shall constitute relief, implied or expressed, of the requirements imposed under any other approval, permit or authorization.

APPENDIX A

WORDING OF INSTRUMENTS DOCUMENT
FOR FINANCIAL ASSURANCE REQUIRED PURSUANT
TO THE ENVIRONMENTAL CLEANUP
RESPONSIBILITY ACT
N.J.S.A. 13:1K-6 et seq. ("ECRA")

LETTER OF CREDIT

A letter of credit, as specified in N.J.A.C. 7:26B-6.4, issued pursuant to ECRA, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Standby Letter of Credit

Richard T. Dewling, Commissioner

New Jersey Department of Environmental Protection

CN 028

Trenton, New Jersey 08625

ATTN: Assistant Director, Industrial Site Evaluation Element

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

ECRA CASE # _____

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's of the industrial establishment name and address] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by you of (1) your sight draft, bearing reference to this Irrevocable Standby Letter of Credit No. _____, and (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the authority of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. (P.L. 1983, C. 330) ("ERCA") and the ECRA Regulations, N.J.A.C. 7:26B.

This letter of credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date]

and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Industrial Site Evaluation Element, CN-028, Trenton, New Jersey 08625 and [name of owner or operator of industrial establishment] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after date of receipt by both NJDEP and [name of owner or operator of industrial establishment], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund or [name of owner or operator of industrial establishment] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in N.J.A.C. 7:26B (Appendix A), as such regulations were constituted on the date shown immediately below.

[Name of issuing institution] shall not cancel this letter of credit on the basis of a request from [name of owner or operator of industrial establishment] until it has received written authorization from NJDEP.

This irrevocable standby letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

Very truly yours,

[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official's Signature]
[Date]

SURETY BOND

A surety bond guaranteeing payment into a trust fund, as specified in N.J.A.C. 7:26B6.2, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

Date bond executed: _____

Effective date: _____

Principal: [Legal name and business address of owner or operator of the industrial establishment]

Type of organization [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEP-approved ECRA cleanup amount]:

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrator, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

* * *

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEP dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal to or greater than the cost estimate for implementa-

tion of the cleanup plan approved by NJDEP on [date] and required as a precondition to any closure or sale or transfer of an industrial establishment in accordance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", and the ECRA Regulations, N.J.A.C. 7:26B, and

WHEREAS, the condition of this obligation is such that, if the principal shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEP on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.2(c) when a surety bond is used to provide a mechanism for access by NJDEP to assure payment for the implementation of the ECRA cleanup plan approved by NJDEP on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under ECRA, whenever required to do so, regarding such industrial establishment for which this surety bond guarantees performance, then this obligation shall be null and void otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the industrial establishment into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Industrial Site Evaluation Element, CN-028, Trenton, N.J., 08625; provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP Industrial Site Evaluation Element, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.2(h).

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this survey on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the Wording of Instruments document referred to in N.J.A.C. 7:26B-6.2(b) as constituted on the date the bond was established.

Principal
[Signatures(s)]
[Date]
[Name(s)]
[Title(s)]
[Corporate seal]
[Name and address]
State of incorporation: _____
Liability limit: _____
[Signature(s)]
[Date]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: _____

PERFORMANCE BOND

A surety bond guaranteeing performance of ECRA cleanup or payment into a standby trust fund, as specified in N.J.A.C. 7:26B-6.3, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond

RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator of the industrial establishment]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)] _____

[Insert name, current ownership, Standard Industrial Classification number, location of industrial establishment, including lot and block number, municipality and county, and ECRA cleanup amount(s) for each industrial establishment guaranteed by this bond. Indicate NJDEP-approved ECRA Cleanup amount]:
Total penal sum of bond: _____
Surety bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto, are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of penal sum.

[Next Paragraph For Use by Principal With ECRA Administrative Consent Order Only]

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEP dated [date], hereinafter "Consent Order", under which Principal has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, said Principal is required to provide financial assurance in an amount equal or greater than to the cost estimate for implementation of the cleanup plan approved by NJDEP on [date] and required as a precondition to any closure or sale or transfer of an industrial establishment in accordance with the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA" and the ECRA Regulations, N.J.A.C. 7:26B;

WHEREAS, the condition of this obligation is such that, if Principal shall promptly and faithfully perform its obligations under the provisions of ECRA, then this obligation shall be null and void; otherwise the surety bond shall remain in full force and effect to assure performance of the obligations under ECRA and to otherwise assure and guarantee the performance and implementation of the ECRA cleanup plan approved by NJDEP on [date];

WHEREAS, said Principal shall establish a standby trust fund as is required by N.J.A.C. 7:26B-6.3(c) when a surety bond is used to provide a mechanism for access by NJDEP to all or part of such financial assurance required by ECRA to assure performance of the implementation of the ECRA cleanup plan and/or Consent Order approved by NJDEP on [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under ECRA, whenever required to do so, regarding each facility for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall either perform the monitoring and cleanup in accordance with the NJDEP-approved cleanup plan [or, if appropriate, delete "NJDEP-approved cleanup plan" and insert "Consent Order"] or place funds in the amount guaranteed for the cleanup of the industrial establishment into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Industrial Site Evaluation Element, CN-028, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26B-6.3(i).

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and the Surety(ies) and that the wording of this surety bond is identical to the Wording of Instruments document referred to in N.J.A.C. 7:26B-6.3(b).

Principal
[Signatures(s)]
[Date]
[Name(s)]
[Title(s)]
[Corporate seal]
[Name and address]
State of incorporation: _____
Liability limit: _____
[Signature(s)]
[Date]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Fund established pursuant to a Standby Trust Agreement shall be required along with and in addition to financial assurance option selected by the owner or operator of an industrial establishment pursuant to this Wording of Instruments document (see N.J.A.C. 7:26B-6.2(b) for Surety Bond; N.J.A.C. 7:26B-6.3(b) for Performance Bond; and N.J.A.C. 7:26B-6.4(b) for Letter of Credit). NJDEP requires a Standby Trust Agreement for a Standby Trust Fund to provide a mechanism for access by NJDEP to all or part or such financial assurance required by ECRA to assure the successful implementation of any ECRA-cleanup plan approved by NJDEP.

A standby trust agreement for a cleanup plan approval or an Administrative Consent Order shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement
RE: ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation," "partnership," "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection, hereinafter "NJDEP", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure or sale or transfer of any industrial establishment in accordance with ECRA.

* * *

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEP dated [date], hereinafter "Consent Order", under

which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required within 14 days of written approval of the ECRA-cleanup plan by NJDEP to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:
Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. [On Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, including tax lot and block number, municipality and county for which financial assurance is demonstrated by this Agreement.]
Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the Fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequent transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for ECRA Cleanup.

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by NJDEP on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEP, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation from time to time for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over property constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 3.

Section 14. Successor Grantor.

Sixty days prior to the Grantor ceasing to exist if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any acts or omissions, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly

authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]
DATE: _____ BY: _____
TITLE: _____
[NAME OF TRUSTEE]
DATE: _____ BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]
CERTIFICATION OF ACKNOWLEDGEMENT
(Grantor)

ECRA Case #: _____
Industrial Establishment: _____
Owner: _____
Operator: _____
Location: _____
Amount of ECRA Cleanup Approval: _____
Amount of ECRA ACO: _____
Financial Assurance Posted: _____
State of _____
County of _____

On the [date], before me personally came [owner or operator of the industrial establishment] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

FULLY FUNDED TRUST

A fully funded trust for a ERCA cleanup plan approval or an ECRA ACO shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby Trust Agreement

RE: ENVIRONMENTAL RESPONSIBILITY CLEANUP ACT

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the owner or operator of the industrial establishment], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the New Jersey Department of Environmental Protection, hereinafter "NJDEP", an agency of the State of New Jersey, has established the Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:26B, pursuant to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 *et seq.*, hereinafter "ECRA", applicable to the Grantor, requiring that certain procedures be followed by industrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure or sale or transfer of any industrial establishment in accordance with ECRA.

* * *

[Next Paragraph For Use by Grantor With ECRA Administrative Consent Order Only]

WHEREAS, the Grantor has entered into an Administrative Consent Order with NJDEP dated [date], hereinafter "Consent Order", under which Grantor has agreed, among other things, to undertake certain actions in order to comply with ECRA with respect to the industrial establishment described above;

WHEREAS, the Grantor is required within 14 days of written approval of the ECRA-cleanup plan by NJDEP to provide a surety bond or other financial security pursuant to N.J.A.C. 7:26B-6 in an amount equal to or greater than the cost of said approved cleanup plan;

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified on Attachment A. [on Attachment A, for each industrial establishment list the name, cleanup plan cost estimates, current ownership, Standard Industrial Classification number, location of the industrial establishment, including tax lot and block number and municipality and county for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a fully funded trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the Fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for ECRA Cleanup.

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the ECRA cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated [date]" or "covered by the ECRA cleanup approved by NJDEP on [date]"] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEP, from the Fund for ECRA cleanup expenditures in such amounts as the NJDEP shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.* including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation from time to time for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over property constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee

shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 3. Section 14. Successor Grantor.

Sixty days prior to the Grantor ceasing to exist if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any acts or omissions, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management official, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ BY: _____ TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____ TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGEMENT

(Grantor)

ECRA Case #: _____ Industrial Establishment: _____ Owner: _____ Operator: _____ Location: _____ Amount of ECRA Cleanup Approval: _____ Amount of ECRA ACO: _____ Financial Assurance Posted: _____ [Total amount received in the form of _____] State of _____ County of _____

On the [date], before me personally came [owner or operator of the industrial establishment], to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Worker and Community Right to Know Act Assessment of Civil Administrative Penalties

Proposed Amendments: N.J.A.C. 7:1G-3.2, 5.2

Proposed New Rules: N.J.A.C. 7:1G-7

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-2 and 34:5A-1 et seq.

DEP Docket Number: 011-87-04.

Proposal Number: PRN 1987-157.

Submit written comments by June 3, 1987 to:

David Bosted, Esq. New Jersey Department of Environmental Protection Office of Regulatory Services CN 402 Trenton, New Jersey 08625

The agency proposal follows:

Summary

On August 29, 1983, Governor Thomas Kean signed the Worker and Community Right to Know Act (P.L. 1983 c.315, N.J.S.A. 34:5A-1 et seq.), which became effective on August 29, 1984 (hereinafter "the Act"). It established a "comprehensive program for the disclosure of information about hazardous substances in the workplace and the community" and provided "a procedure whereby residents of the State may gain access to this information." (Section 2 of the Act, N.J.S.A. 34:5A-2)

Pursuant to the Act, the Department of Environmental Protection was required to develop an Environmental Hazardous Substance List and to prepare and distribute an Environmental Survey to those employers it determined should comply with the Act. The Department also developed the Emergency Services Information Survey pursuant to N.J.A.C. 7:1G-5.1, 5.2 and 5.3. The Emergency Services Information Survey fulfills the legislative mandate by requiring employers to report hazardous materials without having to provide detailed environmental release information on substances not necessarily deemed to be environmental hazards.

The Department conducted the Environmental Survey and Emergency Services Information Survey by distributing survey forms to employers. Due to the extensive nature of the information required, the Department conducted the Environmental Survey using a short form (Part I) and a long form (Part II). Beginning September 5, 1984, the Department began phasing the mailing of the "short form" (Part I) Environmental Survey and the Emergency Services Information Survey to all covered employers (approximately 24,000). Of the 24,000 employers surveyed, approximately 12,000 (or 50 percent) have returned the completed survey. The Depart-

ment has also conducted approximately 300 on-site inspections of facilities resulting in corrections being made to approximately 68 percent of the Emergency Services Information Surveys and to 47 percent of the "short form" (Part I) Environmental Surveys. In order for the Department to fulfill the legislative intent of the Worker and Community Right to Know Law to protect public health, safety and welfare, up-to-date, complete and accurate hazardous substance and material information is needed from covered employers. To obtain this goal, it is imperative that the Department have at its disposal the ability to enforce the provisions of the Act which require covered employers to submit hazardous substance information. This is provided for in N.J.S.A. 34:5A-31(d), by allowing the Commissioner to assess civil administrative penalties for violations of the Act, as proposed herein as new rules N.J.A.C. 7:1G-7.

The proposed amendments to N.J.A.C. 7:1G-3.2 and 5.2 merely define the employer's existing obligation to submit clarifying information, by setting a time limit of 14 days or other date specified by the Department.

Social Impact

The ability of the Commissioner to assess penalties will encourage the submission of information on hazardous substances and materials by covered employers. This information can be used by physicians to aid in medical diagnoses, when necessary. The data generated from the Environmental Survey can also be used by epidemiologists to analyze the effects of environmental hazardous substances on public health.

In addition to providing New Jersey's citizens with access to information about hazardous substances and materials which pose hazards in emergency situations, the information will also significantly benefit contingency planning and emergency response in New Jersey.

Economic Impact

Those employers who do not complete the surveys within the prescribed time period (90 days) or who have not correctly completed the survey may be assessed a civil administrative penalty. The extent of the cost of non-compliance will depend on the type, seriousness and duration of the violation. During implementation of the Act, the Department has striven to ensure compliance with the Act on the part of the industry while limiting the burden to covered employers. Hence, the new rules proposed here are consistent with that approach by allowing the Department to ensure compliance while providing employers with the opportunity to comply with the Act.

The amendments to N.J.A.C. 7:1G-3.2 and 5.2 have no economic impact, because they merely define the existing obligation of the employer to submit clarifying information.

Environmental Impact

The assessment of civil administrative penalties is essential to encourage employers to fulfill their legal obligation to complete and return their surveys. The information reported on the surveys aids the Department in developing a database concerning the types and amounts of hazardous substances and materials used, manufactured, stored, packaged, re-packaged, or disposed of or released into the environment of the State and to which the public is exposed or could potentially be exposed in the community. The information gathered also aids the Department in selecting hazardous substances and materials to monitor in the environment and provides information necessary for the development of regulations to control emissions and discharges of hazardous substances and materials. The information gathered also provides local fire and police and other government officials with detailed information about substances used or stored in their communities which may pose hazards to emergency response personnel.

Regulatory Flexibility Statement

Approximately 12,000 of all covered employers have not complied with the provisions of the Act. Most of these are small businesses as that term is defined under the Regulatory Flexibility Act, P.L. 1986, c.169. The Department has determined that the proposed new rule and amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses. The purpose of the proposed new rule and amendments is only to enforce the existing statutory compliance requirements. No exemptions, reduced penalties or extended compliance deadlines are established for small businesses in order to encourage compliance with the Act, to provide for consistent penalty enforcement without regard to business size and to promote the public health, safety and welfare.

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

7:1G-3.2 Clarification of completed Environmental Survey

The Department may require an employer to submit information clarifying any statement made on Part I and Part II of the Environmental Survey [,]. The Department shall transmit this clarifying information to the county health department (or county clerk if there is no county health department), as it deems necessary. **Submission of the clarifying information by the employer to the Department is mandatory within 14 days of notification, or other date specified by the Department.**

7:1G-3.3 Clarification of completed ESI Survey

The Department may require an employer to submit information clarifying any statement made on the [e]Emergency Services Information Survey. The Department shall transmit this clarifying information to the local fire department and police department as it deems necessary. **Submission of the clarifying information by the employer to the Department is mandatory within 14 days of notification, or other date specified by the Department.**

SUBCHAPTER 7. ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES

7:1G-7.1 Authority and scope

(a) This subchapter is promulgated to provide a schedule and procedures for the assessment of civil administrative penalties as provided in the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.S.A. 34:5A-31(d).

(b) N.J.S.A. 34:5A-31(a) provides four options for enforcement actions whenever an employer is in violation of the Worker and Community Right to Know Act, or any rule or regulation issued pursuant to the Act. One of the options is to levy a civil administrative penalty in accordance with N.J.S.A. 34:5A-31(d). Under that section, the Commissioner is authorized to assess a penalty of not more than \$2,500.00 for each violation, and additional penalties of not more than \$1,000.00 for each day during which a violation continues after receipt of an order from the Department. N.J.S.A. 34:5A-31(d) further provides that, "Any amount imposed under this subparagraph shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration." This subchapter establishes those ranges.

(c) This subchapter shall govern the assessment of civil administrative penalties for violations of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or of any rule or regulation issued pursuant to that Act by the Department of Environmental Protection.

7:1G-7.2 Definitions

In addition to the definitions set forth in N.J.A.C. 7:1G-1.2, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Completed survey", as used in N.J.S.A. 34:5A-7 and this subchapter, means a survey form entirely filled out, and free from deficiencies, errors or omissions.

"Inventory range" means the range in which the quantity of the hazardous substance and material at the facility is reported on the Environmental Survey or on the Emergency Services Information Survey.

"Non-time related violation" means a violation other than a time related violation. These may occur when there is a failure to carry out a duty imposed by statute, order, or regulation. Examples of such violations include the failure to list all reportable substances and misrepresentation of information.

"Order" means any and all orders issued or entered into by the Department including, but not limited to, Administrative Orders and Administrative Consent Orders.

"Reportable substance" means those substances and/or materials which are on the Environmental Hazardous Substance List set forth in N.J.A.C. 7:1G-2 or the Hazardous Materials List set forth in N.J.A.C. 7:1G-4.

"Time related violation" means that type of violation that occurs when there is a failure to meet a time limit or deadline imposed by statute, order, or regulation. Examples of such violations or failure to submit the Environmental Survey or Emergency Services Information Survey within the required time frame and failure to supply clarifying information as requested by the Department within the required time frame.

7:1G-7.3 Procedures for assessment of civil administrative penalties

(a) Before any assessment is levied pursuant to this subchapter, the alleged violator shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the statute, regulation, and/or order violated;
2. A concise statement of the facts alleged to constitute the violation;
3. A statement of the amount of civil administrative penalties sought to be imposed; and

4. A statement of the alleged violator's right to a hearing and notice of the procedure for requesting a hearing.

(b) A notice of assessment of a civil administrative penalty may be issued separately or as part of an administrative order issued pursuant to N.J.S.A. 34:5A-31(b) requiring the alleged violator to take affirmative action to comply with the Worker and Community Right to Know Act or a rule or regulation issued pursuant to the Act.

(c) The alleged violator shall have 20 calendar days from receipt of the notice of civil administrative penalty assessment within which to deliver a written request for a hearing to:

Director
Division of Environmental Quality
CN 405
Trenton, New Jersey 08625

(d) The party requesting a hearing shall, in its request for a hearing, furnish the Department with the following:

1. A statement of the legal authority and jurisdiction under which the hearing or action to be taken is to be held;

2. A reference to the particular sections of the statutes and rules involved;

3. A short and plain statement of the matters of fact and law asserted; and

4. The provisions of the order or notice of assessment to which the party objects, the reasons for such objections, and any alternative provisions proposed.

(e) If a hearing request is not timely received by the Department, the Department shall deny the request.

(f) If a request is incomplete the Department may deny the hearing request. An additional 10 days to correct deficiencies in an incomplete filing may be granted by the Department.

(g) The hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(h) After a hearing, and upon finding that a violation has occurred, the Commissioner or his authorized representative may issue a final assessment of the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.S.A. 34:5A-31(d). If no hearing is requested or if the Department denies the request, the original notice of assessment becomes a final order upon the twenty-first calendar day following its receipt.

(i) Payment of an assessed civil administrative penalty is due when a final order is issued by the Commissioner subsequent to a hearing, if any, or the notice becomes a final order. If the alleged violator fails to pay the penalty to the Department or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 34:5A-31(e) for a civil penalty not to exceed \$2,500.00 per day.

7:1G-7.4 Compromise of penalties

(a) At his discretion, the Commissioner or his authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, on the following terms and conditions:

1. Upon the posting by the violator of a performance bond or similar form of security in an amount and upon terms deemed satisfactory by the Commissioner;

2. On the basis of mitigating or extenuating circumstances;

3. Upon any other terms or conditions acceptable to the Commissioner or his authorized representative.

7:1G-7.5 Alternative remedies

Neither the assessment of a civil administrative penalty nor the payment of any such penalty shall be deemed to affect the availability to the Department of any other enforcement provision provided for by N.J.S.A. 34:5A-31, or any other statute, in connection with the violation for which the assessment is levied.

7:1G-7.6 Records of assessments

(a) In order to promote consistency in the application of this subchapter, the Department shall collect and maintain in a discrete file a record of each assessment made pursuant to this subchapter. Such file shall be a public record and shall be kept available for public inspection pursuant to N.J.S.A. 47:1A-1 et seq.

(b) The file shall, at a minimum, include a copy of each notice and all final orders issued pursuant to N.J.A.C. 7:1G-7.3, and the terms of any compromise agreed to pursuant to N.J.A.C. 7:1G-7.4.

7:1G-7.7 Penalty for time related violations

(a) The penalty for time related violations is determined by the number of weeks or fraction thereof that the Environmental Survey, the Emergency

Services Information Survey or the clarifying information requested by the Department is overdue. The following table shall be used to determine the penalty:

1. Less than four weeks later	\$100.00
2. Four weeks to six weeks late	\$500.00
3. Six weeks to eight weeks late	\$1000.00
4. Eight weeks to 10 weeks late	\$1500.00
5. Ten weeks to 12 weeks late	\$2000.00
6. More than 12 weeks late	\$2500.00

7:1G-7.8 Penalty for non-time related violations

(a) The penalty which may be assessed for a non-time related violation under this subchapter is \$2,500.00 or a fraction thereof, to be determined pursuant to N.J.S.A. 34:5A-31(d) by application of factors indicative of the type, seriousness, and duration of the violation, as described below:

1. Seriousness factor: The seriousness of a violation is determined with reference to the maximum inventory of a single chemical or group of chemicals stored, handled, or manufactured at any one time at the facility but not reported. There are three degrees:

i. Major: The maximum inventory of a single chemical or a group of chemicals stored, handled, or manufactured at the facility at any one time is within inventory range 13 to 20, inclusive (greater than 1,001), as defined in N.J.A.C. 7:1G-7.2.

ii. Moderate: The maximum inventory of a single chemical or a group of chemicals stored, handled, or manufactured at the facility at any one time is within inventory range 11 or 12 (10 to 1,000).

iii. Minor: The maximum range of a single chemical or a group of chemicals stored, handled, or manufactured at the facility at any one time is within inventory range 10 (less than 10).

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three degrees:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could have or should have foreseen and prevented but was not caused by a deliberate, knowing, or purposeful action or inaction by the violator.

iii. Unintentional and unforeseeable: An unintentional and unforeseeable violation is one which the violator could not be expected to have foreseen, even by the exercise of reasonable diligence.

3. Schedule of factor values: Penalties for non-time related violations shall be computed after assigning values to the seriousness and type factors from the table below:

i. Seriousness:	Values
(1) Major	1.00
(2) Moderate	0.50
(3) Minor	0.25
ii. Type:	Values
(1) Willful	1.00
(2) Unintentional but foreseeable	0.50
(3) Unintentionable and unforeseeable	0.25

4. In the event there is an environmental release of a reportable substance which was not reported or inaccurately reported to the Department, an additional value between 0.10 and 0.25, depending on the inherent toxicity or harmful characteristics of the substance, shall be added to the type factor. This is intended to reflect the higher standard of care in the storage and use of hazardous substances and/or materials which the Department seeks to encourage.

(b) Computation of Penalty: The penalty for non-time related violations shall be computed as follows:

$$(\text{seriousness}) \times (\text{type}) \times (\$2,500.00) = \text{penalty}$$

1. If the penalty computed by this method is greater than \$2,500.00 the \$2,500.00 maximum penalty shall be assessed.

7:1G-7.9 Daily penalty

(a) After receipt of an Administrative Order from the Department to cease a violation, either time related or non-time related, and for each day during which the violator fails to comply with the terms of the Administrative Order, a daily penalty shall be assessed, in addition to any other penalties provided for in this subchapter, based on the following table:

1. During first week after deadline	\$100.00/day
2. During second week after deadline	\$200.00/day
3. During third week after deadline	\$500.00/day
4. During fourth week after deadline and subsequently	\$1000.00/day

7:1G-7.10 Violations which are both time and non-time related

(a) In some cases a single offense may constitute both a time related and a non-time related violation. In such cases, the Commissioner, as he deems appropriate, may elect to:

1. Assess penalties for the time related violation only; or
2. Assess penalties for the non-time related violation only; or
3. Assess penalties for both the time related violation and the non-time related violation.

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Fee Schedule

Proposed Repeal and New Rule: N.J.A.C. 7:14A-1.8

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

DEP Docket Number: 012-87-04.

Proposal Number: PRN 1987-158.

A public hearing concerning this proposal will be held on:

May 21, 1987 at 10:00 A.M.
Labor Education Center Auditorium
Cook College
Rydgers Lane
Rutgers University
New Brunswick, New Jersey

Submit written comments by June 3, 1987 to:

David Weinsoff
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the "Department") is responsible for administering a program that regulates the discharge of pollutants to the surface and ground waters of the State. The Department's authority is derived from the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (the "State Act"), pursuant to which New Jersey qualified for and has primary enforcement responsibility under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) for the administration of the New Jersey Pollutant Discharge Elimination System (NJPDES) permitting program. The NJPDES rules are set forth at N.J.A.C. 7:14A-1.1 et seq. Pursuant to Section 9 of the State Act, the Department is provided with the statutory authority to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." The Department assesses fees to provide funds for the review of NJPDES permit applications, the development of specific permit terms and conditions (including wasteload allocations and water quality based effluent limitations, stream monitoring and computer modelling), conducting compliance and 24-hour sampling inspections, bioassay testing evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program.

The Department is proposing to amend the NJPDES Fee rule for the purpose of clarifying the formulas used to calculate the permit fees for Discharges to Surface and Ground Water and to provide for a more equitable distribution of the cost of managing the NJPDES program. The Department is proposing that the annual fee for all dischargers be calculated through application of the following equation: The Environmental Impact of the Discharge to Surface or Ground Water time the Rate established by the Department for each unit of Environmental Impact plus a base Minimum Fee. The Environmental Impact of the Discharge to Surface Water shall be assessed on the basis of the total weighted pollutant load, a bioassay factor which evaluates the synergistic and antagonistic effects of the discharge and a stream factor which evaluates water use, existing water quality and the attainment of water quality standards. The Environmental Impact of the Discharge to Ground Water shall be assessed on the basis of the type and volume of waste stored, treated or discharged, the potential yield of the aquifer, the permeability

of the geological formation of facility liner material, the level of ground water monitoring required by the individual NJPDES permit, and, during corrective action, the total weight loading of pollutants in the ground water. N.J.S.A. 58:10A-10 provides the Department with the authority to seek civil and administrative penalties for failure to pay assessed fees.

The Department's fee assessment methodology has historically taken the cubed root of the total weighted pollutant load as a mathematical tool for compressing the data points (environmental factors) generated by the assimilation of monitoring report data. The Department will use the cube root factor in the fee years July 1, 1987 to June 30, 1988 and July 1, 1988 to June 30, 1989. The Department will use the square root factor in the fee year July 1, 1989 to June 30, 1990. In all subsequent fee years, no root factor will be used.

Social Impact

The Department's proposal to amend the NJPDES rules to clarify the fee regulations and provide for a more equitable distribution of the fees assessed will have a positive social impact. The Department, in amending the current fee schedule, is acting to ensure that those who do the most to introduce pollutants into the environment bear a greater share of the administrative costs. The Department's action reflects both the sophisticated and rational basis of the NJPDES permitting program and the opinion of the Appellate Division of the New Jersey Superior Court in *Public Service Electric & Gas v. Dep't of Environmental Protection*, 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection*, 214 N.J. Super. 446 (App. Div. 1986). Consistent with the Court's opinion, the Department is proposing to implement a fee schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge. A fee schedule based on the methodology set forth in the summary above is consistent with the Court's opinion.

Economic Impact

The fees imposed by the proposed rule are expected to provide the estimated revenue to fund the fiscal year 1988 personnel costs for 295.5 man years (80 percent professional staff, 20 percent clerical staff) and the projected indirect cost for printing, supplies, travel, telephone, postage, data processing, professional services, advertising, equipment and vehicles. The Department proposes to increase personnel by 107 man years for fiscal year 1988 to provide for greater enforcement of the NJPDES rules. The Department estimates that these costs will be approximately \$16 million and is assessing fees in this account. The Annual NJPDES Fee Report, available from the Department, provides a detailed analysis of the NJPDES program costs and the proposed fees.

Environmental Impact

The proposed rule reflects the Department's policy of funding the NJPDES program with fees assessed to dischargers. The fees provide the Department with the financial means to protect, through enhanced technical evaluation, inspection and monitoring, the quality of the State's surface and ground waters. The proposed fee schedule is designed to proportionally assess the cost of the NJPDES program to those facilities whose permitted activity has the greatest negative impact on the environment. The proposed fee schedule, directing the greater share of the administrative costs to those who do most to create the injurious conditions, will have a positive environmental impact.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that this rule will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the Department, in establishing each discharger's fee, will use the information currently reported by each discharger on its Discharge Monitoring Report (DMR) and/or Monitoring Report Forms (MRF) as required under the existing rules. The Department's use of the existing permitting process allows all NJPDES permittees to fully comply with these requirements without the administrative burden or financial expense of retaining any additional services.

The fees will be assessed to all NJPDES permittees, including the estimated 225 permittees employing fewer than 100 full-time employees. The fee schedule takes into consideration the negative environmental impact of the permittee's discharge; those permittees who do the most to create a negative impact on the environment will bear the greater share of the Department's administrative costs.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 7:14A-1.8.

Full text of the proposed new rule follows:

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. The Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or submit a NJPDES permit application.

2. The Department shall not assess an annual fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge.

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Bureau of Collections and Licensing
CN 402
Trenton, New Jersey 08625

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

i. Return the NJPDES permit application to the applicant;

ii. Deny issuance of a final permit;

iii. Terminate a final permit; and/or

iv. Assess penalties pursuant to N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer.

8. The Department, upon the termination of a NJPDES permit, shall pro-rate the fee for the number of days that the facility was in operation during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact x Rate) + Minimum Fee, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$\sum_{i=1}^N [A + (B \times E_i)] = \text{Budget for each category of discharge}$$

$\sum_{i=1}^N$ = Sum of the fees for all facilities

A = Minimum fee

B = Rate

E_i = Environmental Impact for facility;

iii. Minimum Fee is a base cost as set forth in (h) below

10. The Department shall calculate environmental impact by taking the cube root of the total pollutant load for the period July 1, 1987 to June 30, 1989. The Department shall take the square root of the pollutant load to calculate environmental impact for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load in all subsequent fee years.

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. The Annual NJPDES Fee Schedule Report shall include the following:

i. A detailed financial statement of the actual administrative cost of the NJPDES program by account title;

ii. A detailed financial statement of the actual revenue collected, including any surplus which can be credited or any deficit to be assessed in determining the fee schedule.

iii. A detailed financial statement of the anticipated cost of the NJPDES program, including:

(1) A breakdown of the program by account title;

(2) An estimate of the amount of fees that will be collected; and

(3) The current year's fee schedule.

iv. A report of the NJPDES program activities, including:

(1) A list of permits issued;

(2) A list of facilities inspected;

(3) A list of administrative orders and administrative consent orders issued by the Department (by type of order and discharge involved); and

(4) A summary of variance request activities under section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report. The Department shall provide public notice of the hearing at least 14 days prior to the date of the hearing:

i. In the New Jersey Register and one newspaper of general circulation; and

ii. By mailing a copy of the Report to each NJPDES applicant/permittee.

(c) The annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) x (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

ii. Heat Load is the average mBTU's (million British Thermal Units) per hour of the effluent discharged. Where heat load is not reported in mBTU's per hour, the Department shall estimate the heat load using the calculated difference between the influent and effluent temperature multiplied by the amount (in million gallons per day) of effluent discharged. The Department shall use an average influent temperature of 5.57 degrees centigrade during the period November to April and 18.87 degrees centigrade during the period May to October.

iii. Bioassay Factor is the effluent limit in the permit divided by the percent effluent resulting in the 96 Hour LC₅₀. Where the effluent limit set forth in the permit is less stringent than the Wastewater Discharge Requirements (N.J.A.C. 7:9-5.1 et seq.), an effluent limit of 50 shall apply. Where the effluent limit set forth in the permit requires No Measurable Acute Toxicity (N.M.A.T.), an effluent limit of 100 shall apply, except:

(1) Where Bioassay testing is not required by the permit, a Bioassay Factor of 1 will be used; or

(2) Where the permit specifies a limit of N.M.A.T. and the mortality is less than or equal to the control mortality, the Department will use a Bioassay Factor of 0.5.

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey 1986 Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey 1986 Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey 1986 Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4.

2. The Department shall assess an additional fee to NJPDES permittees who request a variance under Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). The annual fee shall be assessed on the basis of the administrative cost that is incurred by the Department and the cost of the technical review performed by a consultant hired by the Department.

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water is derived by applying the formula: Environmental Impact = Waste Type x Volume Discharged x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (Total weighted Pollutant Load is applicable during corrective action under N.J.A.C. 7:14A-6.15), where:

i. Waste Type is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows.

Rating	Waste Type
1	Non-contact cooling water, treated groundwater.
5	Sanitary wastewater, food processing waste, stormwater runoff from non-hazardous waste storage areas, sanitary sludge.
10	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, stormwater runoff from hazardous substance storage areas, landfill leachate, wastewater or sludge containing hazardous constituents.

ii. Volume Discharged is:

(1) For active dischargers, the average daily volume of effluent discharged by the permittee; and

(2) For all other dischargers, the maximum capacity of the facility (in million gallons) divided by 365. Where capacity is not provided to the Department by the permittee, the Department will, on the basis of site specific parameters, make a reasonable estimate of the volume;

iii. Ground Water Status Factor is the rating number, based on the level of monitoring required at the facility, as set forth in the NJPDES permit in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct groundwater monitoring under the NJPDES permit.
1	Permittee is conducting post-closure monitoring at a closed and clean site.
2	Permittee is conducting detection monitoring.
5	Permittee is conducting compliance monitoring. Groundwater pollution has been identified in the detection phase and further monitoring is required to identify the source.
10	Permittee is conducting corrective action as a direct result of known groundwater contamination.

iv. Aquifer Factor is the rating number, based on groundwater yield potential, assigned to each aquifer formation listed in Table II.

v. Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation or facility liner material. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2} . The rating numbers are assigned as follows:

Rating	Permeability
1	10^{-7}
10	10^{-6}
20	10^{-5}
40	10^{-4}
80	10^{-3}
100	10^{-2}
120	10^{-2}

vi. Total Weighted Pollutant Load (applicable during corrective action) is the sum of all the pollutants in the groundwater (in kilograms per day) multiplied by their associated risk factors as listed in Table I. Where the permittee has not provided pollutant concentrations and the areal extent of ground water contamination to the Department, the Department shall make reasonable estimates of the Total Weighted Pollutant Load.

(e) The annual fee for residuals is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of residuals is derived by applying the formula: Environmental Impact = Pathogen Reduction x (Nitrogen + Total Metals Load), where:

i. Pathogen Reduction is 1 where the residual satisfies the requirements for "Processes to Significantly Reduce Pathogens" set forth at 40 CFR 257 or 0.8 where the residual satisfies the requirements for "Processes to Further Reduce Pathogens" set forth at 40 CFR 257.

ii. Nitrogen is the annual amount of nitrogen (in pounds) generated or land applied to the site.

iii. Total Metals Load is the total metal equivalent in pounds generated or land applied, derived from the average concentration of cadmium, copper, nickel, lead and zinc multiplied by the relative toxicity value of that metal (Cadmium 10.0, Copper 0.4, Nickel 1.0, Lead 1.0, and Zinc 0.2).

(f) The annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: Environmental Impact = (W1 + W2) x Closure Status Factor x Ground Water Status Factor x Aquifer Factor x Permeability Factor x Total Weighted Pollutant Load (applicable during corrective action), where:

i. W1 is the total number of acres filled as of January 1, 1985 multiplied by the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each waste type (as set forth in N.J.A.C. 7:26-2.13) permitted for disposal before January 1, 1985. The rating numbers are assigned as follows:

Rating	Waste Type
1	Types 13, 23
2	Types 10, 12, 27, 72, 73, 74
4	Types 18, 25
8	Types 26, 70 and wrecked or discarded equipment
16	Types 17, 28, 76, 77.

ii. W2 is the total amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)i above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
10	Operating landfill and sites containing wrecked or discarded equipment.
8	Landfill terminated after January 1, 1982 without approved closure plan.
2	Landfill terminated prior to January 1, 1982.
1	Landfill terminated with an approved closure plan.

iv. Ground Water Status Factor is the number derived under (d)iii above.

v. Aquifer Factor is the number derived under (d)iv above.

vi. Permeability Factor is the number derived under (d)v above.

vii. Total Weighted Pollutant Load is the number derived under (d)vi above.

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a Significant Indirect User (SIU) to a Domestic Treatment Works (DTW) is derived by applying the formula: Environmental Impact = Toxicity Factor x (COD Load) where:

i. Toxicity Factor is the rating number, based on the degree of hazard, assigned by the Department to each industrial Category. The rating numbers are assigned as follows:

Rating	Industrial Category
1	Food Products
2	Brewery/Yeast
3	Coffee, Soap and Detergent, Foundry, Pulp, Paper and Paperbound, Glue, Coil Coating
4	Explosives, Machine and Mechanical (Roller Bearing)
5	Electroplating, Leather Tanning, Tank storage, Inorganic Chemicals

- 6 Organic Chemicals, Pharmaceuticals
- 10 Ground water decontamination, Hazardous Waste Facilities that recover and recycle hazardous waste
- 15 Landfill leachate
- 20 Hazardous Waste Facilities that treat and discharge hazardous waste, Industrial Waste Management Facilities

ii. COD Load is the quantity of Chemical Oxygen Demand discharged by the DTW (in kilograms per day) and is derived by multiplying the COD load discharged by the SIU (in kilograms per day) by the DTW's discharge rate (DTW effluent ÷ DTW influent).

(h) Minimum fees are as follows:

1. The minimum fee for Discharge to Surface Water permits shall be \$500.00, except that the minimum fee for hazardous waste facilities regulated by N.J.A.C. 7:26 and for Industrial Waste Management Facilities regulated by N.J.A.C. 7:14A-4 shall be \$10,000.

2. The minimum fee for Discharge to Ground Water (DWG) permits shall be assessed as follows:

i. Facilities assigned a Ground Water Status Factor of 1 or 2 under (d)liii above shall be assessed a minimum fee of \$500.00;

ii. Facilities assigned a Ground Water Status Factor of 5 under (d)liii above shall be assessed a minimum fee of \$2,000.00;

iii. Facilities assigned a Ground Water Status Factor of 10 under (d)liii above and conducting corrective action for a non-hazardous constituent shall be assessed a minimum fee of \$3,000.00;

iv. Facilities assigned a Ground Water Status Factor of 10 under (d)liii above and conducting corrective action for a hazardous constituent as defined in N.J.A.C. 7:26-8.16 shall be assessed a minimum fee of \$5,000.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26 and Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4 or facilities that have been issued a NJPDES DGW/IWMF permit or a DGW/IWMF permit-by-rule shall be assessed a minimum fee of \$10,000.00.

3. The minimum fee for a Residuals permit shall be assessed as follows:

i. The minimum fee for domestic sludge shall be \$500.00;

ii. The minimum fee for non-hazardous industrial sludge shall be \$1,000.00; and

iii. The minimum fee for hazardous industrial sludge shall be \$5,000.00.

4. The minimum fee for sanitary landfills shall be assessed as follows:

i. Landfills that are operating or terminated after January 1, 1982 without an approved closure plan shall be assessed a minimum fee of \$2,500.00;

ii. Terminated Landfills properly closed with a Department approved closure plan, or closed prior to January 1, 1982 shall be assessed a minimum fee of \$500.00.

5. The minimum fee for a transfer station shall be \$500.00 and the annual fee for a transfer station shall be \$500.00.

6. The minimum fee for a permit to discharge to a Domestic Treatment Works shall be \$500.00, except that the minimum fee for a permit issued pursuant to N.J.A.C. 7:14A-4 shall be \$10,000.

7. The minimum fee for all emergency permits issued pursuant to N.J.A.C. 7:14A-2.2 shall be \$1,000.00, except that the fee for temporary storage of sludge shall be calculated as follows:

Average Flow	Fee
.999 MGD	\$ 500.00
1 MGD— 4.999 MGD	\$ 800.00
5 MGD—19.999 MGD	\$1,600.00
20 MGD	\$3,200.00

OFFICE OF ADMINISTRATIVE LAW NOTE: Tables I and II currently part of the existing rule and found in the New Jersey Administrative Code are not being repealed or amended.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE Assistance Standards Handbook Financial Aid for Education

Proposed Amendments: N.J.A.C. 10:82-1.7, 1.8 and 3.2

Authorized By: Drew Altman, Ph.D., Commissioner,
Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR.20(a)(3)(vii); and 45 CFR 233.20(a)(4)(ii)(d).

Proposal Number: PRN 1987-148.

Submit comments by June 3, 1987 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The United States Department of Health and Human Services, Office of Family Assistance, has recently provided clarification regarding Federal regulations governing the Aid to Families with Dependent Children (AFDC) program which allow states to establish policy to disregard as income, assistance provided by other agencies and organizations when determining AFDC eligibility and benefit amounts. This is delineated at 45 CFR 233.20(a)(3)(vii). In the past, this option has not been applied to student income (grants, loans and scholarships). While student income granted under the auspices of the Commissioner, United States Department of Education, is exempt by Federal regulation 45 CFR 233.20(a)(4)(ii)(d), other sources of student aid have been considered as available for family maintenance to the extent that the amount provided is in excess of that required for expenses directly related to education. Although this often does not result in any significant amount of countable income, it is, nonetheless, a computation which must be carried out to properly determine eligibility and the AFDC grant level in situations where student income exists.

Currently, Federal sources of educational financial aid (Pell Grants, Supplemental Educational Opportunity Grants, and National Direct Student Loans) are excluded from consideration as well as other sources of grants, loans and scholarships used for expenses directly related to education. The proposed amendments will exclude all grants, loans, scholarships and other educational financial aid from consideration. The deletion of text at N.J.A.C. 10:82-3.2(b)8(2) will preclude duplication of policy as found under N.J.A.C. 10:82-1.7 and 1.8.

Social Impact

In addition to providing the necessary financial assistance to families who are truly in need, a concern of those involved in the administration of public assistance is how to help recipients to become self-sufficient. One means of attaining this goal is to achieve an education which will lead to meaningful employment. If clients are made aware that they can attend college and receive financial assistance in the form of grants, loans or scholarships and not jeopardize their welfare grant, they may be more inclined to pursue their education and ultimately become independent of public assistance. In addition, the knowledge that students will be able to make full use of funds provided may lead to increased availability of student financial aid for this group.

Economic Impact

As stated in the summary, receipt of student financial aid often does not affect the AFDC grant amount because most of the student educational assistance is disregarded from income in determining AFDC benefits. Approximately 1,600 AFDC recipients currently attend college and receive financial aid. The Department's analysis of the AFDC caseload indicates that the proposed amendments will have a negligible economic impact on assistance expenditures. Contingent upon individual case circumstances, certain students in receipt of AFDC benefits may receive a slight increase in their grant as a result of these amendments.

Regulatory Flexibility Statement

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This rulemaking imposes no compliance requirements on small businesses, as the AFDC program is administered by county welfare agencies.

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

10:82-1.7 Eligible AFDC child regularly attending school

(a) (No change.)

(b) Any grant, **scholarship**, [or] student loan or other financial aid received by such child [in the form of a Pell Grant, Supplemental Educational Opportunity Grant, or National Direct Student Loan] shall be fully disregarded in **determining eligibility and amount of assistance payment** [computing the grants] so long as the child continues to attend school as stated in (a) above and meets the conditions under which such moneys are granted. [Student loans from other sources are disregarded to the extent they meet the criteria of N.J.A.C. 10:82-3.2(b)8i(1). Other grants and scholarships shall be disregarded to the extent that the payment is used for expenses directly related to education such as tuition, books, fees, equipment, transportation for school purposes, and child care services necessary for school attendances. Any such funds received which serve to duplicate the public assistance grant shall not be disregarded.]

1. (No change.)

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

10:82-1.8 Parent regularly attending school (all segments)

(a) When a parent of an eligible child is a student regularly attending school as defined in N.J.A.C. 10:82-1.9, the provisions of N.J.A.C. 10:82-1.7(b) and (c) shall apply (see N.J.A.C. 10:81-3.18(b)2ii(6)).

1. Payment for child care shall be provided where necessary to enable a parent to attend school so long as the parent can demonstrate that [his/her] **his or her scholarship(s), [or] grant(s), student loan or other financial aid** does not provide moneys which can be utilized for such care, and child care is not provided through any other source. [When the scholarship(s) makes no specific provision for child care, all school related expenses shall be deducted from the scholarship and any balance remaining shall be considered in the determination of child care payments. (See N.J.A.C. 10:82-5.2 through 5.4).]

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes are as follows:

i.-iv. (No change.)

v. Supplemental aid by other agencies or organizations, whether public or private, provided that:

(1) (No change.)

(2) Such aid is for a special purpose not within the function of the public assistance agency (for example, vocational rehabilitation).]; or

(3) **Such aid is to any undergraduate student for educational purposes.**

vi.-vii. (No change.)

7. (No change.)

8. Loans:

i. Loans for specific purposes:

(1) (No change.)

[(2) Loans or grants to any undergraduate student for education purposes made or ensured under any program administered by the Commissioner of Education and Welfare and other educational grants and scholarships are exempt in accordance with N.J.A.C. 10:82-1.7.]

ii. (No change.)

9.-11. (No change.)

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Routes 4 in Bergen County; U.S. 9 in Middlesex County; 21 in Essex County; U.S. 30 in Camden County; U.S. 40 in Salem and Atlantic County; U.S. 46 in Bergen County; 47 in Cumberland County; 88 in Ocean County; U.S. 130 in Burlington County; 124 in Essex County; 168 in Camden County; 161 in Passaic County; and U.S. 40/322 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28A-1.4, 1.7, 1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69, 1.85 and 1.104

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Proposal Number: PRN 1987-149.

Submit comments by June 3, 1987 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along Routes 4 in the Borough of Elmwood Park, Bergen County; 21 in Nutley Township, Essex County; U.S. 40 in the Borough of Elmer, Salem County; U.S. 46 in the Borough of Elmwood Park, Bergen County and 88 in Brick Township, Ocean County; "time limit parking" zone along Route 4 in Elmwood Park, Bergen County and "no parking bus stop" zones along Routes U.S. 9 in Old Bridge Township, Middlesex County and Howell Township, Monmouth County; U.S. 30 in Audubon Borough, Camden County; U.S. 40 in Buena Vista Township, Atlantic County; 47 in Vineland City, Cumberland County; U.S. 130 in Delran Township, Burlington County; 168 in Audubon Borough, Camden County; 124 in Maplewood Township, Essex County; 161 in the City of Clifton, Passaic County and U.S. 40-322 in Egg Harbor Township, Atlantic County. These amendments are intended to provide safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking," "time limit parking," and "no parking bus stop" zones along the Routes and areas indicated were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.4, 1.7, 1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69, 1.85 and 1.104 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" zones along Routes 4 in the Borough of Elmwood Park, Bergen County; 21 in Nutley Township, Essex County; U.S. 40 in the Borough of Elmer, Salem County; U.S. 46 in the Borough of Elmwood Park, Bergen County and 88 in Brick Township, Ocean County; "time limit parking" zone along Route 4 in Elmwood Park, Bergen County and "no parking bus stop" zones along Routes U.S. 9 in Old Bridge Township, Middlesex County, and Howell Township, Monmouth County; U.S. 30 in Audubon Borough, Camden County; U.S. 40 in Buena Vista Township, Atlantic County; 47 in Vineland City, Cumberland County; U.S. 130 in Delran Township, Burlington County; 168 in Audubon Borough, Camden County; 124 in Maplewood Township, Essex County; 161 in the City of Clifton, Passaic County and U.S. 40-322 in Egg Harbor Township, Atlantic County for the safe and efficient flow of traffic, the enhancement of

safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs and the local officials will bear the costs for "no parking bus stop" and "time limit parking" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not impose any compliance requirements on small businesses, because the rules are intended to regulate traffic along the highway system.

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

16:28A-1.4 Route 4

(a) The certain parts of State highway Route 4 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-3. (No change.)

4. No stopping or standing in the Borough of Elmwood Park, Bergen County, along the southerly (eastbound) side from River Drive to East 53rd Street and from East 54th Street to East 55th Street.

(b) (No change.)

(c) **The certain parts of State highway Route 4 described in this subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following Time Limit Parking zones:**

1. One hour time limit parking on Broadway (south side) from East 53rd Street to East 54th Street in Elmwood Park, Bergen County on Monday through Saturday from 7:00 A.M. to 7:00 P.M., except Sundays and holidays.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-35. (No change.)

36. Along the southbound (westerly) side in Old Bridge Township, Middlesex County:

i. (No change.)

ii. **Mid-block bus stop:**

(1) Between Perrine Road and Runyon Cheesequake Road—Beginning 195 feet south of the southerly curb line of Perrine Road and extending 135 feet southerly therefrom.

37. (No change.)

38. Along the northbound (easterly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1)-(4) (No change.)

(5) Aldrich Road—Beginning at the southerly curb line of the jughandle to Aldrich Road east and extending 135 feet southerly therefrom.

ii. Mid-block bus stops:

(1) (No change.)

(2) Salem Hill Road—Beginning at a point 204 feet south of the southerly curb line of Salem Hill Road and extending 135 feet southerly therefrom.

iii. Far side bus stops:

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

(4) Aldrich Road—Beginning at the northerly curb line of the jughandle from Aldrich Road and extending 135 feet northerly therefrom.

(5) Alexander Avenue—Beginning at the northerly curb line of Alexander Avenue and extending 135 feet northerly therefrom.

39.-41. (No change.)

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)

(a) The certain parts of State highway Route 21 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-3. (No change.)

4. No stopping or standing in the City of Clifton, Passaic County, along both sides, for the entire length within the corporate limits of the City of Clifton, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

5. No stopping or standing in Nutley Township, Essex County, along both sides for the entire length within the corporate limits of the Township of Nutley, including all ramps, services roads, and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.A.C. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-19. (No change.)

20. Along the northbound (easterly) side in Audubon Borough, Camden County:

i. **Far side bus stops:**

(1) East Kings Highway—Beginning at the northerly curb line of East Kings Highway and extending 117 feet northerly therefrom.

(2) West Merchant Street—Beginning at the northerly curb line of West Merchant Street and extending 128 feet northerly therefrom.

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-7. (No change.)

8. No stopping or standing in the Borough of Elmer, Salem County:

i. Along the southerly (eastbound) side beginning at the easterly curb line of County Road 648 (North Main Street) to a point 68 feet easterly therefrom.

(b) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southerly (eastbound) side in Buena Vista Township, Atlantic County:

i. At the far side bus stop beginning at the easterly curb line of County Road 557 (Buena-Tuckahoe Road) and extending 100 feet easterly therefrom.

16:28A-1.32 Route 46

(a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in the Borough of Elmwood Park, Bergen County: [along both sides of all ramps and connections with Route US 46 under the jurisdiction of the Commissioner of Transportation.]

i. Along both sides within the corporate limits of the Borough of Elmwood Park, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

ii. Along the northerly (westbound) side from River Drive to the Elmwood Park-Garfield boundary line.

iii. Along the southerly (eastbound) side from River Drive to the Elmwood Park-Garfield boundary line.

2.-16. (No change.)

(b) (No change.)

16:28A-1.33 Route 47

(a) (No change.)

(b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)

7. Along the southbound (westerly) side in Vineland City, Cumberland County:

i. At the mid-block bus stop between College Drive and Route 55, beginning 1,580 feet south to the southerly curb line of College Drive and extending 135 feet southerly therefrom.

16:28A-1.44 Route 88

(a) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-5. (No change.)

6. No stopping or standing in Brick Township, Ocean County:

i. Along both sides for the entire length within the corporate limits of Brick Township including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.

(b) (No change.)

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

5. Along the southbound (westerly) side in Delran Township, Burlington County:

i. At the near side bus stop beginning at the prolongation of the northerly curb line of Tenby Chase Drive and extending 105 feet northerly therefrom.

(c) (No change.)

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)

7. Along the northbound (easterly) side in Audubon Borough, Camden County:

i. Mid-block bus stop between North Merchant Street and Main Street, beginning 205 feet south of the prolongation of the southerly curb line of Main Street and extending 135 feet southerly therefrom.

16:28A-1.69 Route 124

(a) The certain parts of State highway Route 124 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along Springfield Avenue on the westbound (northerly) side in Maplewood Township, Essex County:

i. At the mid-block bus stop beginning 240 feet east of the easterly prolongation curb line of Chancellor Avenue and extending 145 feet easterly therefrom.

(b) (No change.)

16:28A-1.85 Route 161

(a) (No change.)

(b) The certain parts of State highway Route 161 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along Clifton Avenue on the northbound (easterly) side in the City of Clifton, Passaic County:

i. At the near side bus stop beginning at the southerly curb line of St. James Place and extending 105 feet southerly therefrom.

2. Along Clifton Avenue on the southbound (westerly) side in the City of Clifton, Passaic County:

i. At the near side bus stop beginning at the northerly curb line of Godwin Place and extending 105 feet northerly therefrom.

16:28A-1.104 Route U.S. 40-322

(a) (No change.)

(b) The certain parts of State highway Route U.S. 40-322 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along the eastbound (southerly) side in Egg Harbor Township, Atlantic County:

i. At the mid-block bus stop between Delancy Avenue and Fire Road, beginning 713 feet west of the westerly curb line of Delancy Avenue and extending 135 feet westerly therefrom.

ii. At the near side bus stop beginning at the westerly curb line of Palermo Avenue and extending 105 feet westerly therefrom.

iii. At the far side bus stop beginning at the easterly curb line of Victory Drive and extending 100 feet easterly therefrom.

3. Along the westbound (southerly) side in Egg Harbor Township, Atlantic County:

i. At the far side bus stop beginning at the westerly curb line of County Lane and extending 100 feet westerly therefrom.

ii. At the near side bus stop beginning at the easterly curb line of Fire Road and extending 105 feet easterly therefrom.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Financial Business Corporation and Interest on Indebtedness to Financial Business Corporation; Money Market Fund Distribution

Proposed New Rule: N.J.A.C. 18:7-1.16

Proposed Amendment: N.J.A.C. 18:7-5.2

Authorized By: John R. Baldwin, Director of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1987-147.

Submit comments by June 3, 1987 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed new rule relates to the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. and N.J.A.C. 18:7-1.1 et seq. The proposed new rule, N.J.A.C. 18:7-1.16, dealing with the definition of "financial business corporation" was previously proposed on April 7, 1986 (see 18 N.J.R. 627(a)). Also appearing at 18 N.J.R. 627(a) was a proposed amendment to N.J.A.C. 18:7-5.2 which dealt with the computation of entire net income for a qualified financial business corporation. Rather than adopt these proposals, the Division decided to repropose their contents (see 18 N.J.R. 1487(a)). The adoption of an amendment to N.J.A.C. 18:7-5.2 is contingent upon the adoption of the proposed new rule N.J.A.C. 18:7-1.16. Thus, the proposed amendment to N.J.A.C. 18:7-5.2(a)7iii will clarify how interest on indebtedness which relates to a debt owed to a 10 percent stockholder is computed for determining entire net income for a financial business corporation. As originally proposed, N.J.A.C. 18:7-5.2(b)2 codified the position of the Division with respect to treatment of distributions from certain money market mutual funds as interest. The public comments received on the proposal were carefully reviewed and analyzed. In consideration of some of the concerns expressed, the Division has made substantial changes to the original proposal which require new public notice. This new proposal reflects those changes. A taxpayer subject to the Corporation Business Tax Act can qualify as a financial corporation if it meets the requirements set forth at N.J.S.A. 54:10A-4(m) and proposed new rule N.J.A.C. 18:7-1.16. Such taxpayer would be in substantial competition with national banks and employ moneyed capital in a number of enumerated ways. Leasing corporations meeting five criteria specified in the rule would qualify as financial business corporations. In addition, 75 percent of gross income must be derived from listed activities enumerated in the rule. "Gross income" is separately defined for the purpose of this rule only and not for other provisions of the Corporation Business Tax Act and other rules where gross income has a different meaning. For clarity, the proposal also lists a number of business classifications which would not qualify for "financial business corporation" treatment.

Social Impact

Inasmuch as the proposal makes clear the position of the Division of Taxation, it will simplify the administration of the Corporation Business Tax Act. The proposal will facilitate the filing of returns by taxpayers and ease certain aspects of tax administration. It is expected that the rules will tend to minimize controversy.

Economic Impact

The proposal will serve to diminish the cost of return preparation and the cost of administration of the tax insofar as the proposal communicates the interpretation put on the tax laws by the Division of Taxation. In and of itself the proposal will not increase or diminish tax yield significantly. However, it will result in considerable savings in cost of tax administration to the taxpayer, both in return preparation costs and in avoiding audits.

Regulatory Flexibility Statement

This proposal affects large and small businesses alike in a positive way. The proposed rule defining financial business corporation would equally benefit all businesses because it would allow interest deductions on corporate taxes. Application of the rule in an unequal manner between large and small businesses would result in disparate treatment of similarly treated entities and would be discriminatory.

Full Text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

18:7-1.16 [(Reserved)] Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;
2. Buying and selling exchange;
3. Making of or dealing in secured or unsecured loans and discounts;
4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;
5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or
6. Dealing in or underwriting obligations of the United States, any state or any political subdivision thereof or of a corporate instrumentality of any of them.
7. Certain leasing transactions which approximate secured loans by meeting each of the following requirements:
 - i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.
 - ii. Lessor may not rely on repetitious leasing of the same property. The lease must be a net lease.
 - iii. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

(b) For purposes of this section:

1. "Tax benefits" means those benefits derived from depreciation and any investment tax credit related to the financed property.
2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed. Such value may not exceed 20 percent of the lessor's full investment.
3. "Net lease" means a lease under which the lessor will not, directly, or indirectly, provide or be obligated to provide for:
 - i. The servicing, repair or maintenance of the leased property during the lease term.
 - ii. The purchasing of parts and accessories for the leased property; however, the improvements and additions to the leased property may be leased to the lessee upon its request.
 - iii. The loan of replacement or substitute property while the leased property is being serviced.
 - iv. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.
 - v. The renewal of any license or registration for the property unless such action by the taxpayer is clearly necessary to protect its interest as an owner or financier of the property.

(c) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;
2. National banks;
3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91-181 (12 U.S.C. §2091 et seq.);
4. Stock or mutual insurance companies authorized to transact business in this State;
5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;
6. Real estate investment trusts;
7. Credit unions organized under the laws of this State;
8. Savings banks organized under the laws of this State;
9. Savings and loan or building and loan associations organized under the laws of this State;
10. Pawn brokers organized under the laws of this State; and
11. State banks and trust companies organized under the laws of this State.

(d) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7-1.15.

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C.A. 21, et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A-4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through (a)7 above. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form CBT-100, adjusted as follows:

1. "Gross income" for purposes of this subsection and N.J.A.C. 18:7-5.2(a)7iii means the result of adding the income amounts for gross receipts, or sales, dividends, interest, gross rents, gross royalties, capital gain, net income, net gain or loss from line 14(a), Part II, Federal Form 4797 and other income as adjusted for interest on Federal, state, municipal and other obligations not included in line 5 above and the dividend exclusion.
2. Gross income arrived at (f)1 above is the denominator;
3. The gross income included in (f)2 above resulting from the activities set forth in (a)1 through (a)7 above is the numerator; and
4. If the resulting percentage of (f)2 and 3 above is 75 percent or more, such corporation is a financial business corporation.

(g) A corporation that qualifies as a financial business corporation must file a Corporation Business Tax Return for Banking and Financial Corporation, Form BFC-1 and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38 (Section 38 of the Corporation Business Tax Act).

18:7-5.2 Entire net income; how computed

"Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

(a) Add to Federal taxable income:

1.-6. (No change.)

7. The amount deducted, in computing Federal taxable income, for interest on indebtedness (whether or not evidenced by a written instrument) directly or indirectly owed to an individual stockholder or members of his immediate family who, in the aggregate, own beneficially ten percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder, including its subsidiaries, which owns beneficially, directly or indirectly, ten percent or more of the taxpayer's outstanding shares of capital stock minus ten percent of the amount so deducted or \$1,000.00, whichever is larger. Thus, if the amount of such interest is \$1,000.00 or less, then none of said amount need be added back. However, there shall be allowed as a deduction:

i.-ii. (No change.)

iii. Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7-1.16. A debt is owed to an "affiliate" corporation when it is owing directly or indirectly

to holders of ten percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes as defined in N.J.A.C. 18:7-4.5. The deduction may not be claimed on the Corporation Business Tax Return, Form CBT-100. Any corporation which is a financial business corporation must file the Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1, and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38; and

[iii.] iv. Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent

notwithstanding that related indebtedness may be excluded from net worth where it is indirectly owing to such bank holding company.

8.-12. (No change.)

(d) Deduct from federal taxable income:

1. (No change.)

2. Fifty percent of all other dividends included in Federal taxable income or added to Federal taxable income in accordance with (a) above [;]. **Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.**

3.-7. (No change.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

(a)

UNIFORM ADMINISTRATIVE PROCEDURE RULES Special Hearing Rules

Adopted Repeal: N.J.A.C. 1:1 and 1:2 through 1:21 Adopted New Rules: N.J.A.C. 1:1 and 1:6 through 1:21

Pre-proposed: April 21, 1986 at 18 N.J.R. 728(a).

Proposed: September 8, 1986 at 18 N.J.R. 1728(a).

Adopted: April 1, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.

Filed: April 2, 1987 as R.1987 d.200, with substantive and technical changes not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: May 4, 1987.

Expiration Date: May 4, 1992.

Operative Date (Adopted Repeal and Adopted New Rules): July 1, 1987.

Summary of Public Comments and Agency Responses:

Written comments were submitted by the following:

Casino Control Commission

Department of Education

Department of Personnel

Division of Gaming Enforcement

Joseph Rosa, Jr., Esq.

The OAL replied by letter to each commenter, responding to each point raised.

Based on the submitted remarks and other considerations, the OAL made a few changes since the rules were proposed. All changes from the proposal are described below. (For a complete explanation of the differences between the adopted rules and the existing rules, it is necessary to refer to the pre-proposal at 18 N.J.R. 728(a) and the proposal at 18 N.J.R. 1728(a). The proposal includes cross-reference tables correlating the new rules with the existing rules. These tables will also be printed in Title I of the New Jersey Administrative Code when the new rules are published.)

Although the new rules are effective upon publication, they are not operative until July 1, 1987. The delay will give the OAL time to implement new procedures. In addition, the OAL will be available during that time for whatever implementation and education assistance may be requested by others. During the transition period, hearings will be governed by the existing rules. The New Jersey Administrative Code will not be revised to reflect the new rules until they are operative.

The following are the changes that were made since the proposal.

Subchapter 2

As the result of a comment from the Department of Education, the definition of "agency head" was expanded to clarify that the State Board of Education is the agency head in the Department, but the Commissioner of Education renders final decisions.

The definition of "final decision" was expanded to include the decision rendered by an agency head when the agency head conducts a hearing, as permitted by N.J.S.A. 52:14F-8(b).

The definition of "withdrawal" has been amended primarily for stylistic rather than substantive reasons.

Subchapter 3

Several commenters objected to N.J.A.C. 1:1-3.3 as proposed because they felt that the rules should not limit an agency's right to have a transmitted case returned. Upon further consideration, the OAL agrees that no time limit should be set on when a case can be returned. Therefore, proposed 1:1-3.3(b) and (c) have been deleted.

Subchapter 7

Some requirements have been deleted from N.J.A.C. 1:1-7.4. The OAL felt the deleted language was inconsistent with the general trend of the rules to minimize technical requirements.

Subchapter 8

N.J.A.C. 1:1-8.2(a)8 has been modified to be more clear. A reference to recovering costs from others has been clarified. Any such arrangements can be handled between the agency and the parties when circumstances require.

Subchapter 9

Based on a comment from the Division of Gaming Enforcement, the words "all parties consent" have been added to N.J.A.C. 1:1-9.4(c). OAL agrees that the accelerated process should not be used unless all parties concur.

Subchapter 12

In N.J.A.C. 1:1-12.5(e), language has been changed to clarify that partial summary decisions will be designated "orders" because they do not fully dispose of the case.

Subchapter 14

Language was added to N.J.A.C. 1:1-14.3(a) to make clear that the judge must approve the use of an interpreter.

The change in N.J.A.C. 1:1-14.7 corrects an oversight in the pre-proposal and proposal that occurred when the existing conference hearing rules (N.J.A.C. 1:2) were incorporated into the general hearing rules. There should have been a provision specifically barring post-hearing submissions in conference hearings. The oversight has been corrected by adding a new subsection (g), which is based on the existing N.J.A.C. 1:2-2.8. Therefore, this modification will result in no change in current practice before the OAL.

In addition, in N.J.A.C. 1:1-14.8(d), a sentence has been added to clarify that a proceeding on the papers is concluded when the record is assigned to a judge for decision. The 45-day time limit for issuance of an initial decision runs from that date. See, 1:1-18.1(d).

Subchapter 15

The prior transcribed testimony provision, N.J.A.C. 1:1-15.12, was adopted separately as N.J.A.C. 1:1-15.10. See, 18 N.J.R. 2381(a). The text of 1:1-15.12 has been changed to conform to the recently adopted 1:1-15.10. This procedure, therefore, is currently operative as N.J.A.C. 1:1-15.10.

Subchapter 18

In the proposal, the OAL introduced N.J.A.C. 1:1-18.6(d), a new rule dealing with requests for stays of final decision. Upon further consideration, the OAL has decided to eliminate language in the proposed rule that said failure to timely respond would be "deemed a denial." In addition, it was decided that the reference to appeals was unnecessary and it has been deleted.

The extension of time limits rule, N.J.A.C. 1:1-18.8, was amended to make clear that each agency head has 10 days to respond to an extension request. It should be noted that subsection (d) continues to relate solely to extensions of the time limit for exceptions and replies that do not involve an extension of the final decision date. All extensions of final decision deadlines are controlled by subsection (e).

Also in 1:1-18.8, subsection (e) was rewritten to be more consistent with the wording in (c) and (d). No substantive change is intended. In the interest of readability, the entire subsection has been deleted and the new language shown as a complete sentence.

Subchapter 19

Questions have been raised about the practicality of the settlement process, concerning when the judge must assess whether the agreement is consistent with "the public interest." The OAL has decided to remove that requirement from N.J.A.C. 1:1-19.1 as being unnecessary. (Also in 1:1-19.1, the word "verbally" was changed to "orally" in order to be more precise.)

Regarding withdrawal, the OAL has decided to return to the existing process. Therefore, significant changes have been made in N.J.A.C. 1:1-19.2. The new rule permits a party to withdraw at any time; it will not change current practice in OAL hearings. In particular, the new rule

is not intended to affect the handling of certain Department of Education and Casino Control Commission cases which are subject to agency policies relating to withdrawal.

Subchapter 20

By changing "settlement agreement" to "mediation agreement" in N.J.A.C. 1:1-20.2(a), the OAL intends to make more clear that such cases are concluded at that point. When a transmitting agency is a party to a successful mediation, there will be no initial decision.

Special Hearing Rules

Chapters 5 and 10B were not in the proposal but were separately adopted after the proposal appeared. They are included in this adoption so that a complete version of the Special Hearing Rules appears. Both Chapters 5 and 10B are operative at this time.

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

**Cross-Reference Table—(Old to New)
 Title 1, Chapter 1**

Old Sections	New Sections	Old Sections	New Sections
1:1-1.1	1:1-1.1	1:1-3.12(e)	1:1-5.5(a)
1:1-1.2	1:1-1.2	1:1-3.12(f)	1:1-5.5(b)
1:1-1.3	1:1-1.3	1:1-3.12(g)	1:1-5.5(c)
1:1-1.4	1:1-2.1	1:1-3.12(h)	1:1-5.5(e)
1:1-1.5	1:1-2.1	1:1-3.13	1:1-5.6
1:1-1.6	1:1-2.1	1:1-4.1	1:1-1.4
1:1-1.7	1:1-2.1	1:1-4.2	1:1-14.6(f)
1:1-1.8	1:1-4.2; 1:1-8.1(a)-(c); 1:1-8.2(a)6	1:1-5.1(a)	1:1-4.1(a)
1:1-1.9	1:1-4.1(b)	1:1-5.1(b)	1:1-8.1(a)
1:1-2.1	1:1-3.1	1:1-5.1(c)	Deleted
1:1-2.2(a)	1:1-3.2(a)	1:1-5.2(a)	1:1-8.2(a)
1:1-2.1(b)	1:1-3.2(a)	1:1-5.2(b)	1:1-8.2(c)
1:1-2.2(c)	1:1-8.1(c); 1:1-8.3(b)	1:1-5.2(c)	1:1-8.3(a)
1:1-3.1(a)	1:1-14.1(a)	1:1-5.2(d)	1:1-9.5(a)
1:1-3.1(b)	1:1-14.1(b)	1:1-5.2(e)	1:1-8.2(d)
1:1-3.2(a)	1:1-14.2(a)	1:1-5.3	Deleted
1:1-3.2(b)	1:1-2.1 (definition of settlement); 1:1-14.6(a)	1:1-5.4(a)	1:1-4.2; 1:1-8.1(b) 1:1-8.1(b)
1:1-3.2(c)	1:1-9.3; 1:1-14.6(f)	1:1-5.4(b)	1:1-8.1(b)
1:1-3.2(d)	1:1-14.2(b)	1:1-5.4(c)	1:1-8.1(b)
1:1-3.2(e)	1:1-9.7(a)	1:1-5.4(d)	1:1-4.2
1:1-3.3(a)	1:1-14.1(a)	1:1-5.5(a)	1:1-7.4(a)
1:1-3.3(b)	1:1-14.11(a)	1:1-5.5(b)	1:1-7.4(b)
1:1-3.3(c)	1:1-14.11(b)	1:1-5.5(c)	1:1-7.3(c)
1:1-3.3(d)	1:1-14.11(c)	1:1-5.5(d)	Deleted
1:1-3.3(e)	1:1-14.11(d)	1:1-6.1(a)	1:1-6.1(a)
1:1-3.3(f)	1:1-14.11(e)	1:1-6.1(b)	1:1-6.1(b)
1:1-3.4(a)	1:1-15.7(a)	1:1-6.2	Deleted
1:1-3.4(b)	1:1-15.7(b)	1:1-6.3	1:1-6.2(a)-(b)
1:1-3.4(c)	1:1-15.7(c)	1:1-7.1(a)	1:1-7.1(a)
1:1-3.5(a)	1:1-14.4(a)	1:1-7.1(b)	1:1-7.1(b)
1:1-3.5(b)	1:1-14.4(c)	1:1-7.1(c)	1:1-7.1(c)
1:1-3.5(c)	Deleted	1:1-7.1(d)	1:1-7.1(d)
1:1-3.6	Deleted	1:1-7.1(e)	1:1-7.1(d)
1:1-3.7(a)	1:1-5.1	1:1-7.2(a)	1:1-7.2(a)
1:1-3.7(b)	1:1-5.2	1:1-7.2(b)	1:1-7.2(b)
1:1-3.8(a)	1:1-14.5(a)	1:1-7.2(c)	1:1-7.2(c)
1:1-3.8(b)	1:1-5.3; 1:1-1.3(a)	1:1-7.2(d)	1:1-7.2(d)
1:1-3.8(c)	1:1-14.5(b)-(d)	1:1-8.1(a)	1:1-8.1(a)
1:1-3.9	1:1-14.6(a)-(p)	1:1-8.1(b)	1:1-8.1(b)
1:1-3.10(a)	1:1-14.3(a)	1:1-8.2(a)	1:1-8.2(a)
1:1-3.10(b)	1:1-14.3(b)	1:1-8.2(b)	1:1-8.2(b)
1:1-3.11	1:1-6.3	1:1-8.2(c)	1:1-8.2(c)
1:1-3.12(a)	1:1-5.4(a)	1:1-8.2(d)	1:1-8.2(d)
1:1-3.12(b)	1:1-5.4(b)	1:1-8.3(a)	1:1-8.3(a)
1:1-3.12(c)	1:1-5.4(b)	1:1-8.3(b)	1:1-8.3(b)
1:1-3.12(d)	Deleted	1:1-8.3(c)	1:1-8.3(c)
		1:1-8.4	1:1-8.4
		1:1-8.5(a)	1:1-8.5(a)
		1:1-8.5(b)	1:1-8.5(b)
		1:1-8.5(c)	1:1-8.5(c)
		1:1-8.5(d)	1:1-8.5(d)
		1:1-9.1(a)	1:1-9.1(a)
		1:1-9.1(b)	1:1-9.1(b)
		1:1-9.1(c)1.	1:1-9.1(c)1.
		1:1-9.1(c)2.	1:1-9.1(c)2.
		1:1-9.1(c)3.	1:1-9.1(c)3.
		1:1-9.1(d)	1:1-9.1(d)
		1:1-9.1(e)	1:1-9.1(e)
		1:1-9.2(a)	1:1-9.2(a)
		1:1-9.2(b)	1:1-9.2(b)
		1:1-9.2(c)	1:1-9.2(c)
		1:1-9.2(d)	1:1-9.2(d)
		1:1-9.2(e)	1:1-9.2(e)
		1:1-9.2(f)	1:1-9.2(f)
		1:1-9.2(g)	1:1-9.2(g)
		1:1-9.3(a)	1:1-9.3(a)
		1:1-9.3(b)	1:1-9.3(b)
		1:1-9.3(c)	1:1-9.3(c)
		1:1-9.4(a)	1:1-9.4(a)
		1:1-9.4(b)	1:1-9.4(b)
		1:1-9.5(a)	1:1-9.5(a)
		1:1-9.5(b)	1:1-9.5(b)
		1:1-9.5(c)	1:1-9.5(c)
		1:1-9.5(d)	1:1-9.5(d)
		1:1-9.5(e)	1:1-9.5(e)
		1:1-9.5(f)	1:1-9.5(f)
		1:1-14.4(a)	1:1-14.4(a)
		1:1-11.1(a)	1:1-11.1(a)
		1:1-11.2(a)	1:1-11.2(a)
		1:1-11.3	1:1-11.3
		1:1-11.1(b); 1:1-11.3	1:1-11.1(b); 1:1-11.3
		1:1-11.2(b)	1:1-11.2(b)
		1:1-11.1(c)	1:1-11.1(c)
		1:1-11.5	1:1-11.5
		1:1-11.4	1:1-11.4
		1:1-12.1(a)	1:1-12.1(a)
		1:1-12.1(a)	1:1-12.1(a)
		1:1-7.3(c);	1:1-7.3(c);
		1:1-12.1(b)	1:1-12.1(b)
		1:1-14.1(a)	1:1-14.1(a)
		1:1-12.1(c)	1:1-12.1(c)
		1:1-12.2(a)	1:1-12.2(a)
		1:1-12.2(b)	1:1-12.2(b)
		1:1-12.2(c)	1:1-12.2(c)
		1:1-12.2(d)	1:1-12.2(d)
		1:1-12.2(e);	1:1-12.2(e);
		1:1-12.3(c)	1:1-12.3(c)
		1:1-12.2(f)	1:1-12.2(f)
		1:1-1.3(b);	1:1-1.3(b);
		1:1-14.6(f)	1:1-14.6(f)
		1:1-12.3(b)	1:1-12.3(b)
		1:1-12.4(a)	1:1-12.4(a)
		1:1-12.4(b)	1:1-12.4(b)
		1:1-14.9(a)	1:1-14.9(a)
		1:1-14.9(c)	1:1-14.9(c)

1:1-9.5(c)	.....	1:1-14.9(c)	.....	1:1-14.1(c)	.....	1:1-17.1(c)
1:1-9.6(a)	.....	1:1-12.6(a)	.....	1:1-14.1(d)	.....	1:1-17.1(d)
1:1-9.6(b)	.....	1:1-12.6(b)	.....	1:1-14.2(a)	.....	1:1-17.2(a)
1:1-9.6(c)	.....	1:1-12.6(c)	.....	1:1-14.2(b)	.....	1:1-17.2(b)
1:1-9.6(d)	.....	1:1-12.6(d)	.....	1:1-14.2(c)	.....	1:1-17.2(c)
1:1-9.6(e)	.....	1:1-12.6(e)	.....	1:1-14.2(d)	.....	1:1-17.2(d)
1:1-9.6(f)	.....	1:1-12.6(f)	.....	1:1-14.3(a)	.....	1:1-17.3(a)
1:1-9.6(g)	.....	1:1-12.6(g)	.....	1:1-14.4(a)	.....	1:1-17.4(a)
1:1-9.6(h)	.....	1:1-12.6(h)	.....	1:1-14.4(b)	.....	1:1-17.4(b)
1:1-9.6(i)	.....	1:1-12.6(i)	.....	1:1-14.5(a)	.....	1:1-17.5(a)
1:1-9.6(j)	.....	1:1-12.6(j)	.....	1:1-14.6(a)	.....	1:1-17.6(a)
1:1-9.6(k)	.....	1:1-12.6(k)	.....	1:1-14.6(b)	.....	1:1-17.6(b)
1:1-9.7(a)	.....	1:1-14.10(a)	.....	1:1-14.6(c)	.....	1:1-17.6(c)
1:1-9.7(b)	.....	1:1-14.10(b)	.....	1:1-14.6(d)	.....	1:1-17.6(d)
1:1-9.7(c)	.....	1:1-14.10(c)	.....	1:1-14.7(a)	.....	1:1-17.7(a)
1:1-9.7(d)	.....	1:1-14.10(e)	.....	1:1-14.7(b)	.....	1:1-17.7(b)
1:1-9.7(e)	.....	1:1-14.10(f)	.....	1:1-14.7(c)	.....	1:1-17.7(c)
1:1-9.7(f)	.....	1:1-14.10(g)	.....	1:1-14.8(a)	.....	1:1-17.8(a)
1:1-9.7(g)	.....	1:1-14.10(h)	.....	1:1-14.8(b)	.....	1:1-17.8(b)
1:1-9.7(h)	.....	1:1-14.10(i)	.....	1:1-14.8(c)	.....	1:1-17.8(c)
1:1-9.7(i)	.....	1:1-14.10(j)	.....	1:1-15.1	.....	1:1-2.1
1:1-10.1(a)	.....	1:1-9.1(d);	.....	1:1-15.2(a)	.....	1:1-15.1(c)
		1:1-13.1(b)	.....	1:1-15.2(b)	.....	1:1-14.6(k);
1:1-10.1(a)1.	.....	1:1-13.1(d)	.....			1:1-14.7(c)-(d)
1:1-10.1(a)2.	.....	1:1-13.1(b)	.....	1:1-15.2(c)	.....	1:1-15.1(d)
1:1-10.1(b)	.....	1:1-13.1(c)	.....	1:1-15.2(d)	.....	1:1-15.1(b)
1:1-10.1(c)	.....	1:1-13.2(a)	.....	1:1-15.2(e)	.....	1:1-15.8(a)
1:1-10.1(d)	.....	1:1-13.2(b)	.....	1:1-15.2(f)	.....	1:1-15.1(a)
1:1-11.1(a)	.....	1:1-10.1(a)	.....	1:1-15.2(g)	.....	1:1-15.1(e)
1:1-11.1(b)	.....	1:1-10.1(d)	.....	1:1-15.2(h)	.....	1:1-15.8(a)5.
1:1-11.1(c)	.....	1:1-10.1(e)	.....	1:1-15.3(a)	.....	1:1-15.2(a)
1:1-11.1(d)	.....	1:1-10.1(b)	.....	1:1-15.3(b)	.....	1:1-15.2(b)
1:1-11.1(e)	.....	1:1-10.2(a);	.....	1:1-15.4(a)	.....	1:1-2.1
		1:1-10.4(b)	.....	1:1-15.4(b)	.....	1:1-15.3
1:1-11.2(a)	.....	1:1-10.2(a)	.....	1:1-15.5(a)	.....	1:1-15.8(b)
1:1-11.2(a)4.	.....	1:1-10.2(c)	.....	1:1-15.5(b)	.....	1:1-15.1(a)
1:1-11.2(b)	.....	1:1-10.1(c);	.....	1:1-15.5(c)	.....	1:1-15.8(c)
		1:1-10.4(d)	.....	1:1-15.6	.....	1:1-15.4
1:1-11.3(a)	.....	1:1-10.1(c)	.....	1:1-15.7(a)	.....	1:1-15.9(a)
1:1-11.3(b)	.....	1:1-10.2(c)	.....	1:1-15.7(b)	.....	1:1-15.9(b)
1:1-11.4(a)	.....	1:1-10.3(a)	.....	1:1-15.7(c)	.....	1:1-15.9(c)
1:1-11.4(b)	.....	1:1-10.2(d)	.....	1:1-15.7(d)	.....	1:1-15.9(d)
1:1-11.4(c)	.....	1:1-10.3(b)	.....	1:1-15.7(e)	.....	1:1-15.9(e)
1:1-11.5(a)	.....	1:1-10.4(a)	.....	1:1-15.8(a)	.....	1:1-15.5(a)
1:1-11.5(b)	.....	1:1-10.4(b)	.....	1:1-15.8(b)	.....	1:1-15.5(b)
1:1-11.5(c)	.....	1:1-10.4(e)	.....	1:1-15.9	.....	1:1-15.6
1:1-11.5(d)	.....	1:1-1.3(b);	.....	1:1-16.1	.....	1:1-2.1;
		1:1-14.6(f)	.....			1:1-14.7(g)
1:1-11.5(e)	.....	1:1-10.4(b)	.....	1:1-16.2(a)	.....	1:1-14.7(f)
1:1-11.5(f)	.....	1:1-10.4(c)	.....	1:1-16.2(b)	.....	1:1-14.7(f)
1:1-11.6(a)	.....	1:1-10.5	.....	1:1-16.2(c)	.....	1:1-14.7(f)
1:1-11.6(b)	.....	Deleted	.....	1:1-16.3(a)	.....	1:1-18.1(a),(d)
1:1-11.7	.....	Deleted	.....	1:1-16.3(b)	.....	1:1-18.1(b)
1:1-12.1(a)	.....	1:1-16.1(a)	.....	1:1-16.3(c)	.....	1:1-18.2(c);
1:1-12.1(b)	.....	1:1-16.1(b)	.....			1:1-18.3(c)
1:1-12.2(a)	.....	1:1-16.2(a)	.....	1:1-16.3(d)	.....	1:1-18.1(c)
1:1-12.2(b)	.....	1:1-16.2(b)	.....	1:1-16.3(e)	.....	1:1-18.1(g);
1:1-12.2(c)	.....	1:1-16.2(c)	.....			1:1-18.2(b)
1:1-12.3(a)	.....	1:1-16.3(a)	.....	1:1-16.4(a)	.....	1:1-18.4(a)
1:1-12.3(b)	.....	1:1-16.3(b)	.....	1:1-16.4(b)	.....	1:1-18.4(b)
1:1-12.3(c)	.....	1:1-16.3(c)	.....	1:1-16.4(c)	.....	1:1-18.4(d)
1:1-12.4	.....	1:1-16.4	.....	1:1-16.4(d)	.....	1:1-18.5(a)
1:1-12.5	.....	1:1-16.5	.....	1:1-16.4(e)	.....	1:1-18.5(b)
1:1-12.6(a)	.....	1:1-16.6(a)	.....	1:1-16.5(a)	.....	1:1-18.6(a)
1:1-12.6(b)	.....	1:1-16.6(b)	.....	1:1-16.5(b)	.....	1:1-18.6(b)
1:1-12.6(c)	.....	1:1-16.6(c)	.....	1:1-16.5(c)	.....	1:1-18.7(a)-(b)
1:1-13.1	.....	1:1-12.5(a)	.....	1:1-16.5(d)	.....	1:1-18.6(c)
1:1-13.2(a)	.....	1:1-12.5(b)	.....	1:1-16.6(a)	.....	1:1-18.8(a)
1:1-13.2(b)	.....	1:1-12.5(c)	.....	1:1-16.6(b)	.....	1:1-18.8(b)
1:1-13.2(c)	.....	Deleted	.....	1:1-16.6(c)	.....	1:1-18.8(c)-(f)
1:1-13.3(a)	.....	1:1-12.5(d)	.....	1:1-16.6(d)	.....	Deleted
1:1-13.3(b)	.....	1:1-12.5(e)	.....	1:1-17.1(a)	.....	1:1-19.1(a)
1:1-13.3(c)	.....	1:1-12.5(f)	.....	1:1-17.1(b)	.....	1:1-19.1(b)
1:1-13.4(a)	.....	1:1-12.5(b)	.....	1:1-17.1(c)	.....	1:1-19.1(c)
1:1-13.4(b)	.....	Deleted	.....	1:1-17.1(d)	.....	Deleted
1:1-14.1(a)	.....	1:1-17.1(a)	.....	1:1-17.1(e)	.....	Deleted
1:1-14.1(b)	.....	1:1-17.1(b)	.....	1:1-17.1(f)	.....	Deleted
				1:1-17.1(g)	.....	Deleted

1:1-17.2(a)	.....	1:1-19.2(a)-(c)	1:1-8.1(b)	.....	1:1-1.8;
1:1-17.2(b)	.....	1:1-19.2(d)			1:1-5.4(b)-(c)
1:1-17.2(c)	.....	1:1-19.2(e)	1:1-8.1(c)	.....	1:1-1.8;
1:2-2.9(a)	.....	1:1-18.2(a)			1:1-2.2(c);
1:2-2.9(b)	.....	1:1-18.2(b)			1:1-5.4(a)
1:2-2.9(c)	.....	1:1-18.2(c)	1:1-8.2(a)	.....	1:1-5.2(a);
					1:1-6.1(b)
			1:1-8.2(b)	.....	New
			1:1-8.2(c)	.....	1:1-5.2(b)
			1:1-8.2(d)	.....	1:1-5.2(e)
			1:1-8.2(e)	.....	1:1-5.2(b)
			1:1-8.3(a)	.....	1:1-5.2(c)
			1:1-8.3(b)	.....	1:1-7.2(d)
			1:1-9.1(a)	.....	1:1-8.1(a)
			1:1-9.1(b)	.....	1:1-8.1(a)
			1:1-9.1(c)	.....	New
			1:1-9.1(d)	.....	1:1-10.1(a)
			1:1-9.1(e)	.....	1:2-3.1;
					1:7-1.1
			1:1-9.1(f)	.....	1:2-2.1
			1:1-9.1(g)	.....	New
			1:1-9.2	.....	New
			1:1-9.3	.....	1:1-3.2(c);
					1:2-2.3
			1:1-9.4	.....	New
			1:1-9.5(a)	.....	1:1-5.2(d)
			1:1-9.5(b)	.....	1:1-8.2(a)-(b)
			1:1-9.5(c)	.....	1:1-8.2(b)
			1:1-9.5(d)	.....	New
			1:1-9.5(e)	.....	New
			1:1-9.5(f)	.....	1:1-8.2(c)
			1:1-9.6(a)	.....	1:1-8.1(b)
			1:1-9.6(b)	.....	1:1-8.1(a)
			1:1-9.6(c)-(h)	.....	New
			1:1-9.7(a)	.....	1:1-3.2(e)
			1:1-9.7(b)	.....	New
			1:1-10.1(a)	.....	1:1-11.1(a)
			1:1-10.1(b)	.....	1:1-11.1(d)
			1:1-10.1(c)	.....	1:1-11.2(b);
					1:1-11.3(a)
			1:1-10.1(d)	.....	1:1-11.1(b)
			1:1-10.1(e)	.....	1:1-11.1(c)
			1:1-10.2(a)	.....	1:1-11.2(a)
			1:1-10.2(b)	.....	New
			1:1-10.2(c)	.....	1:1-11.2(a)4.;
					1:1-11.3(a)-(b)
			1:1-10.2(d)	.....	1:1-11.4(b)
			1:1-10.3(a)	.....	1:1-11.4(a)
			1:1-10.3(b)	.....	1:1-11.4(c)
			1:1-10.4(a)	.....	1:1-11.5(a)
			1:1-10.4(b)	.....	1:1-11.5(e)
			1:1-10.4(c)-(d)	.....	1:1-11.5(f)
			1:1-10.4(e)	.....	1:1-11.5(c)
			1:1-10.5	.....	1:1-11.6(a)-(b)
			1:1-10.6(a)-(d)	.....	1:2-2.6(a)-(d)
			1:1-10.6(e)	.....	New
			1:1-11.1(a)	.....	1:1-8.3(a)
			1:1-11.1(b)	.....	1:1-8.4
			1:1-11.1(c)	.....	1:1-8.5(b)
			1:1-11.2(a)	.....	1:1-8.3(b)
			1:1-11.2(b)	.....	1:1-8.5(a)
			1:1-11.3	.....	1:1-8.3(c);
					1:1-8.4
			1:1-11.4	.....	1:1-8.5(d)
			1:1-11.5	.....	1:1-8.5(c)
			1:1-12.1(a)	.....	1:1-9.1(a)
			1:1-12.1(b)	.....	1:1-9.1(c)
			1:1-12.1(c)	.....	1:1-9.1(e)
			1:1-12.1(d)	.....	1:2-2.5(a)
			1:1-12.2(a)	.....	1:1-9.2(a)
			1:1-12.2(b)	.....	1:1-9.2(b)
			1:1-12.2(c)	.....	1:1-9.2(c)
			1:1-12.2(d)	.....	1:1-9.2(d)
			1:1-12.2(e)	.....	1:1-9.2(e)
			1:1-12.2(f)	.....	1:1-9.2(f)
			1:1-12.2(g)	.....	1:1-9.2(a)

Cross-Reference Table—(New to Old)
Title 1, Chapter 1

New Sections		Old Sections
1:1-1.1(a)	.....	1:1-1.1(a)
1:1-1.1(b)	.....	1:1-1.1(a)
1:1-1.1(c)	.....	1:1-1.1(a);
		1:1-6.1(a)
1:1-1.1(d)	.....	1:1-1.1(b)
1:1-1.1(e)	.....	1:1-1.1(c)
1:1-1.2	.....	1:1-1.2
1:1-1.3(a)	.....	1:1-1.3(a)
1:1-1.3(b)	.....	1:1-1.3(a);
		1:1-9.2(g);
		1:1-11.5(d)
1:1-1.3(c)	.....	1:1-1.3(b)
1:1-1.4	.....	1:1-4.1
1:1-2.1	.....	1:1-1.4;
		1:1-1.5-1.7;
		1:1-15.1;
		1:1-15.4(a);
		1:1-16.1;
		1:2-2.2;
		1:2-3.2(a)
1:1-3.1	.....	1:1-2.1
1:1-3.2(a)	.....	1:1-2.2(a)-(b)
1:1-3.2(b)	.....	New
1:1-3.2(c)	.....	New
1:1-3.3	.....	New
1:1-4.1(a)	.....	1:1-5.1(a)
1:1-4.1(b)	.....	1:1-1.9
1:1-4.2	.....	1:1-1.8;
		1:1-2.2(c);
		1:1-5.4(a),(d)
1:1-5.1	.....	1:1-3.7(a)
1:1-5.2	.....	1:1-3.7(b)
1:1-5.3	.....	New
1:1-5.4(a)	.....	1:1-3.12(a)
1:1-5.4(b)	.....	1:1-3.12(b)-(c)
1:1-5.5(a)	.....	1:1-3.12(e)
1:1-5.5(b)	.....	1:1-3.12(f)
1:1-5.5(c)	.....	1:1-3.12(g)
1:1-5.5(d)	.....	New
1:1-5.5(e)	.....	1:1-3.12(h)
1:1-5.5(f)	.....	New
1:1-5.6(a)	.....	1:1-3.13
1:1-5.6(b)	.....	New
1:1-6.1(a)	.....	1:1-6.1(a)
1:1-6.1(b)	.....	New
1:1-6.1(c)	.....	New
1:1-6.2(a)	.....	1:1-6.3
1:1-6.2(b)	.....	1:1-6.3
1:1-6.3	.....	1:1-3.11
1:1-7.1(a)	.....	1:1-7.1(a)
1:1-7.1(b)	.....	1:1-7.1(b)
1:1-7.1(c)	.....	1:1-7.1(d)
1:1-7.1(d)	.....	1:1-7.1(e)
1:1-7.2(a)	.....	1:1-7.2(a)
1:1-7.2(b)	.....	1:1-7.2(c)
1:1-7.2(c)	.....	1:1-7.1(c)
1:1-7.3(a)	.....	1:1-7.2(b)
1:1-7.3(b)	.....	1:1-7.2(d)
1:1-7.3(c)	.....	1:1-5.5(c);
		1:1-9.1(c)1.
1:1-7.4(a)	.....	1:1-5.5(a)
1:1-7.4(b)	.....	1:1-5.5(b)
1:1-8.1(a)	.....	1:1-1.8;
		1:1-5.1(a)-(b)

1:1-12.3(a)	.....	1:1-9.3(a)		1:1-8.3(a);
1:1-12.3(b)	.....	1:1-9.3(c)		1:1-8.4
1:1-12.3(c)	.....	1:1-9.2(e)	1:1-14.6(o)	1:1-3.9
1:1-12.4(a)	.....	1:1-9.4(a)	1:1-14.6(p)	1:1-3.9
1:1-12.4(b)	.....	1:1-9.4(b)	1:1-14.7(a)-(e)	New
1:1-12.4(c)	.....	1:1-9.3(b)	1:1-14.7(f)	1:1-16.2(a)-(c);
1:1-12.5(a)	.....	1:1-13.1		1:2-2.8(a)
1:1-12.5(b)	.....	1:1-13.2(a);	1:1-14.7(g)	1:1-16.1
		1:1-13.4(a)	1:1-14.7(h)	New
1:1-12.5(c)	.....	1:1-13.2(b)	1:1-14.8(a)-(e)	1:2-3
1:1-12.5(d)	.....	1:1-13.3(a)	1:1-14.9(a)	1:1-9.5(a)
1:1-12.5(e)	.....	1:1-13.3(b)	1:1-14.9(b)	1:1-9.7(a)
1:1-12.5(f)	.....	1:1-13.3(c)	1:1-14.9(c)	1:1-9.5(a)-(c);
1:1-12.6(a)	.....	1:1-9.6(a)		1:1-10.1(d)
1:1-12.6(b)	.....	1:1-9.6(b)	1:1-14.10(a)	1:1-9.7(a)
1:1-12.6(c)	.....	1:1-9.6(c)	1:1-14.10(b)	1:1-9.7(b)
1:1-12.6(d)	.....	1:1-9.6(d)	1:1-14.10(c)	1:1-9.7(c)
1:1-12.6(e)	.....	1:1-9.6(e)	1:1-14.10(d)	New
1:1-12.6(f)	.....	1:1-9.6(f)	1:1-14.10(e)	1:1-9.7(d)
1:1-12.6(g)	.....	1:1-9.6(g)	1:1-14.10(f)	1:1-9.7(e)
1:1-12.6(h)	.....	1:1-9.6(h)	1:1-14.10(g)	1:1-9.7(f)
1:1-12.6(i)	.....	1:1-9.6(i)	1:1-14.10(h)	1:1-9.7(g)
1:1-12.6(j)	.....	1:1-9.6(j)	1:1-14.10(i)	1:1-9.7(h)
1:1-12.6(k)	.....	1:1-9.6(k)	1:1-14.10(j)	1:1-9.7(i)
1:1-12.7	.....	1:1-9.5(a)	1:1-14.10(k)	New
1:1-13.1(a)	.....	1:1-10.1(a)	1:1-14.10(l)	New
1:1-13.1(b)	.....	1:1-10.1(a);	1:1-14.11(a)	1:1-3.3(b)
		10.1(a)2.	1:1-14.11(b)	1:1-3.3(c)
1:1-13.1(c)	.....	1:1-10.1(b)	1:1-14.11(c)	1:1-3.3(d)
1:1-13.1(d)	.....	1:1-10.1(a)1.	1:1-14.11(d)	1:1-3.3(e)
1:1-13.2(a)	.....	1:1-9.5(c);	1:1-14.11(e)	1:1-3.3(f)
		1:1-10.1(c)	1:1-14.12(a)-(d)	New
1:1-13.2(b)	.....	1:1-10.1(d)	1:1-14.13(a)-(c)	New
1:1-13.2(c)	.....	New	1:1-15.1(a)	1:1-15.2(f);
1:1-14.1(a)	.....	1:1-3.1(a);		1:1-15.5(b)
		1:1-3.3(a);	1:1-15.1(b)	1:1-15.2(d)
		1:1-9.1(c)2.	1:1-15.1(c)	1:1-15.2(a)
1:1-14.1(b)	.....	1:1-3.1(b)	1:1-15.1(d)	1:1-15.2(c)
1:1-14.1(c)	.....	New	1:1-15.1(e)	1:1-15.2(g)
1:1-14.1(d)	.....	New	1:1-15.2(a)	1:1-15.3(a)
1:1-14.2(a)	.....	1:1-3.2(a)	1:1-15.2(b)	1:1-15.3(b)
1:1-14.2(b)	.....	1:1-3.2(d)	1:1-15.2(c)	1:1-15.3(b)
1:1-14.3(a)	.....	1:1-3.10(a)	1:1-15.3	1:1-15.4(b)
1:1-14.3(b)	.....	1:1-3.10(b)	1:1-15.4	1:1-15.6
1:1-14.3(c)	.....	New	1:1-15.5(a)	1:1-15.8(a)
1:1-14.4(a)	.....	1:1-3.5(a);	1:1-15.5(b)	1:1-15.8(b)
		1:1-8.2(d)	1:1-15.6	1:1-15.9;
1:1-14.4(b)	.....	New		1:2-2.7
1:1-14.4(c)	.....	1:1-3.5(b)	1:1-15.7(a)	1:1-3.4(a)
1:1-14.5(a)	.....	1:1-3.8(a)	1:1-15.7(b)	1:1-3.4(b)
1:1-14.5(b)	.....	1:1-3.8(c)	1:1-15.7(c)	1:1-3.4(c)
1:1-14.5(c)	.....	1:1-3.8(c)	1:1-15.8(a)	1:1-15.2(e)
1:1-14.5(d)	.....	1:1-3.8(c)	1:1-15.8(a)5.	1:1-15.2(h)
1:1-14.6(a)	.....	1:1-3.2(b);	1:1-15.8(b)	1:1-15.5(a)
		1:1-3.9	1:1-15.8(c)	1:1-15.5(c)
1:1-14.6(b)	.....	1:1-3.9	1:1-15.8(d)	1:1-15.5(b)
1:1-14.6(c)	.....	1:1-3.9	1:1-15.8(e)	New
1:1-14.6(d)	.....	1:1-3.9;	1:1-15.8(f)	New
		1:2-2.4	1:1-15.9(a)	1:1-15.7(a)
1:1-14.6(e)	.....	1:1-3.9	1:1-15.9(b)	1:1-15.7(b)
1:1-14.6(f)	.....	1:1-3.2(c);	1:1-15.9(c)	1:1-15.7(c)
		1:1-3.9;	1:1-15.9(d)	1:1-15.7(d)
		1:1-4.2;	1:1-15.9(e)	1:1-15.7(e)
		1:1-9.2(g);	1:1-15.9(f)	New
		1:1-11.5(d)	1:1-15.10	New
1:1-14.6(g)	.....	1:1-3.9	1:1-15.11	New
1:1-14.6(h)	.....	1:1-3.9	1:1-15.12(a)-(d)	New
1:1-14.6(i)	.....	1:1-3.9;	1:1-16.1(a)	1:1-12.1(a)
		1:1-15.2(a)	1:1-16.1(b)	1:1-12.1(b)
1:1-14.6(j)	.....	1:1-3.5(a)-(c);	1:1-16.2(a)	1:1-12.2(a)
		1:1-3.9	1:1-16.2(b)	1:1-12.2(b)
1:1-14.6(k)	.....	1:1-3.9;	1:1-16.2(c)	1:1-12.2(c)
		1:1-15.2(b)	1:1-16.3(a)	1:1-12.3(a)
1:1-14.6(l)	.....	1:1-3.9	1:1-16.3(b)	1:1-12.3(b)
1:1-14.6(m)	.....	1:1-3.9	1:1-16.3(c)	1:1-12.3(c)
1:1-14.6(n)	.....	1:1-3.9;	1:1-16.4	1:1-12.4

1:1-16.5	.....	1:1-12.5
1:1-16.6(a)	.....	1:1-12.6(a)
1:1-16.6(b)	.....	1:1-12.6(b)
1:1-16.6(c)	.....	1:1-12.6(c)
1:1-17.1(a)	.....	1:1-14.1(a)
1:1-17.1(b)	.....	1:1-14.1(b)
1:1-17.1(c)	.....	1:1-14.1(c)
1:1-17.1(d)	.....	1:1-14.1(d)
1:1-17.2(a)	.....	1:1-14.2(a)
1:1-17.2(b)	.....	1:1-14.2(b)
1:1-17.2(c)	.....	1:1-14.2(c)
1:1-17.2(d)	.....	1:1-14.2(d)
1:1-17.3(a)	.....	1:1-14.3(a)
1:1-17.4(a)	.....	1:1-14.4(a)
1:1-17.4(b)	.....	1:1-14.4(b)
1:1-17.5(a)	.....	1:1-14.5(a)
1:1-17.6(a)	.....	1:1-14.6(a)
1:1-17.6(b)	.....	1:1-14.6(b)
1:1-17.6(c)	.....	1:1-14.6(c)
1:1-17.6(d)	.....	1:1-14.6(d)
1:1-17.7(a)	.....	1:1-14.7(a)
1:1-17.7(b)	.....	1:1-14.7(b)
1:1-17.7(c)	.....	1:1-14.7(c)
1:1-17.8(a)	.....	1:1-14.8(a)
1:1-17.8(b)	.....	1:1-14.8(b)
1:1-17.8(c)	.....	1:1-14.8(c)
1:1-18.1(a)	.....	1:1-16.3(a)
1:1-18.1(b)	.....	1:1-16.3(b)
1:1-18.1(c)	.....	1:1-16.3(d)
1:1-18.1(d)	.....	1:1-16.3(a)
1:1-18.1(e)	.....	1:1-16.3(a)
1:1-18.1(f)	.....	New
1:1-18.1(g)	.....	1:1-16.3(e)
1:1-18.1(h)	.....	New
1:1-18.2(a)	.....	1:1-16.3(a);
		1:2-2.9(a)
1:1-18.2(b)	.....	1:1-16.3(e);
		1:2-2.9(b)
1:1-18.2(c)	.....	1:1-16.3(c);
		1:2-2.9(c)
1:1-18.3(a)	.....	1:1-16.3(a)
1:1-18.3(b)	.....	1:1-16.3(e)
1:1-18.3(c)	.....	1:1-16.3(c)
1:1-18.4(a)	.....	1:1-16.4(a)
1:1-18.4(b)	.....	1:1-16.4(b)
1:1-18.4(c)	.....	New
1:1-18.4(d)	.....	1:1-16.4(c)
1:1-18.4(e)	.....	New
1:1-18.5(a)	.....	1:1-16.4(d)
1:1-18.5(b)	.....	1:1-16.4(e)
1:1-18.5(c)	.....	New
1:1-18.6(a)	.....	1:1-16.5(a)
1:1-18.6(b)	.....	1:1-16.5(b)
1:1-18.6(c)	.....	1:1-16.5(d)
1:1-18.6(d)	.....	New
1:1-18.7(a)	.....	1:1-16.5(c)
1:1-18.7(b)	.....	1:1-16.5(c)
1:1-18.8(a)	.....	1:1-16.6(a)
1:1-18.8(b)	.....	1:1-16.6(b)
1:1-18.8(c)-(g)	.....	New
1:1-19.1(a)	.....	1:1-17.1(a)
1:1-19.1(b)	.....	1:1-17.1(b)
1:1-19.1(c)	.....	1:1-17.1(c)
1:1-19.2(a)	.....	1:1-17.2(a)
1:1-19.2(b)	.....	1:1-17.2(a)
1:1-19.2(c)	.....	1:1-17.2(a)
1:1-19.2(d)	.....	1:1-17.2(b)
1:1-19.2(e)	.....	1:1-17.2(c)
1:1-20.1(a)-(b)	.....	New
1:1-20.2(a)-(c)	.....	New
1:1-21.1(a)-(b)	.....	New
1:1-21.2(a)-(c)	.....	New
1:1-21.3	.....	New
1:1-21.4(a)	.....	New
1:1-21.5(a)-(c)	.....	New
1:1-21.6	.....	New
1:1-21.7	.....	New

CHAPTER 1
UNIFORM ADMINISTRATIVE
PROCEDURE RULES

SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF
RULES, CONSTRUCTION AND
RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:111.1(c) (Subpoena forms);
2. N.J.A.C. 1:112.6 (Emergency relief);
3. N.J.A.C. 1:114.10 (Interlocutory review);
4. N.J.A.C. 1:116.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:121 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practice and class action designations may not be applied.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

SUBCHAPTER 2. DEFINITIONS

1:1-2.1 Definitions

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

"Adjournment" means postponement of the hearing until another time.

"Administrative law judge" means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Administrative rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

"Affidavit" means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

"Agency" includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

"Agency head" means the person or body authorized by law to render final decisions in contested cases*[*] * , **except that in the Department of Education, the State Board of Education is the head of an agency but the Commissioner of Education is authorized by statute to render final decisions.***

"Appellant" means the party who is requesting a reversal or modification of a prior result.

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.

"Clerk" means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

"Complainant" means the party who requests action or relief by filing a complaint.

"Conclusion of hearing" means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

"Conference hearing" means a proceeding conducted before an administrative law judge, in which discovery, prehearing motions and post-hearing submissions are limited.

"Contested case" means 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 by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to 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.

"Discovery" means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

"Docket number" means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	82
agency	sequence no.	year

"Evidence" is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

"Filing" means receipt of an original or clear copy of a paper by the proper office or officer.

"Final decision" means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, *[*or]* an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10*[*] * **or a decision by an agency head after a hearing conducted in accordance with these rules.***

"Finding of fact" means the determination from proof or official notice of the existence of a fact.

"Hearing" means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

"Intervention" means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

"Judge" means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

"Jurisdiction" means the legal power to hear or decide a case.

"Material fact" means a fact legally consequential to a determination of an issue in the case.

"Mediation" means a proceeding conducted after transmission in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

"Motion" means an application to a judge for a ruling or order.

"Participation" means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

"Party" means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

"Petitioner" means the party who is requesting relief or action at the hearing.

"Pleadings" means written statements of the parties' respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency's rules.

"Plenary hearing" means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

"Prehearing conference" means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

"Presumption" means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

"Principal of a close corporation" means either a substantial shareholder of a corporation that is not publicly owned or an officer or executive employee who is actively involved in managing the business of such a corporation.

"Proceeding on the papers" means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

"Proof" means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

"Pro se" means a person who acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

"Record" means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Respondent" means the party who answers or responds to a request for relief or action.

"Service" means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including: (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge.

"Subpoena" means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

"Telephone hearing" means a proceeding conducted by telephone conference call.

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Withdrawal" means a decision by a party voluntarily relinquishing*]: (1) each request for action or relief, or (2) all defenses to a request for action or relief. It does not include settlements.]* ***a hearing request or a raised defense.***

SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

1:1-3.1 Commencement of contested cases in the State agencies

A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency.

1:1-3.2 Jurisdiction of the Office of Administrative Law

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. 1:1-17.

(b) When the Office of Administrative Law acquires jurisdiction over a matter that arises from a State agency's rejection of a party's application, and at the hearing the party offers proofs that were not previously considered by the agency, the judge may either allow the party to amend the application to add new contentions, claims or defenses or, if considerations of expediency and efficiency so require, the judge shall order the matter returned to the State agency. If the matter is returned to the agency and thereafter transmitted for hearing, the agency's response to any new contentions, claims or defenses shall be attached to the transmittal form required by N.J.A.C. 1:1-8.2.

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;
2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;
3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;
4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; and
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3.

1:1-3.3 Return of transmitted cases

[(a) Upon notice to the parties, the Clerk and the judge, the transmitting agency may request that a previously transmitted case be returned. The notice shall state the reason for returning the case.] ***A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, an initial decision shall be entered returning the case.***

*[(b) If the request is made before the first witness is sworn, the Office of Administrative Law shall return the matter to the transmitting agency forthwith.

(c) If the request is made after the first witness is sworn, the matter shall continue at the Office of Administrative Law.]*

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:1-4.1 Determination of contested case

(a) After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case. If any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within 30 days from receipt of the petition and inform all parties of its determination.

(b) When a question arises whether a particular matter is a contested case, legal advice shall be obtained from the Attorney General's office.

1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

SUBCHAPTER 5. REPRESENTATION

1:1-5.1 Representation

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule R 1:21-1(e) or be represented by a law graduate or student pursuant to R 1:21-3(b). Except as provided by N.J.A.C. 1:1-5.4 and 1:1-5.6, a corporation must be represented by an attorney.

1:1-5.2 Out-of-state attorneys; admission procedures

(a) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain in this State a bona fide office for the practice of law, may, at the discretion of the judge, be admitted pro hac vice for the one occasion to participate in the proceeding in the same manner as an attorney authorized to practice in this State pursuant to New Jersey Court Rule R 1:21-1 by complying with the following procedure:

1. Admission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the attorney to appear in subsequent matters during the payment year, provided the attorney otherwise qualifies for admission.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

1:1-5.3 Conduct of lawyers

In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) In conformity with New Jersey Court Rule R. 1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals; and
6. Union representatives in Civil Service cases.

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

ii. At the hearing, the judge shall determine that the non-lawyer applicant seeking to represent a recipient or applicant for services fulfills the appearance requirements of Federal law.

iii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall state that he or she is an agency staff person with knowledge of the matter in controversy, has been assigned to represent the agency in the case and that the county or municipal counsel is not providing representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name, title, business address and telephone number of his or her supervisor.

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Public Welfare, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements for representation set forth in (b)2.i, below.

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement, signed by a Deputy Attorney General for the State agency that the Attorney General will not provide representation for the agency in the case.

ii. For non-lawyers from legal services programs, the Notice shall include a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services Program of which he or she is a part; and the name, business address, telephone number and signed authorization of a Legal Services attorney who supervises the applicant.

iii. The non-lawyer union representative shall include in his or her Notice a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit; and the name, title, business address and telephone number of his or her supervisor.

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she satisfies the Federal and State requirements for non-lawyer representation.

v. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall demonstrate in his or her Notice how he or she qualifies as a principal of a close corporation.

vi. Any non-lawyer applicant filing a Notice of Appearance/Application shall state in the Notice that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii. The Notice of Appearance/Application must be signed by the non-lawyer applicant. Notices shall be filed with the Clerk and served on all parties no later than 10 days prior to the scheduled hearing date.

viii. The Clerk may require the applicant to supply additional information or explanation of the items specified above as applicable, or may require the applicant to supply evidence of the statements contained in the Notice. If the Clerk does not otherwise notify the applicant within five days of receipt of the Notice, the non-lawyer's request to appear at the hearing shall be deemed approved. When the Clerk believes that a Notice presents a significant legal issue relating to representation rights, the Clerk will notify the parties that the presiding judge will determine the matter at or before the hearing.

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

(a) The presiding judge, unless precluded by Federal law, may determine at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. The judge shall implement a determination to preclude non-lawyer representation by informing the parties of the decision and the reasons therefor. With respect to a county, local or State agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual either to obtain a new non-lawyer, to represent himself or herself or to obtain legal representation.

(b) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance/Application or in any oral application by a non-lawyer.

(c) Non-lawyer representatives shall be subject to the Uniform Administrative Procedure Rules, including the sanctions provided in N.J.A.C. 1:1-14.4. If the judge determines that an incorrect statement in an oral application or Notice of Appearance/Application was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. 1:11-4.4, which may include:

1. In the case of a State, county or local agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action;

2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,

3. A recommendation by the presiding judge to the agency head that a particular non-lawyer representative be permanently excluded from administrative hearings before that agency.

(d) A non-lawyer may not be precluded from providing representational services solely because the non-lawyer is also appearing as a witness in the matter.

(e) In general, a non-lawyer representative shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross-examinations of witnesses.

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation which may be rendered by a non-lawyer. Conditions or limits may include:

i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;

ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;

iii. Requiring the party to speak for him or herself; or

iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party.

1:1-5.6 Appearance without representation: State agencies or county or municipal welfare agencies; corporations

(a) In those cases where a State agency or a county or municipal welfare agency does not send a representative who has been approved under N.J.A.C. 1:1-5.4 to a hearing, but merely rests its case on papers and/or on witnesses presented to the judge:

1. The agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. 1:1-5.4 and lists the papers and/or witnesses upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency represen-

tative, under N.J.A.C. 1:1-5.4, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to examine or cross-examine witnesses.

(b) In cases where a corporation is a party and will not be represented at the hearing by either a lawyer or a non-lawyer representative approved under N.J.A.C. 1:1-5.4, the judge may permit the corporation to proceed at the hearing on papers and/or on witnesses.

1. The corporation's lawyer or approved non-lawyer representative must obtain the judge's approval for the appearance without representation prior to the hearing. The judge shall consider whether the party's position can be adequately presented without representation and whether there will be any adverse impact on the hearing process.

2. A witness who appears on behalf of the corporation may testify and, in the interest of developing a full hearing record, may be permitted to ask questions through the judge, make statements in response to other testimony or to offer documents in his or her own name. However, the judge need not permit this witness to examine or cross-examine other witnesses.

SUBCHAPTER 6. PLEADINGS

1:1-6.1 Pleading requirements

(a) Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case. Except as otherwise provided by this subchapter, parties in contested cases should refer to the rules of the appropriate agency for guidance.

(b) Pleadings shall be filed as required by the rules of the agency with subject matter jurisdiction over the case.

(c) Pleadings shall be served in the manner permitted by N.J.A.C. 1:1-7.1(a) on all parties and on any other person required by the rules of the agency with subject matter jurisdiction over the case.

1:1-6.2 Amendment of pleadings

(a) Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.

(b) A judge in granting pleading amendments may permit a brief continuance to allow an opposing party additional preparation time.

1:1-6.3 Public officers; death or separation from office

When any public officer who is a party to a contested case, whether or not mentioned by name in the pleadings, dies, resigns or for any reason ceases to hold office, his or her successor in office shall be deemed to have been substituted in his or her place. However, on motion, the judge may otherwise order or may specifically order the retention as a party of the predecessor in office.

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS; FORMAT

1:1-7.1 Service; when required; manner

(a) Service shall be made in person; or by certified mail, return receipt requested; or by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served.

(b) Any paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order.

(c) Service by mail shall be complete upon mailing.

(d) The standards of personal service contained in R. 4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable.

1:1-7.2 Proof of publication and service

(a) Whenever these rules or the applicable rules of any agency provide for publication, mailing or posting of public notices in contested cases, proofs thereof shall be filed within 20 days after the publication, mailing or posting.

(b) Except for service by publication or as otherwise required by this chapter or by State or Federal statute, proof of service shall not be necessary unless a question of notice arises.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, any other representative or party, or by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney or other representative for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

1:1-7.3 Filing; copies

(a) A paper may be filed with either the Clerk or the judge assigned to the case. Evidence of filing shall be a notation showing the date, time and place of filing. When a paper is filed with a judge, the notation shall also identify the judge. A copy of such papers shall be forwarded by the filing party to the Clerk immediately.

(b) The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refiling or cure the defects and accept the papers for filing.

(c) All papers filed with the Office of Administrative Law shall be in duplicate. If the filer submits an additional copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk will return the paper to the filer marked with the date of filing.

1:1-7.4 Format of papers

(a) Every paper filed shall contain:

1. The Office of Administrative Law docket number of the proceeding or, if the case has not been transmitted, the agency docket number *[in the upper right hand portion]*;

2. The name, address and telephone number of the person who prepared the paper *[in the upper left hand portion]*; and

3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8 1/2" x 11" stock of customary weight and quality insofar as is practicable.

SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:1-8.1 Agency filing with the Office of Administrative Law; settlement efforts

(a) After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-8.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.

(b) During the 30-day period in (a) above, an agency may attempt settlement in accordance with N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the 30th day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.

(c) An agency *[shall]* ***may*** file a contested case with the Office of Administrative Law immediately if the agency determines that settlement efforts would be inappropriate or unproductive.

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;

2. The name, address and telephone number of the agency's transmitting officer;

3. The name or title of the proceeding, including the designation petitioner/respondent or appellant/appellee when appropriate;

4. The agency docket or reference number;

5. A description of the nature of the case, including a statement of the legal authority and jurisdiction upon which the agency action is based or under which the hearing is to be held, a reference to particular statutes and rules involved as well as a brief summary of the matters of fact and law asserted. If this information is included in a pleading that is attached to the transmittal form pursuant to (b) below, the agency may refer to the pleading in order to satisfy this requirement;

6. An indication as to whether the agency has attempted settlement;

7. An estimate of the total time required for the hearing;

8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law may provide at its expense either an audiotape recording or a court stenographer for the hearing. When a stenographer is requested by the transmitting agency *[for its own purposes]*, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee

shall be paid by that party. *[When any party to the case is entitled by law to recover the cost of a court stenographer from others, the requesting agency shall not be required to pay the appearance fee]*;

9. Anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand;

10. The names and addresses of all parties and their attorneys or other representatives;

11. A request for a barrier-free hearing location if it is known that a handicapped person will be present; and

12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case.

(b) The agency shall attach all pleadings to the transmittal form.

(c) The agency may affix to the completed transmittal form only documents which have been exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

(d) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

(e) The completed transmittal form and any attachments shall be filed with the Clerk of the Office of Administrative Law.

1:1-8.3 Receipt by Office of Administrative Law of transmitted contested case; filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, the Clerk shall determine whether the matter should be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case, other than one requiring a conference hearing, whenever necessary to foster an efficient and expeditious proceeding and where:

1. The issues are unusually complex, numerous or novel; or
2. The case is expected to require two or more hearing days; or
3. Any party to the case requests a prehearing.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 for:

1. Division of Motor Vehicles cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13;
2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and
3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A conference hearing may be scheduled for:

1. Civil Service cases dealing with layoffs, disciplinary actions and termination after probationary work period;
2. Division of Public Welfare cases where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency or a local decision or inaction by a municipal welfare department *(see N.J.A.C. 1:10 for special hearing rules)*;

3. Food stamp intentional program violations cases *(see N.J.A.C. 1:10 for special hearing rules)*;

4. Matters arising out of the Special Education Program of the Department of Education *(see N.J.A.C. 1:6A for special hearing rules)*;

5. Any case when all parties agree and the judge so directs; and

6. Any other class of cases which the Director of the Office of Administrative Law and the transmitting agency agree would be suitable to be heard as conference hearings.

(g) A telephone hearing may be scheduled for any case when all parties agree and the judge so directs.

1:1-9.2 Cases commenced by order to show cause

When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk, who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-7.

1:1-9.3 Priority scheduling

Priority in scheduling shall be given where requirements of law impose expedited time frames for disposition of a case. In all other cases, the transmitting agency or any party may make special scheduling requests to the Clerk.

1:1-9.4 Accelerated proceedings

(a) Upon written request to the Clerk, with copies to all parties, any party may apply for accelerated disposition of a case. The applicant must state the reasons for the request.

(b) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (c)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (c)8 below.

(c) If the transmitting agency agrees to the 15-day decision deadline *, all parties consent* and the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.

2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.

3. Except for extraordinary circumstances establishing good cause, no adjournments shall be granted.

4. Prehearing motions shall not be permitted unless requested by the presiding judge.

5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.

6. Initial decisions shall be issued within 15 days after the hearing is concluded.

7. Exceptions to the initial decision must be filed with the agency no later than three days after receipt of the initial decision. No replies or cross-exceptions are permitted.

8. Final decisions shall be entered within 15 days after receipt of the initial decision.

1:1-9.5 Clerk's notices

(a) Upon acceptance of a contested case for filing, the Clerk shall notify the transmitting agency and all parties of the case's filing date and the Office of Administrative Law docket number. This notice shall include a description of the nature of the proceeding, a reference to the controlling hearing procedures, including discovery, and a reference to the right of persons to represent themselves or to be represented by any attorney or a qualified non-lawyer in certain situations. The Clerk may also include in this notice any information he or she deems instructive or helpful to the parties and may combine this notice with any other notice, including the notice of hearing.

(b) The Clerk shall provide all parties with timely notice of any mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding, except that in emergency relief proceedings pursuant to N.J.A.C. 1:1-12.6 the Clerk may require the moving party to provide appropriate notice. Each notice shall apprise the parties of the presiding

judge and the date, time and place of the proceeding. The Clerk may also include in any proceeding notice any information he or she deems instructive or helpful to the parties.

(c) Notice shall be by regular mail, except that when emergent needs so require and the law permits, notice of proceedings may be by telegram, mailgram or telephone. Telephone notice shall be confirmed promptly in writing.

(d) All Clerk's notices shall be written in plain language. See generally, N.J.S.A. 56:12-1 et seq.

(e) Each notice shall prominently display a telephone number where parties can obtain further assistance.

(f) All parties shall receive subsequent notices of all proceedings in any contested case. Subsequent notices shall apprise the parties of the date, time, place and nature of a proceeding and may be either written or effected by a statement made on the record.

1:1-9.6 Adjournments

(a) Applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge. Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

(b) Adjournments will be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(c) Adjournments will not be granted to complete discovery if parties have not timely complied with N.J.A.C. 1:1-10.4.

(d) The fact that a party obtains the consent to an adjournment of his or her adversary will not always result in the granting of the adjournment.

(e) An attorney with a conflicting engagement in a court shall call the Clerk or judge as soon as the conflict is discovered. Attorneys should not assume that such conflicts will always result in an adjournment.

(f) When the judge or the Clerk requests, a party obtaining an adjournment will be responsible for securing from his or her adversary consent to a new date.

(g) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date. The Clerk shall confirm the new date with a subsequent notice mailed to the parties.

(h) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-14.4(a).

1:1-9.7 Inactive list

(a) Where a party to a pending case is mentally or physically incapable of proceeding or is with other just excuse unable to proceed without substantial inconvenience or inordinate expense, that party or his or her representative may move to place the case on the inactive list. A judge, as a condition to placing a matter on the inactive list, shall consider the public interest in the matter and may impose conditions appropriate to the case.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on the inactive list for as brief a period as possible not to exceed six months.

2. The Clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. The Clerk shall notify all parties and the agency of any action taken under this section.

(b) Cases may not be placed on the inactive list to await an appellate court decision involving other parties unless the appellate decision is so imminent and directly relevant to the matter under dispute that some reasonable delay would be justified.

SUBCHAPTER 10. DISCOVERY

1:1-10.1 Purpose and function; policy considerations; public documents not discoverable

(a) The purpose of discovery is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. These rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary.

(b) It is not ground for denial of a request for discovery that the information to be produced may be inadmissible in evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.

(d) Public documents accessible under legislative authorization shall not be discoverable under this subchapter, except for good cause shown. A party shall exhaust administrative remedies to obtain public documents before seeking discovery under this subchapter.

(e) Discovery shall generally not be available against a State agency that is neither a party to the proceeding nor asserting a position in respect of the outcome but is solely providing the forum for the dispute's resolution.

1:1-10.2 Discovery by notice or motion; depositions; physical and mental examinations

(a) Any party may notify another party to provide discovery by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things;
3. Permission to enter upon land or other property for inspection or other purposes; and
4. Requests for admissions.

(b) Any party may request an informal, nontranscribed meeting with witnesses for another party in order to facilitate the purposes of discovery as described in N.J.A.C. 1:1-10.1. The other party and his or her representative must be given notice and the opportunity to be present. Such meetings are voluntary and cannot be compelled. Failure to agree to such meetings will not be considered good cause for permitting depositions pursuant to (c) below.

(c) Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause. In deciding any such motion, the judge shall consider the policy governing discovery as stated in N.J.A.C. 1:1-10.1 and shall weigh the specific need for the deposition or examination; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition or examination; undue hardship; and matters of expense, privilege, trade secret or oppressiveness. An order granting a deposition or an examination shall specify a reasonable time during which the deposition or examination shall be concluded.

(d) A party taking a deposition or having an examination conducted who orders a transcript or a report shall promptly, without charge, furnish a copy of the transcript or report to the witness deposed or examined, if an adverse party, and, if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.

1:1-10.3 Costs of discovery

(a) The party seeking discovery shall pay for all reasonable expenses caused by the discovery request.

(b) Where a proponent of any notice or motion for discovery or a party taking a deposition is a State agency, and the party or person from whom such discovery or deposition is sought is entitled by law to recover in connection with such case the costs thereof from others, such State agency shall not be required to pay the cost of such discovery or deposition.

1:1-10.4 Time for discovery; relief from discovery; motions to compel

(a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

(b) Parties shall immediately serve discovery requests and notices and make discovery motions.

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice.

(d) A party who wishes to object to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days from receipt of the notice. A party who wishes to compel a response to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days of the notice due date. A party who wishes to object to a discovery response shall place a telephone conference call to the judge and the other parties within 10 days of receiving the

response. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.

(e) The parties shall complete all discovery no later than five days before the first scheduled evidentiary hearing or by such date ordered by the judge at the prehearing conference.

1:1-10.5 Sanctions

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.4 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

1:1-10.6 Discovery in conference hearings; no discovery in mediation

(a) If an agency or a county/local governmental entity is a party to a conference hearing and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. See, N.J.S.A. 47:1A2. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

(b) If the subject of a conference hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(c) Any discovery other than that permitted in (a) and (b) above in conference hearings shall be by motion to the judge and for good cause shown.

(d) In no conference case shall the hearing date be adjourned to permit discovery.

(e) No discovery to prepare for mediation shall be permitted.

SUBCHAPTER 11. SUBPOENAS

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk or any judge to compel the attendance of a person to testify at a hearing or a deposition. The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(b) A subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case.

(c) Subpoena forms shall be available free of charge from the Office of Administrative Law.

1:1-11.2 Service; fees

(a) A subpoena shall be served by the requesting party by delivering a copy either in person or by certified mail return receipt requested to the person named in the subpoena, together with the appropriate fee, at a reasonable time in advance of the hearing.

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of \$2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of \$2.00 for every 30 miles of travel in going to the place of hearing from his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

1:1-11.3 Motions to quash

The judge on motion may quash or modify any subpoena for good cause shown. If compliance with a subpoena for the production of documentary evidence would be unreasonable or oppressive, the judge may condition denial of the motion upon the advancement by the requesting party of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be

produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.

1:1-11.4 Failure to obey subpoena

A party who refuses to obey a subpoena may be subject to sanctions under N.J.A.C. 1:1-14.4 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable.

1:1-11.5 Enforcement

A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.

SUBCHAPTER 12. MOTIONS

1:1-12.1 When and how made; generally; limitation in conference hearings

(a) Where a party seeks an order of a judge, the party shall apply by motion.

1. A party shall make each motion in writing, unless it is made orally during a hearing or unless the judge otherwise permits it to be made orally.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made, the relief or order being sought and the date when the matter shall be submitted to the judge for disposition. A party shall submit a proposed form of order with each motion, unless the judge waives this requirement.

(b) A party shall file each motion with the Clerk, except for motions made during a hearing, other motions permitted by a judge to be made orally, and emergency motions. Upon filing, the Clerk shall transmit the motion to the judge assigned to the case. When a motion is filed in a case which has not yet been assigned to a judge, the Clerk shall immediately assign the case and shall transmit the motion to the judge along with the case file.

(c) In a motion for substantially the same relief as that previously denied, a party shall specifically identify the previous proceeding and its disposition.

(d) In conference hearings, other than motions for emergency relief, discovery, summary decision or conversion of the conference hearing into another form of proceeding, a party may not file a motion in advance of the scheduled hearing date.

1:1-12.2 Motions in writing; generally, no oral argument; time limits

(a) With the exception of emergency relief applications made pursuant to N.J.A.C. 1:1-12.6 and when a motion is expedited pursuant to (g) below, no action shall be taken on motions in writing until at least 20 days have expired from the date of service upon the opposing party.

(b) The moving papers shall establish a submission date at least 20 days from the date of service upon the opposing party, when the matter will be submitted to a judge for disposition. Proof of service shall be filed with the moving papers.

(c) The opposing parties shall file and serve responsive papers no later than 10 days after receiving the moving papers. Proof of service shall be filed with the responsive papers.

(d) The moving party may file and serve further papers responding to any matter raised by the opposing party and shall do so no later than five days after receiving the responsive papers.

(e) All motions in writing shall be submitted for disposition on the papers unless oral argument is directed by the judge.

(f) With the exception of motions for summary decision under N.J.A.C. 1:1-12.5 and motions concerning predominant interest in consolidated cases under N.J.A.C. 1:1-17.6, all motions shall be decided within 10 days after they are submitted for disposition.

(g) A party may request an expedited schedule for disposition of a motion by arranging a telephone conference between the judge and all parties. If the judge agrees to expedite, he or she must establish a schedule for responsive papers, submission and decision.

1:1-12.3 Procedure when oral argument is directed

(a) When oral argument is directed on a motion, the Clerk shall serve upon the parties a notice complying with the requirements of N.J.A.C. 1:1-9.5(f).

(b) Unless otherwise ordered for good cause shown, all motions for which oral argument has been directed shall be heard by telephone conference without any personal appearance of the parties upon such terms as shall be established by the judge, including provision for sound recording.

(c) A motion for which oral argument has been directed shall be considered submitted for disposition at the close of argument.

1:1-12.4 Affidavits; briefs and supporting statements; evidence on motions

(a) Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under N.J.A.C. 1:1-15, and to which affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) In the discretion of the judge, a party or parties may be required to submit briefs or supporting statements pursuant to the schedule established in N.J.A.C. 1:1-12.2 or as ordered by the judge.

(c) The judge may hear the matter wholly or partly on affidavits or on depositions, and may direct any affiant to submit to cross-examination and may permit supplemental or clarifying testimony.

1:1-12.5 Motion for summary decision; when and how made; partial summary decision

(a) At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein.

(b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

(c) Motions for summary decision shall be decided within 45 days from the date of submission. Any motion for summary decision not decided by an agency head which fully disposes of the case shall be treated as an initial decision under N.J.A.C. 1:1-18. Any partial summary decision shall be treated as required by (e) and (f) below.

(d) If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

(e) A partial summary decision ***order*** shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6. However, at the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order ***[and decision]*** may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. ***[1:1-18.3 through 18.6]* *1:1-18.3(c)12***. Within 10 days after the ***[initial decision]* *order*** is filed with the agency head, the Clerk shall certify a copy of pertinent portions of the record to the agency head.

(f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to the case orders that a postponement is necessary because of special requirements, possible prejudice, unproductive effort or other good cause.

1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When

forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

1:1-12.7 Disposition of motions

Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:1-13.1 Prehearing conferences

(a) A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-9.1(d).

(b) The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-13.2 and that discovery should have already been commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the parties

and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

(c) In exceptional circumstances, the judge may, upon no less than 10 days' notice, require the parties to file with the judge and serve upon all other parties no later than three days before the scheduled prehearing conference, prehearing memoranda stating their respective positions on any or all of the matters specified in N.J.A.C. 1:1-13.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

1:1-13.2 Prehearing order; amendment

(a) Within 10 days after the conclusion of the prehearing conference, the judge shall prepare a written order specifically setting out the matters listed in 1 through 14 below and shall cause the same to be served upon all parties.

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;

2. The parties and their status, for example, petitioner, complainant, appellant, respondent, intervenor, etc., and their attorneys or other representatives of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;

3. Any special legal requirements as to notice of hearing;

4. The schedule of hearing dates and the time and place of hearing;

5. Stipulations as to facts and issues;

6. Any partial settlement agreements and their terms and conditions;

7. Any amendments to the pleadings contemplated or granted;

8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;

9. Order of proofs;

10. A list of exhibits marked for identification;

11. A list of exhibits marked in evidence by consent;

12. Estimated number of fact and expert witnesses;

13. Any motions contemplated, pending and granted;

14. Other special matters determined at the conference.

(b) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors.

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

SUBCHAPTER 14. CONDUCT OF CASES

1:1-14.1 Public hearings; records as public; sealing a record; media coverage

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Prehearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case may, at the judge's discretion, be conducted in public or in closed session and may or may not be recorded. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

1:1-14.2 Expedition

(a) Hearings and other proceedings shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

(b) The parties shall promptly advise the Clerk and the judge of any event which will probably delay the conduct of the case.

1:1-14.3 Interpreters; payment

(a) Any party at his or her own cost may obtain an interpreter ***if the judge determines that interpretation is necessary***.

(b) Taking into consideration the complexity of the issues and communications involved, the judge may require that an interpreter be taken from an official registry of interpreters or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the judge.

(c) If all parties consent, the judge may accept as an interpreter a friend or relative of a party or witness, any employee of a State or local agency, or other person who can provide acceptable interpreter assistance.

1:1-14.4 Sanctions: Failure to appear; failure to comply with orders or requirements of this chapter

(a) If a party or representative fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall dismiss the matter or grant the requested relief. The initial decision shall note that the dismissal or relief is ordered because the party failed to appear. If the non-appearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the non-appearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall grant the requested relief or dismiss the claim.

(b) If the judge dismisses the matter or grants the requested relief, the party who failed to appear at the hearing may request a remand in an exception to the initial decision.

(c) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Continue the proceeding and consider sanctions under (a)1i or ii above; or

5. Take other appropriate case-related action.

1:1-14.5 Ex parte communications

(a) Except as specifically permitted by law or this chapter, a judge may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge shall advise all parties of the communications as soon as possible thereafter.

(b) The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.

(c) Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or when necessary to the discharge of the agency head's broad regulatory responsibilities. In no event may the legal representative participate in making or preparing the final decision in the case.

1:1-14.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more or less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or decelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court reporter to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

(a) The judge shall commence conference and plenary hearings by stating the case title and the docket number, asking the representatives or parties present to state their names for the record and describing briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the

procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record at this time.

(b) In conference and plenary hearings, the party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

(c) After opening statements in conference and plenary hearings, the party with the burden of proof shall begin the presentation of evidence unless the judge has determined otherwise. The other parties may present their evidence in a sequence determined by the judge.

(d) Cross-examination of witnesses in conference and plenary hearings shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing.

(e) When all parties and witnesses have been heard in conference and plenary hearings, opportunity shall be offered to present oral final argument, in a sequence determined by the judge.

(f) Unless permitted or requested by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions permitted after the final argument in *[conference and]* plenary hearings. Whenever possible, proposed findings or other submissions should be offered at the hearing in lieu of or in conjunction with the final argument.

1. When proposed findings or other submissions are permitted or requested by the judge, the parties shall conform to a schedule that may not exceed 30 days after the last day of testimony or the final argument.

2. When the judge permits proposed findings or other submissions to be prepared with the aid of a transcript, the transcript must be ordered immediately. The 30-day submission time frame shall commence upon receipt of the transcript.

3. Any proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.

4. Any reference in briefs or other such submissions to initial decisions shall include sufficient information to enable the judge to locate the initial decision. This shall include either the Office of Administrative Law docket number or a reference to New Jersey Administrative Reports or another published and indexed compilation.

(g) In conference hearings, no proposed findings of fact, including conclusions of law, briefs, forms of order or other dispositions may be offered or required after the final argument, except for the purpose of expressing the terms of a settlement.

*[(g)]**(h)* The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired, or when the last such item has been received by the judge, whichever is earlier.

*[(h)]**(i)* A telephone hearing may be designated by the Clerk or judge as a conference or plenary hearing. A telephone hearing, whether conference or plenary, is begun by the judge placing a conference call on a designated date and time to the parties in the case.

1:1-14.8 Conduct of proceedings on the papers

(a) Upon transmittal of a case that may be conducted as a proceeding on the papers, the Clerk shall schedule a hearing and send a notice of hearing to the parties. The notice shall permit the party requesting the hearing to select a telephone hearing or a proceeding on the papers in lieu of the scheduled in-person hearing.

(b) Along with the notice of hearing, the Clerk shall transmit a certification, to be completed if the party requesting the hearing chooses to have a proceeding on the papers.

(c) A completed certification must be returned to the Clerk no later than 10 days before the scheduled hearing date. Statements, records and other documents which supplement the certification may also be submitted. Upon request and for good cause shown, the Clerk may grant additional time for submission of supplemental documents.

(d) At the conclusion of the time allotted in (c) above, the Clerk will assign the record for review and determination by a judge. The record consists of the certification and supplemental documents, as well as documents transmitted with the file by the transmitting agency. ***In a proceeding on the papers, the hearing is concluded when the clerk assigns the record to a judge.***

(e) If no certification is received, the case will be heard as scheduled in (a) above. If the party requesting the hearing does not appear at the inperson hearing, the judge will decide the case on documents transmitted by the agency and contained in the file.

1:1-14.9 Orders; preparation of orders

(a) Any resolution which does not completely conclude the case shall be by order. Orders may be rendered in writing or orally on the record by the judge.

(b) Unless such review is precluded by law, all judges' orders are reviewable by an agency head in accordance with N.J.A.C. 1:1-14.10 or when rendering a final decision under N.J.A.C. 1:1-18.6.

(c) Orders may be prepared by a party at the direction of a judge. When prepared by a party, the order shall be filed with the judge and served on all parties who may within five days after service object to the form of the order by writing to the judge with a copy to all parties. Upon objection to the form of the order, the judge, without oral argument or any further proceedings, may settle the form of the order either by preparing a new order or by modifying the proposed order. After signing the order, the judge shall cause the order to be served upon the parties.

1:1-14.10 Interlocutory review

(a) Except for the special review procedures provided in N.J.A.C. 1:1-12.6 (emergency relief), and 1:1-12.5(e) (partial summary decision), an order or ruling may be reviewed interlocutorily by an agency head at the request of a party.

(b) Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the receipt of the written order or oral ruling, whichever is rendered first. An opposing party may, within three days of receipt of the request, submit an objection to the agency head. A copy must be served on the party who requested review. Any request for interlocutory review or objection to a request shall be in writing by memorandum, letter or motion and shall include a copy of any written order or ruling or a summary of any oral order or ruling sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the 10 day period will satisfy this notice requirement, provided that a written communication or order promptly follows.

(d) A party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head in writing arguments in favor of the order or ruling being reviewed. A copy shall be served on the party who requested review.

(e) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed. The time period for disposition may be extended for good cause for an additional 20 days if both the agency head and the Director of the Office of Administrative Law concur.

(f) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the Clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

(g) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

(h) The time limits established in this section, with the exception of (e) above, may be extended by the agency head where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence.

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j) Any order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;

2. Was made but the agency head declined to review the order or ruling; or

3. Was made and not considered by the agency head within the established time frame.

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;

2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;

3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;

4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs or expenses; and

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3.

(l) Any request for interlocutory review of those matters specified in (k) above should be addressed to the Director of the Office of Administrative Law with a copy to the agency head who transmitted the case to the Office of Administrative Law. Review shall proceed in accordance with (b) through (h) above.

1:1-14.11 Ordering a transcript; cost

(a) Any party, or any person with a legitimate need, may obtain a transcript of any proceeding which has been sound recorded by filing a request with the Clerk and by notifying all parties. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a \$200.00 security deposit for each day or fraction thereof of the proceeding. The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the Clerk shall bill the requesting party for the preparation of the transcript and the copy. Upon receipt of payment, the Clerk shall forward the original transcript to the requesting party and shall return the deposit.

(b) Any party may obtain an unofficial copy of a sound recorded proceeding by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) Any party, or any person with a legitimate need, may request the appropriate stenographic firm to prepare a transcript of any stenographically recorded proceeding and shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable deposit. The reporter shall promptly prepare the transcript in accordance with standards established by the State and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The requesting party shall be charged for the copy filed with the Clerk at a rate not to exceed State contract rates.

(d) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(e) State agencies requesting official transcripts shall make provision for payment or shall pay the cost of production at rates established under the prevailing State contract rates; provided that where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceedings is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Public Advocate upon request the official transcript.

1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or

8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-14.10(k) and (l).

1:1-14.13 Proceedings in the event of death, disability, departure from State employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from State employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, a conference will be scheduled to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and

2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

SUBCHAPTER 15. EVIDENCE RULES

1:1-15.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

(b) Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(c) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey ***[Court Rules]*** ***Rules of Evidence*** except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or

2. Create substantial danger of undue prejudice or confusion.

(d) If the judge finds at the hearing that there is no bona fide dispute between the parties as to any unstipulated material fact, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (c) above or a valid claim of privilege.

(e) When the rules in this subchapter state that the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the

issue. The judge shall indicate which party has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (c) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

1:1-15.2 Official notice

(a) Official notice may be taken of judicially noticeable facts as explained in Rule 9 of the New Jersey Rules of Evidence.

(b) Official notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge.

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

1:1-15.3 Presumptions

No evidence offered to rebut a presumption may be excluded except pursuant to the judge's discretion under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege.

1:1-15.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: Rule 23 (Privilege of Accused); Rule 24 (Definition of Incrimination); Rule 25 (Self-incrimination); Rule 26 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 2A:84-22.1 et seq. (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.11 et seq. (Rape Counselor Privilege); Rule 27 (Newsperson's Privilege); Rule 28 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); Rule 29 (Priest-Penitent Privilege); Rule 30 (Religious Belief); Rule 31 (Political Vote); Rule 32 (Trade Secret); Rule 34 (Official Information); Rule 36 (Identity of Informer); Rule 37 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); Rule 38 (Admissibility of Disclosure Wrongfully Compelled); Rule 39 (Reference to Exercise of Privileges); and Rule 40 (Effect of Error in Overruling Claim of Privilege).

1:1-15.5 Hearsay evidence; residuum rule

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

1:1-15.6 Authentication and content of writings

Any writing offered into evidence which has been disclosed to each other party at least five days prior to the hearing shall be presumed authentic. At the hearing any party may raise questions of authenticity. Where a genuine question of authenticity is raised the judge may require some authentication of the questioned document. For these purposes the judge may accept a submission of proof, in the form of an affidavit, certified document or other similar proof, no later than 10 days after the date of the hearing.

1:1-15.7 Exhibits

(a) The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a brief description of the exhibit stated by the offering party or the judge, and the marking directed by the judge. The verbatim record shall also include a record of the exhibits retained by the judge at the end of the proceedings and of the disposition then made of the other exhibits.

(b) Parties should, whenever practicable, provide each party to the case with a copy of any exhibit offered into evidence. Large exhibits that cannot be placed within the judge's file may be either photographed, attached to the file, or described in the record and committed to the safekeeping of a party. All other admitted exhibits shall be retained in the judge's file until certified to the agency head pursuant to N.J.A.C. 1:1-18.1.

(c) The standard marking for exhibits shall be:

1. P = petitioner;
2. R = respondent;
3. A = appellant;
4. J = joint;
5. C = judge;
6. I = intervenor; or
7. Such other additional markings required for clarity as the judge may direct.

1:1-15.8 Witnesses; requirements for testifying; testifying by telephone

(a) Except as otherwise provided by this subchapter, by statute or by rule establishing a privilege:

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be a witness; and
3. No person is disqualified to testify to any matter; and
4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and
5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing but the judge presiding at the hearing in a contested case may not testify as a witness.

(b) A person is disqualified to be a witness if the judge finds the proposed witness is incapable of expression concerning the matter so as to be understood by the judge directly or through interpretation by one who can understand the witness, or the proposed witness is manifestly incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

(c) As a prerequisite for the testimony of a witness there must be evidence that the witness has personal knowledge of the matter, or has special experience, training or education, if such is required. Such evidence may be provided by the testimony of the witness. In exceptional circumstances, the judge may receive the testimony of a witness conditionally, subject to evidence of knowledge, experience, training or education being later supplied in the course of the proceedings. Personal knowledge may be obtained through hearsay.

(d) A witness may not testify without taking an oath or affirming to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religion or lack of it.

(e) Testimony of a witness may be presented by telephone if, before the hearing begins, all parties agree and the judge finds there is good cause for permitting the witness to testify by telephone.

(f) Testimony of a witness may be given in narrative fashion rather than by question and answer format if the judge permits.

1:1-15.9 Expert and other opinion testimony

(a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:

1. May be rationally based on the perception of the witness; and
2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

(b) If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are:

1. Based on facts and data perceived by or made known to the witness at or before the hearing; and
2. Within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Testimony in the form of opinion or inferences which is otherwise admissible is not objectionable because it embraces the ultimate issue or issues to be decided by the judge.

(d) A witness may be required, before testifying in terms of opinions or inference, to be first examined concerning the data upon which the opinion or inference is based.

(e) Questions calling for the opinion of an expert witness need not be hypothetical in form unless, in the discretion of the judge, such form is required.

(f) If facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, those facts and data upon which an expert witness bases opinion testimony need not be admissible in evidence.

1:1-15.10 Offers of settlement inadmissible

Offers of settlement, proposals of adjustment and proposed stipulations shall not constitute an admission and shall not be admissible.

1:1-15.11 Stipulations

The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon.

1:1-15.12 Prior transcribed testimony

(a) If there was a previous ***[proceeding]* *hearing*** in the same matter which was electronically or stenographically recorded, a party may, unless ***[otherwise precluded by law.]* *the judge determines that it is necessary to evaluate credibility,*** offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least five days notice of that intention ***[.]* *and provide each with a copy of the transcript being offered.***

(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) ***[When permissible by law,]* *Provided the requirements in (a) above are satisfied,*** the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.

*** (e) Prior transcribed testimony that would be admissible as an exception to the hearsay rule under Evidence Rule 63(3) is not subject to the requirements of this section.***

SUBCHAPTER 16. INTERVENTION AND PARTICIPATION

1:1-16.1 Who may apply to intervene; status of intervenor

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the proceeding.

1:1-16.2 Time of motion

(a) A motion for leave to intervene may be filed at any time after a case is initiated.

(b) If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.

(c) If made after a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the Clerk of the Office of Administrative Law.

1:1-16.3 Standards for intervention

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

1:1-16.4 Notice of opportunity to intervene or participate

Where it appears to the judge that a full determination of a case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his or her own initiative, may order that the Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

1:1-16.5 Alternative treatment of motions to intervene

Every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate.

1:1-16.6 Participation; standards for participation

(a) Any person or entity with a significant interest in the outcome of a case may move for permission to participate.

(b) A motion to participate may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. 1:1-16.2. In deciding whether to permit participation, the judge shall consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion.

(c) The judge shall determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or
2. The right to file a statement or brief; or
3. The right to file exceptions to the initial decision with the agency head; or
4. All of the above.

SUBCHAPTER 17. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

1:1-17.1 Motion to consolidate; when decided

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency.

(b) This rule shall apply to cases:

1. Already filed with the Office of Administrative Law;
2. Commenced in an agency but not yet filed with the Office of Administrative Law; and
3. Commenced in an agency and not required to be filed with the Office of Administrative Law under N.J.S.A. 52:14F-8.

(c) The judge assigned to the case first transmitted to the Office of Administrative Law shall hear and rule upon the motion to consolidate.

(d) All motions to consolidate, including those involving predominant interest allegations, must be disposed of by interlocutory order prior to commencing the evidentiary hearing.

1:1-17.2 Form of motion; submission date

(a) A motion to consolidate shall require the parties to show cause why the matters should not be consolidated.

(b) Motions to consolidate cases which commenced in separate agencies and all replies thereto shall include a predominant interest allegation and shall be supported by a brief and affidavits.

(c) All consolidation motions involving cases commenced in two or more agencies shall be scheduled by the Office of Administrative Law for oral argument under N.J.A.C. 1:1-12.3.

(d) Motions for consolidation involving cases transmitted or to be transmitted to the Office of Administrative Law from a single agency shall be handled in accordance with N.J.A.C. 1:1-12.2.

1:1-17.3 Standards for consolidation

(a) In ruling upon a motion to consolidate, the judge shall consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;
5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and
6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

1:1-17.4 Review of orders to consolidate cases from a single agency

(a) Except as provided in (b) below, orders granting or denying the consolidation of cases commenced before a single State agency shall be subject to N.J.A.C. 1:1-14.10.

(b) An order consolidating any matter commenced before a single agency but not transmitted to the Office of Administrative Law shall be forwarded to the agency head for review.

1. The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Adminis-

trative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

1:1-17.5 Multiple agency jurisdiction claims; standards for determining predominant interest

(a) When a motion to consolidate pertains to contested cases filed with two or more State agencies which are asserting jurisdiction, the judge shall determine which agency, if any, has the predominant interest in the conduct and outcome of the matter. In determining this question, the following factors shall be weighed:

1. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;

2. Whether the common issue before the two agencies is, for either agency, the sole, major or dominant issue in dispute and whether its determination would either serve to moot the remaining questions or to affect substantially their resolution;

3. Whether the allegations involve issues and interests which extend beyond the immediate parties and are of particular concern to one or the other agency;

4. Whether the claims, if ultimately vindicated, would require specialized or particularized remedial relief available in one agency but not the other;

5. Whether the common issue is clearly severable from the balance of the controversy and thus will permit non-duplicative factual and legal determinations by each agency.

1:1-17.6 Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct

(a) In motions concerning multiple agencies, the judge shall initially determine the consolidation question. If consolidation is to be ordered, then a predominant interest determination must also be rendered in the consolidation order. If particular issues in the entire controversy are clearly severable, the judge's consolidation order shall specify which agency shall decide each such issue. Motions for consolidation involving predominant interest determinations must be decided within 45 days from the date of submission.

(b) If one agency is determined to have a predominant interest, that agency shall render the final decision on all issues within the scope of its predominant interest. The judge in the consolidation order shall specify the issues relating to the predominant issue and shall clearly identify the agency having the authority to issue a final decision on those issues.

(c) If there are requests for relief which may not be granted by the agency with the predominant interest, the judge shall in the consolidation order specify clearly which determinations by the agency with the predominant interest shall bind the agency subsequently considering any applications for relief.

(d) When an agency exempt under N.J.S.A. 52:14F-8(a) is determined to have a predominant interest in a contested case, the matter shall be heard by an administrative law judge unless the exempt agency decides, in its final order reviewing the judge's consolidation order to have the matter heard by its own personnel. If the exempt agency decides to have its own personnel hear the matter, but the hearer does not have jurisdiction over all issues within the scope of the agency's predominant interest, the hearer shall be designated a special administrative law judge as provided by N.J.S.A. 52:14F-6(b).

1:1-17.7 Review of orders involving consolidation of cases from multiple agencies

(a) All orders granting or denying consolidation of cases commenced before multiple agencies shall be forwarded by the Office of Administrative Law to the respective agency heads for their review.

(b) The agency head's review of the judge's order shall be completed no later than 45 days from the entry of the judge's order, except when, for good cause shown and upon notice to all parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(c) Agency heads considering a judge's consolidation order are encouraged to consult and coordinate with each other before issuing a final order.

1:1-17.8 Initial decision in cases involving a predominant interest; order of review; extension of time limits

(a) The judge in a consolidated case involving a predominant interest shall consider all the issues and arguments in the case and shall render

a single initial decision in the form prescribed by N.J.A.C. 1:1-18, disposing of all the issues in controversy.

(b) The initial decision shall be filed first with the agency which has the predominant interest. After rendering its final decision, the agency with the predominant interest shall transmit the record, including the initial decision and its final decision, to the other agency which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its statutory grant of authority.

(c) Upon transmitting the record, the agency with the predominant interest shall pursuant to N.J.A.C. 1:1-18.8 request an extension to permit the rendering of a final decision by the agency which does not have the predominant interest.

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:1-18.1 Initial decision in contested cases

(a) When a case is not heard directly by an agency head, the judge shall issue an initial decision which shall be based exclusively on:

1. The testimony, documents and arguments accepted by the judge for consideration in rendering a decision;
2. Stipulations; and
3. Matters officially noticed.

(b) The initial decision shall be final in form and fully dispositive of all issues in the case.

(c) No substantive finding of fact or conclusion of law, nor any concluding order or other disposition shall be binding upon the agency head, unless otherwise provided by statute.

(d) In plenary hearings and proceedings on the papers, the initial decision 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, unless an earlier time frame is mandated by Federal or State law.

(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.

(f) In mediations successfully concluded by initial decision, the decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

(g) Within 10 days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

(h) Upon filing of an initial decision with the transmitting agency, the Office of Administrative Law relinquishes jurisdiction over the case.

1:1-18.2 Oral initial decision

(a) The judge may render the initial decision orally on the record before the parties in any case where the judge determines that the circumstances appropriately permit an oral decision and the questions of fact or law are sufficiently non-complex.

(b) Within 15 working days of rendering an oral decision, the decision shall be transcribed, filed with the agency head and mailed to the parties with an indication of the date of receipt by the agency head.

(c) In an oral decision, the judge shall identify the case, the parties, and the issue or issues to be decided and shall analyze the facts as they relate to the applicable law, and make findings of fact, conclusions of law and an appropriate order or disposition of the case. The decision shall include the statement at N.J.A.C. 1:1-18.3(c)12. and the judge shall explain to the parties that the decision is being forwarded to the agency head for disposition pursuant to N.J.S.A. 52:14B-10, and that exceptions may be addressed to the agency head. The judge need not specifically include in the oral decision the other material required by N.J.A.C. 1:1-18.3(c) as long as it is otherwise contained in the record.

1:1-18.3 Written initial decision

(a) If an oral decision is not issued, the judge shall issue a written initial decision.

(b) The Clerk shall file the written initial decision with the agency head and shall promptly serve the written initial decision upon the parties with an indication of the date of receipt by the agency head.

(c) The written initial decision shall contain the following elements which may be combined and need not be separately discussed:

1. An appropriate caption;
2. The appearances of the parties and their representatives, if any;
3. A statement of the case;
4. A procedural history;
5. A statement of the issue(s);

6. A factual discussion;

7. Factual findings;

8. A legal discussion;

9. Conclusions of law;

10. A disposition;

11. A list of exhibits admitted into evidence; and

12. The following statement: "This recommended decision may be adopted, modified or rejected by (the head of the agency), who by law is empowered to make a final decision in this matter. However, if (the head of the agency) does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10."

1:1-18.4 Exceptions; replies

(a) Any party may file written exceptions within 10 days from the receipt of the judge's initial decision with the agency head and with the Clerk. A copy of the exceptions shall be served on all other parties.

(b) The exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

(c) Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.

(d) Within five days from receipt of exceptions, any party may file a reply with the agency head and with the Clerk, serving a copy thereof on all other parties. Such replies may include cross-exceptions or submissions in support of the initial decision.

(e) In all settlements, exceptions and cross-exceptions shall not be filed, unless permitted by the judge or agency head.

1:1-18.5 Motions to reconsider and reopen

(a) Motions to reconsider an initial decision are not permitted.

(b) Motions to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

(c) Motions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances.

1:1-18.6 Final decision; stay of implementation

(a) Within 45 days after the receipt of the initial decision, or sooner if an earlier time frame is mandated by Federal or State law, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision. Such an order or final decision shall be served upon the parties and the Clerk forthwith.

(b) An order or final decision rejecting or modifying the findings of fact in the initial decision shall be based upon substantial evidence in the record. Any order or final decision rejecting or modifying the initial decision shall specify in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence of record at hearing and interpretation of law upon which it is based and the precise changes in result or disposition caused by the rejection or modification.

(c) If an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by N.J.A.C. 1:1-18.8, the initial decision shall become a final decision.

(d) When a stay of the final decision is requested, the agency shall respond to the request within 10 days. *[Failure to timely respond shall be deemed a denial and the party requesting the stay may appeal the denial to the Appellate Division, pursuant to New Jersey Court Rule R. 2:9-7.]*

1:1-18.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered. The remand order shall be attached to a N.J.A.C. 1:1-8.2 transmittal form and returned to the Clerk of the Office of Administrative Law along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision.

1:1-18.8 Extensions of time limits

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted ***in writing*** to the Director of the Office of Administrative Law. If the Director ***[approves]*** ***concurrs in*** the request, he or she shall ***within 10 days*** forward a proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall ***within 10 days*** sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall ***within 10 days*** sign and issue the order and cause it to be served on all parties and the Director of the Office of Administrative Law. ***If the extended time limit necessitates an extension of the deadline for the final decision, the requirements of (e) below apply.***

(e) ***[To extend the time limit for filing a final decision, the transmitting agency head shall forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director concurs in granting the extension, he or she shall sign and issue the order and cause it to be served on all parties.]*** ***Requests to extend the time limit for filing a final decision shall be submitted in writing to the transmitting agency head. If the agency head concurs in the request, he or she shall within 10 days sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within 10 days sign and issue the order and cause it to be served on all parties.***

[(f) An order granting an extension must be issued no later than 10 days after the request for an extension is received.]

[(g)](f)*** Any order granting an extension must establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only in case of extraordinary circumstances.

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:1-19.1 Settlements

(a) When the parties to a case wish to settle the matter, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or

2. ***[Verbally]*** ***Orally***, by the parties or their representatives.

(b) If the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, ***[and does not determine that it is inconsistent with the public interest.]*** the judge shall issue an initial decision incorporating the full settlement terms and approving the settlement.

[(c) On the judge's motion or on motion of a party, the judge may require evidence on the record to determine whether the settlement terms are consistent with the public interest.]

1:1-19.2 Withdrawals

[(a) Any party may withdraw a request for a hearing or a defense raised which shall be processed in accordance with (b) or (c) below. Parties shall not use the withdrawal process in those cases where the parties have agreed between themselves to settle the matter. All settlements shall be handled in accordance with N.J.A.C. 1:1-19.1. Withdrawals shall only be requested where a party voluntarily abandons a request for action or relief or a defense to a request for action or relief.]

[(b)](a)*** ***[Before commencement of testimony at the evidentiary hearing, a]*** ***A*** party may withdraw a request for a hearing or a defense raised by ***[written request to the Clerk, with a copy to all parties, setting forth the reason for the withdrawal.]*** ***notifying the judge and all parties in writing.*** Upon receipt of such ***[request]*** ***notification***, the judge ***[assigned to the case]*** shall ***[, except in those instances where he or she determines that the withdrawal should more properly be handled as a settlement under N.J.A.C. 1:1-19.1.]*** enter an initial decision granting the withdrawal. ***[The decision shall specify that the party requesting the withdrawal has relinquished the right to take action against the other party or parties or to defend against the action of the other party or parties and shall contain an appropriate disposition of the case.]***

[(c) After commencement of testimony at the evidentiary hearing, a request for withdrawal shall be made by motion and shall set forth the reason for the withdrawal. Upon receipt of the motion, the judge shall determine whether to permit the withdrawal and may deny withdrawal by order or issue an initial decision approving the withdrawal.]

[(d)](b)*** Upon entry of a decision ***[approving]*** ***granting*** a withdrawal, the Clerk shall return the matter to the agency ***for an appropriate disposition***.

[(e)](c)*** After a decision ***[approving]*** ***granting a*** withdrawal has been entered, a party shall address to the agency head any motion to reopen a withdrawn case.

SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

1:1-20.1 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.

2. The Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges as suggested mediators. Each party may strike two judges from the list and the Office of Administrative Law will not assign any judge who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

3. All parties must agree in writing to the following:

i. Not to use any information gained solely from the mediation in any subsequent proceeding;

ii. Not to subpoena the mediator for any subsequent proceeding;

iii. Not to disclose to any subsequently assigned judge the content of the mediation discussion;

iv. To mediate in good faith; and

v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

4. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.

5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-14.4.

6. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge.

7. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.

(b) In no event shall mediation efforts continue beyond 30 days from the date of the first scheduled mediation unless this time limit is extended by agreement of all the parties.

1:1-20.2 Conclusion of mediation

(a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a ***[settlement]*** ***mediation*** agreement.

(b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate subsequent proceedings.

SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:1-21.1 Transmission to the Office of Administrative Law

(a) Any agency head may request under N.J.S.A. 52:14F-5(o) the assignment of an administrative law judge to conduct an uncontested case, including rule making and investigatory hearings. Public or investigatory hearings conducted pursuant to a rulemaking shall proceed in accordance with N.J.S.A. 52:14B-4(g). The agency head may make such a request by letter and by completing the applicable portions of an N.J.A.C. 1:1-8.2 transmittal form.

(b) The letter of request and transmittal form shall be filed with the Clerk of the Office of Administrative Law, together with any attachments, after all pleadings and notice requirements have been concluded.

1:1-21.2 Discovery

(a) Unless other discovery arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, discovery in uncontested cases shall consist of the following:

1. If an agency or a county/local governmental entity is a party to an uncontested case hearing, and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

2. If the subject of an uncontested case hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(b) Any discovery other than that permitted in (a)1 and 2 above shall be by motion to the judge and for good cause shown.

(c) The hearing date shall not be adjourned to permit discovery.

1:1-21.3 Representation

In uncontested cases conducted by the Office of Administrative Law, representation shall not be regulated by N.J.A.C. 1:1-5.

1:1-21.4 Conduct of uncontested cases

(a) Unless other arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, uncontested cases shall proceed in the following manner:

1. Uncontested cases shall begin with the judge reading the case title and the docket number, asking the representatives or parties present to state their names for the record and stating briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record.

2. In a sequence determined by the judge, each party to the proceeding shall be permitted to make a presentation setting forth the factual and/or legal basis for its position. When the parties are disputing the facts, the judge shall administer an oath to any party who wishes to make a presentation. The judge may also permit the parties to ask questions, either at the conclusion of each presentation or at the conclusion of all presentations, in the manner and to the extent that he or she determines most suitable.

3. Subject to a bona fide claim of privilege, documents or other tangible items or the written statements of an individual may be entered into the record if they are helpful to an understanding of the situation.

4. No rules of evidence apply to these proceedings.

5. Proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions may be submitted prior to the beginning of the hearing. Such documents may not be accepted thereafter, nor required of the parties at any time unless all parties agree to provide such submissions and the time for issuing the judge's report is not extended.

6. The proceeding shall be deemed concluded on the date the judge determines that no further presentations under 2. above shall be necessary.

1:1-21.5 Report

(a) In uncontested cases, the judge shall issue a report to the transmitting agency head which shall deal with each issue presented. The report shall explain the subject matter of the proceeding and the position of each party, shall recommend a course of action and shall set forth the factual or legal basis for the recommendation.

(b) The report may be rendered in writing or orally on the record at the hearing before the parties. If the report is rendered orally, it shall be transcribed and filed with the agency head and mailed to the parties.

(c) The report shall be issued within 45 days after the hearing is concluded unless expedition is required.

1:1-21.6 Exceptions and cross-exceptions

In uncontested cases exceptions may be filed but replies and cross-exceptions shall not be permitted.

1:1-21.7 Extensions

Requests for an extension of any time limit associated with an uncontested case shall be taken to the transmitting agency head.

CHAPTERS 2. THROUGH 4. (RESERVED)

AGENCY NOTE: Chapter 5 was adopted separately on October 20, 1986 at 18 N.J.R. 2122(a). It is included in this adoption notice so that readers may refer to a complete version of the Special Hearing Rules. Chapter 5 became effective upon publication and is operative at this time.

CHAPTER 5 DEPARTMENT OF COMMUNITY AFFAIRS COUNCIL ON AFFORDABLE HOUSING

SUBCHAPTER 1. APPLICABILITY

1:5-1.1 Applicability

(a) The rules in subchapters 2 through 5 of this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-8.1 concerning an objection to a municipality's petition for substantive certification.

(b) The rules in subchapter 20 of this chapter shall apply to hearings arising under N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-7.1(d) concerning the adjudication of an issue which may facilitate mediation efforts.

(c) Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R. these rules shall apply.

SUBCHAPTER 2. THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:5-10.1 Discovery

(a) At least 10 days before the scheduled hearing date, each party shall disclose to each other party the following:

1. Copies of any documents intended to be introduced at the hearing;
2. The names and addresses of all witnesses intended to be called at the hearing, including the qualifications of any expert witnesses; and
3. A summary of the testimony of each witness.

(b) Upon application of a party, the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(c) No other discovery need be provided.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:5-12.1 Motions

Other than motions resolved in the prehearing order and motions for emergency relief or for summary decision, a party may not file a motion in advance of the scheduled hearing date.

SUBCHAPTER 13. PREHEARING CONFERENCE; EXPEDITED SCHEDULING; ADMISSIBILITY OF EXPERT WITNESS REPORTS

1:5-13.1 Prehearing conference

(a) A prehearing conference shall be scheduled within 15 days of receipt of the case in the Office of Administrative Law.

(b) When the case is filed, the Clerk shall contact the parties to arrange a date, time and place for a prehearing conference.

1:5-13.2 Expedited scheduling

(a) At the prehearing conference, the judge shall set a schedule for the hearing, specifying the time which will be allowed for briefs, proposed findings of fact, conclusions of law, forms of order or other dispositions, or other supplemental material.

(b) The schedule shall provide for the completion of the hearing and the issuance of the initial decision no later than 90 days after transmittal of the matter to the Office of Administrative Law, unless the time is extended by the Director for good cause shown.

1:5-13.3 Admissibility of expert witness reports

(a) During the prehearing conference, the judge may consider requests to admit into evidence an expert witness in lieu of direct examination, subject to cross-examination of the expert at the hearing.

(b) If an expert witness report is to be admitted pursuant to (a) above, such report shall be filed with the judge and served on each party by the offering party no later than five days before the scheduled hearing date.

SUBCHAPTER 14. THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISION; TRANSCRIPTS

1:5-18.1 Transcripts

(a) At the conclusion of the hearing, a transcript of the proceedings shall be prepared. The written transcript must be completed in time to be submitted to the Council on Affordable Housing simultaneously with the initial decision.

(b) Cost of the transcript shall be apportioned pursuant to N.J.A.C. 5:91-8.1.

SUBCHAPTER 19. (RESERVED)

**SUBCHAPTER 20. ISSUE REFERRAL FROM COUNCIL'S
MEDIATION PROCESS**

1:5-20.1 Referral to the Office of Administrative Law

(a) The Council on Affordable Housing may under N.J.A.C. 5:91-7.1(d) request the OAL to conduct a hearing on any issue which the Council believes may facilitate the mediation process.

(b) The Council's request shall be granted by the OAL under N.J.S.A. 52:14F-5(o) and the hearing conducted pursuant to this subchapter.

1:5-20.2 Scheduling

Issues transmitted under this subchapter shall be scheduled by the Clerk for a hearing within 20 days of their transmittal to this office.

1:5-20.3 Discovery

(a) At least five days before the scheduled date for the hearing, each party shall exchange with each other party the following:

1. Copies of any documents intended to be introduced at the hearings;
2. The names and addresses of all witnesses intended to be called at the hearing, including the qualifications of any expert witnesses; and
3. A summary of the testimony of each witness.

(b) Upon application of a party, the judge shall exclude any evidence that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(c) No other discovery need be provided.

1:5-20.4 Conduct of hearing

Unless other arrangements are requested by the Council on Affordable Housing and agreed to by the Director of the Office of Administrative Law, hearings under this subsection shall be conducted pursuant to N.J.A.C. 1:1-13.7(a) through (g) as pre-proposed at 18 N.J.R. 728(a).

SUBCHAPTER 21. (RESERVED)

**CHAPTER 6
DEPARTMENT OF EDUCATION
BUDGET HEARINGS**

SUBCHAPTER 1. APPLICABILITY

1:6-1.1 Applicability

The rules in this chapter shall apply to any hearings concerning appeals by district boards of education of a governing body's decision to reduce a school budget, pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-7.1 et seq. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. THROUGH SUBCHAPTER 7. (RESERVED)

**SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE
OF ADMINISTRATIVE LAW**

1:6-8.1 Transmission of cases; material to be submitted

When a case is transmitted to the Office of Administrative Law, as provided by N.J.A.C. 6:24-7.7(b), the Commissioner of Education shall forward along with the transmittal form any material submitted by the district board of education or board of school estimate or any decisions by the Commissioner relating to any request for a cap waiver by the district board.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:6-10.1 Discovery; exchange of documents

(a) Within 10 days of receipt of the notice of hearing, the governing body shall forward to the judge assigned to hear the case a copy of the information which was given to the district board of education when the reduction was made, including the following documents:

1. If changes were made to the operating budget, a copy of the line item budget detailing the specific reductions that were effectuated by the governing body; a copy of the statement of supporting reasons for each of these reductions; and a certification stating the date on which these documents were originally given to the district board of education;

2. If changes were made to the capital budget, a copy of the capital budget; a copy of the statement of supporting reasons for each change; and a certification stating the date on which such documents were originally given to the board of education.

(b) Within 20 days of receipt of the notice of hearing, the district board of education shall forward a copy to the governing body and two copies to the judge of each of the following:

1. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters), amount reduced by the governing body and revised budgeted amount for the next school year. This budget should be accompanied by written testimony, approved by the district board of education, as to why each of the amounts in dispute is necessary to provide a "thorough and efficient" system of education;

2. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

3. Pupil enrollment by grade for the district as of June 30, preceding; September 30 preceding; and that projected for September of the next school year;

4. Salary schedules for all employees;

5. Number of schools and classrooms in each;

6. Costs for non-aided transportation for the previous school year and projected for the current school year and the next school year;

7. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

8. Advertised budget for the next school year;

9. If a capital budget is in dispute, a substantiation for each proposed capital project.

(c) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document.

(d) All other discovery shall be on motion for good cause shown.

SUBCHAPTER 11. THROUGH SUBCHAPTER 21. (RESERVED)

**CHAPTER 6A
SPECIAL EDUCATION PROGRAM**

SUBCHAPTER 1. APPLICABILITY

1:6A-1.1 Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6:28-1.1 et seq. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1514 et seq. and 34 CFR 300 et seq. These rules do not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

SUBCHAPTER 2. COMMENCEMENT OF MATTER

1:6A-2.1 Commencement of matter by a board of education, public agency, parent or guardian: notice of action

(a) With respect to the referral, evaluation, classification or educational placement of a pupil, or to the provision of a free and appropriate education to a pupil under N.J.A.C. 6:28-1.1:

1. When a board of education or public agency proposes to act or to make any change with regard to a pupil, the board or agency shall send a written notice to the parent(s) or guardian of the pupil no later than 15 days after making such a determination, and in no event less than 15 days prior to the date for implementing the proposed action or change unless the parent(s) or guardian otherwise consents to the proposal.

2. When a board of education or public agency is requested by a parent or guardian to make any change with regard to a pupil, the board or agency shall send a written notice to the parent(s) or guardian of the pupil forthwith upon approving or denying the request, and in no event more than 30 days from the date of the request.

(b) Each notice shall be clearly and simply written and shall include:

1. A description of the action proposed or denied by the board of education or public agency, an explanation for the proposal or denial, a description of the other options considered and a rationale for the rejection of those options (34 CFR 300.505(a)(2));

2. A description of the procedures and factors used by the board of education or public agency in determining whether to propose or deny an action, including each test, record or report the board or agency used as a basis for the proposal or denial (34 CFR 300.504(a)(3) and (4));

3. A request for parental or guardian consent to any action proposed by the board of education, or public agency, as described in N.J.A.C. 6:28 (34 CFR 300.500 and 34 CFR 300.504); and

4. A copy and explanation of the procedures, described in this subchapter and in N.J.A.C. 6:28, 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq., for appealing the board or public agency's proposal or denial, including a clear statement of:

i. The right to examine all relevant records with respect to the pupil;

ii. The right to a hearing at the Office of Administrative Law on the proposal or denial;

iii. The right, at the hearing, to be accompanied and advised by counsel or by individuals with special knowledge or training in the problems of handicapped children, or both.

(c) The notice shall be communicated in the native language of the parent(s) or guardian. If a written form of communication is clearly not feasible, another appropriate form of communication may be used.

(d) The board of education or public agency shall take appropriate steps to insure that the parent(s) or guardian receives and understands the notice, and shall maintain a record of all steps it has taken in this regard.

1:6A-2.2 Hearing request by parent, guardian, board of education or public agency

(a) A parent, guardian, board of education, or public agency may, in writing, request a hearing at any time after the board of education or public agency has sent a written notice of action or after 30 days have elapsed from the date of a parent's or guardian's request for change with regard to a pupil. A hearing request shall be addressed to the Department of Education with a copy to each other party in the dispute. The Department shall acknowledge receipt of the request and shall forthwith send each party a copy of the acknowledgment.

(b) When a board or public agency has failed to issue a notice of action pursuant to N.J.A.C. 1:6A-2.1(a)2., and a parent or guardian has requested a hearing, the board or public agency shall issue a notice of action no later than five days from receiving notice of the hearing request. In addition the board may be subject to appropriate sanctions under N.J.A.C. 1:1-14.4.

(c) A hearing request shall specify, as nearly as practical, the issues in dispute. A hearing request from a parent or guardian shall specify whether the dispute concerns the classification of the pupil, the placement of the pupil, the contents of the pupil's individualized education program, or such other issue as may be clearly specified, and the specific relief or action sought by the parent or guardian.

(d) Upon receiving the Department of Education's acknowledgement or notice of a hearing request, the parties shall immediately begin to exchange information, in preparation for a settlement conference. The board of education or public agency shall provide all relevant records and information to the parent or guardian. The parent or guardian shall provide relevant information requested by the board or agency. The exchange of information shall be completed pursuant to the time limits in N.J.A.C. 1:6A-3.3 (Time for discovery).

(e) In its acknowledgement, the Department of Education shall inform the parties of any free or low-cost legal and other relevant services available, including:

1. The Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate;

2. The New Jersey State Bar Association and county bar association lawyer referral services;

3. The Association of Trial Lawyers—New Jersey lawyer referral service; and

4. The Legal Aid and Legal Services offices in New Jersey (34 CFR 300.506(c)).

SUBCHAPTER 3. EMERGENCY RELIEF, SETTLEMENT AND SCHEDULING OF HEARING

1:6A-3.1 Emergency relief pending settlement or decision

(a) As part of a hearing request, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the Department of Education, attention Division of Special Education, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements shall be processed by the Department in accordance with N.J.A.C. 1:6A-3.2.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief if the judge determines from the proofs that:

1. The application has a reasonable probability of ultimately prevailing on the merits; and

2. Either serious physical harm will result to a student or students if the relief is not granted; or the student's education program will be terminated or interrupted; and

3. The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested emergency relief, the judge shall either return the parties to the Department of Education for a settlement conference under N.J.A.C. 1:6A-3.2 or schedule hearing dates if a settlement conference has already been conducted.

1:6A-3.2 Settlement conference by the Department of Education

(a) Within seven days of receipt of any hearing request, the Department of Education shall conduct and all parties shall attend a settlement conference at a time and place convenient to the parent or guardian.

(b) The purpose of the settlement conference is to attempt to settle the dispute and to assist the parties in defining issues, identifying evidence, exchanging information, stipulating facts and listing possible witnesses

for a hearing in the event that settlement cannot be reached. The terms of any settlement or other agreement and the assent of the parties shall be contemporaneously recorded.

(c) If a settlement is reached, the terms shall be reduced to writing within three days, and signed by the parties and the representative of the Department of Education.

(d) If a settlement is not reached, the Department of Education shall prepare within three days a written document that specifies the issues in dispute, any stipulations, and witness lists for each party. This document shall be included with the transmittal of the matter to the Office of Administrative Law, and a copy of it and the transmittal form shall be sent to the parties. Any exhibits that both parties agree are admissible may be attached to the document.

(e) Where the hearing has been requested by a board of education or public agency, the parent or guardian may request and shall receive an adjournment of the settlement conference for up to 15 days, to be calculated from the originally scheduled conference date. For good cause, the Department of Education may otherwise adjourn a settlement conference or schedule another settlement conference. Any adjournment of the settlement conference or scheduling of another conference shall extend the deadline for decision on the matter, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), by an amount of time equal to the adjournment or rescheduling.

(f) The Department of Education shall include with the transmittal any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties.

1:6A-3.3 Discovery

(a) All requests for information, records or other discovery shall be made before or at the settlement conference. All responses to these requests shall be completed no later than five days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall to the greatest extent possible consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

1:6A-3.4 Scheduling of hearing by Office of Administrative Law

If the matter is not fully resolved at the settlement conference, as required in N.J.A.C. 1:6A-3.2, the representative of the Department at the conference shall, in the presence of the parties, telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be no later than 14 days from the date of the conference, unless a later date is agreed upon by all parties. If a later date is agreed upon, the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), shall be extended by a time equal to the amount of delay. The Commissioner of Education shall, no later than three days after the settlement conference, transmit the matter to the Office of Administrative Law. Copies of all notices, requests, pleadings, filings, stipulations of issues and facts, and witness lists compiled at the settlement conference and a description of the positions of each party shall be included with the standard Office of Administrative Law transmittal form required by N.J.A.C. 1:1-8.2. In addition, the transmittal shall include the dates of all settlement conferences, including any which were adjourned.

1:6A-3.5 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any administrative review by the Department or ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless consented to by the party requesting the hearing. Any delay or adjournment by consent shall extend the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), by an amount of time equal to the delay or adjournment.

SUBCHAPTER 4. HEARING

1:6A-4.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) For good cause shown on the record, the judge may adjourn the hearing, and the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), will be extended by an amount of time equal to the adjournment.

(c) A verbatim record shall be made of the hearing.

(d) Unless consented to by both parties, any findings and recommendations made as a result of an administrative review provided by rules of the Department of Education may not be introduced as evidence or made part of the record at hearing. However, any evidence developed or disclosed at the administrative review may be offered for inclusion into the hearing record.

(e) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

1:6A-4.2 Representation

(a) At a hearing, any party may be accompanied and advised by legal counsel or by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.

1:6A-4.3 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

1:6A-4.4 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6:28-1 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen from a list approved by the Department of Education either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent evaluation at no cost to the parent(s) or guardian. (34 CFR 300.503)

(b) Where an independent educational evaluation is ordered, the judge may adjourn the hearing, and the deadline for decision, as established in N.J.A.C. 1:6A-5.1 (Deadline for decision), will be extended by an amount of time equal to the adjournment.

SUBCHAPTER 5. DECISION AND APPEAL

1:6A-5.1 Deadline for decision

(a) The judge shall issue a written decision no later than 21 days from the close of the hearing record.

(b) Subject to any adjournments reasonably granted or other postponements agreed to by the parties and due to unusual circumstances stated on the record, the judge shall render this decision no later than 45 days from the date of the hearing request.

1:6A-5.2 Confidentiality

(a) In the written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence by the Office of Administrative Law pursuant to Federal regulations, 34 CFR 300.500 et seq. The Decision Control section of the Office of Administrative Law, 185 Washington Street, Newark, NJ 07012, (201) 648-6006, shall maintain these records.

1:6A-5.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C.A. 1415(e)(3).

(b) A party intending to appeal the administrative law judge's decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the adminis-

trative proceeding, provided a copy remains on file at the Office of Administrative Law. The requesting party shall bear the cost of any necessary reproduction. Written requests for this material should be directed to Decision Control, Office of Administrative Law, 185 Washington Street, Newark, NJ 07102.

(c) The record shall consist of all documents transmitted by the Department of Education to the Office of Administrative Law; correspondence; any documents relating to motions; briefs; exhibits; transcripts; if any; the administrative law judge's decision; and any other material specifically incorporated into the record by the judge.

1:6A-5.4 Stay of implementation

(a) Unless the parties otherwise agree, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.513.

(b) Where a party appeals any portion of the decision not involving a change in the pupil's educational placement, and upon request by any party, the judge may stay implementation of the decision if he finds that immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

1:6A-5.5 Motion to reopen hearing

(a) Any party may file with the presiding judge, and serve on each other party, a motion to reopen the hearing no later than 10 days following the issuance of the decision.

(b) The judge may reopen the hearing for reasons of:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence which would probably alter the decision and which, by due diligence, could not have been discovered in time for the hearing; or
3. Fraud, misrepresentation or misconduct of another party.

CHAPTER 7

DEPARTMENT OF ENVIRONMENTAL PROTECTION EMERGENCY WATER SUPPLY ALLOCATION PLAN CASES

SUBCHAPTER 1. APPLICABILITY

1:7-1.1 Applicability

(a) The rules in this chapter shall apply to hearings arising under N.J.A.C. 7:19A-1.1 et seq. concerning the denial of an application for a hardship exemption from water rationing or the ban on adjustable water uses. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:7-2.1 Definitions

"Applicant" means an individual or entity who is aggrieved by a decision of the Water Emergency Task Force, established by N.J.A.C. 7:19A-4.2.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:7-4.1 Agency conference; failure to reach settlement

(a) In a case dealing with an application for a hardship exemption from water rationing or the ban on adjustable water uses, the Department of Environmental Protection (DEP) shall attempt to settle the dispute through appropriate conferences within 30 days of receiving a hearing request.

(b) If settlement is not reached, the parties shall use the conference to prepare issues and evidence for the hearing, and to determine any discovery needs.

(c) At or immediately after the conference, DEP shall supply the applicant with any materials requested pursuant to N.J.A.C. 1:7A-10.1 (Discovery).

(d) If settlement is not reached, DEP shall transmit the case to the Office of Administrative Law, including all documents upon which the Water Emergency Task Force based its decision to deny the hardship exemption.

SUBCHAPTER 5 THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:7-10.1 Discovery

(a) Discovery shall be limited to the records of DEP, including all documents relied upon by the Water Emergency Task Force with respect to the case.

(b) DEP shall supply the applicant with a copy of all discovery at or forthwith after the settlement conference.

SUBCHAPTER 11 THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:7-14.1 Proceeding on the papers

Water emergency cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:7-14.2 Certification

The applicant may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8. The certification shall explain why the exemption is necessary to avoid extraordinary hardship and why no reasonable alternative exists other than to grant the exemption.

1:7-14.3 In-person hearings; telephone hearings

If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-14.8, such proceeding shall be conducted pursuant to the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

SUBCHAPTER 15 THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTERS 8 AND 9 (RESERVED)

CHAPTER 10 PUBLIC WELFARE HEARINGS

SUBCHAPTER 1. APPLICABILITY

1:10-1.1 Applicability

The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Public Welfare (DPW) wherein an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2 THROUGH SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10-5.1 Representation at hearing

(a) An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4, 7 C.F.R. 273.15(c)(4); 45 C.F.R. 205.10(a)(3)(iii); 7 C.F.R. 273.15(d)(3)(ii)(D); 7 C.F.R. 273.15(p)(2).

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS

1:10-9.1 Adjournments

(a) In cases involving food stamp benefits, upon timely application an applicant/recipient shall receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(b) In all other cases, upon timely application and for good cause shown, an applicant/recipient may receive one adjournment of the scheduled hearing date for a period of no more than 30 days.

(c) The total of all adjournments in a case shall not exceed 30 days, unless good cause is shown for a greater extension of time.

(d) In cases involving an alleged intentional program violation, the applicant/recipient must request the adjournment at least 10 days before the scheduled hearing date. 7 C.F.R. 273.16(e)(1)(iii).

1:10-9.2 Notice of hearing

(a) In cases involving AFDC or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. The notice may be sent less than 10 days before the hearing date if the applicant or recipient so requests in order to expedite the hearing.

(b) In cases involving an alleged intentional program violation, written notice of the scheduled hearing shall be sent to the applicant/recipient at least 30 days prior to the hearing. 7 C.F.R. 273.16(e)(3).

1:10-9.3 Scheduling of hearing

(a) The hearing shall be held at a time, date and location convenient to the applicant or recipient.

(b) Upon presentation of acceptable information regarding an applicant's or recipient's illness or infirmity which would prevent his or her appearance at a hearing location, the hearing shall be scheduled at the applicant/recipient's residence.

SUBCHAPTER 10. DISCOVERY

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i); 7 C.F.R. 273.16(e)(3)(c).)

(b) Any other discovery shall be by motion to the judge and for good cause shown. In no case shall the hearing date be adjourned to permit discovery under this subsection.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. CONTINUED ELIGIBILITY; EMERGENCY FAIR HEARINGS

1:10-12.1 Eligibility for continued benefits in AFDC and food stamp cases

(a) If the recipient is entitled to and has elected to receive continued unreduced benefits, the judge shall determine at the conclusion of the hearing whether assistance should be continued unreduced pending a final decision. Benefits shall be continued unreduced if the judge determines that the issue is one of fact rather than law or policy (N.J.A.C. 10:81-6.9(a)), unless the recipient has waived the receipt of continued benefits or continued benefits are otherwise not required by State or Federal law.

(b) An adjournment of a hearing at the request of a recipient shall not prolong continuation of benefits at an unreduced level, unless the adjournment is due to: delay caused by the DPW, the Office of Administrative Law or the CWA; unavoidable causes such as illness on the part of the recipient or the failure of the CWA to provide assistance for transportation when such assistance is required by regulations. Adjournment at the request of the CWA or by the judge shall not affect continued benefits. (N.J.A.C. 10:81-6.9(b).)

(c) The judge shall inform the recipient and the CWA in writing either at the time of the hearing or on the first day following the hearing whether or not benefits will be continued unreduced pending a final decision. (N.J.A.C. 10:81-6.9(c).)

1:10-12.2 Emergency fair hearings in AFDC or General Assistance cases

(a) When DPW determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DPW shall notify the Office of Administrative Law by telephone of the hearing request on the same day as the request is received. The Clerk of the Office of Administrative Law shall prepare the Office of Administrative Law transmittal form based upon the telephone call.

2. The case shall be scheduled by the Office of Administrative Law for a hearing within three days after the phone call is received.

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to DPW within one day after the Office of Administrative Law is notified of the hearing request. DPW shall notify the CWA or MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing by telephone.

4. The judge shall file an initial decision by mailgram with the Director of the DPW and the parties no later than the day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the CWA or MWD may, by telephone, make exception or objection to the initial decision, to the DPW no later than the first day following the issuance of the initial decision.

6. The Director of the DPW shall issue a final decision no later than three days following the date the initial decision is received which shall accept, reject or modify the initial decision. On the date the final decision is issued, the DPW shall notify the CWA or MWD, the Office of Administrative Law and the petitioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided on the date notice of the decision is received.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:10-14.1 Attendance at hearing

(a) The applicant/recipient or a representative and the CWA or MWD and their representatives, if any, shall attend the hearing.

(b) The hearing may also be attended by other persons having an interest in the matter if permitted by the applicant or recipient.

(c) The judge may limit the number of persons in attendance at the hearing to comport with any hearing room space limitations.

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.4(l).

SUBCHAPTER 15. THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving AFDC benefits, an initial decision shall be issued within 21 days from the date of the hearing.

(b) In cases involving food stamp benefits, an initial decision shall be issued within 14 days from the date of the hearing.

(c) In cases involving food stamp intentional program violations, an initial decision shall be issued within 21 days from the date of the hearing.

(d) In cases involving General Assistance, an initial decision shall be issued within 21 days from the date of the hearing.

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the Office of Administrative Law, the Director of the DPW and to all parties. The exceptions must be received by the DPW no later than five days after receipt of the initial decision. No replies or cross-exceptions shall be permitted.

1:10-18.3 Written initial decisions

All initial decisions shall be issued in writing, pursuant to N.J.A.C.

1:1-18.3. Oral initial decisions are not permitted.

SUBCHAPTER 19. SETTLEMENTS

1:10-19.1 Division of Public Welfare settlements

(a) The parties to a hearing may resolve a dispute, subsequent to transmittal of a matter to the Office of Administrative Law, by agreeing to settlement and withdrawal of the hearing request.

(b) Settlement prior to the scheduled hearing date shall not involve the administrative law judge. The DPW shall notify the Office of Administrative Law of any settlement and withdrawal so derived and the contested case shall be closed. The Office of Administrative Law shall immediately return the case file to DPW.

(c) If on the date of the scheduled hearing or at any time during the hearing the parties agree to settle the matter at issue, a "Stipulation of Settlement and Withdrawal" shall be executed by the parties. This document shall contain:

1. The reason for the hearing request;

2. The reason for settlement and terms of settlement; and

3. The effective date of eligibility and/or benefit entitlement resulting from settlement when appropriate.

(d) The execution of a Stipulation of Settlement and Withdrawal terminates the contested case. The Office of Administrative Law shall transmit the closed file to the Bureau of Administrative Review and Appeals (BARA), Division of Public Welfare within four days of the date of the scheduled hearing.

(e) A review of the settlement shall be completed and written notice shall be provided by BARA not later than three days after its receipt from the Office of Administrative Law. When approved, any terms or conditions of settlement shall be implemented within three days of the date notification of approval is received in the CWA or MWD. In the

event settlement action is disapproved, the matter will be returned to the Office of Administrative Law within three days as a new case. The specific reason for returning the matter and applicable citation of law and regulations shall be clearly stated on the transmittal form.

(f) When implementation by the CWA or MWD is required in a settlement, a written report shall be sent by the CWA or MWD to the BARA within 30 days of the date the action was approved. Such report shall include the calculation of benefits in all cases involving a retroactive payment or a recalculation of benefit entitlement.

SUBCHAPTER 20. THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 10A DEPARTMENT OF CORRECTIONS INMATE DISCIPLINE CASES

SUBCHAPTER 1. APPLICABILITY

1:10A-1.1 Applicability

The rules in this chapter shall apply to Department of Corrections (Department) matters wherein an inmate of a State custodial, penal or correctional institution or program appeals from a sanction, arising from a single incident, which imposes the loss of 365 days or more of commutation time credits awarded pursuant to N.J.S.A. 30:4-140. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedures Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:10A-2.1 Parties; representatives

(a) The parties to inmate discipline cases shall be the inmate who allegedly committed the offense for which a sanction is being sought and the superintendent of the institution where the alleged offense occurred.

(b) A representative of a party is a person who is authorized to represent a party by these special hearing rules.

SUBCHAPTER 3. THROUGH SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:10A-5.1 Representation; entry of appearance

(a) The inmate may represent him or herself or may be represented by an attorney authorized to practice law in this State, including a Public Defender, or by a law student pursuant to R. 1:21-3(c). The Superintendent may be represented pursuant to N.J.A.C. 1:1-5.4(a)2 or by a Deputy Attorney General or by a law assistant pursuant to R. 1:21-3(c).

(b) Any lawyer agreeing to represent a party shall promptly file an entry of appearance with the Clerk and notify the other party and the judge, if one has been assigned to the matter.

SUBCHAPTER 6. THROUGH SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. FILING AND TRANSMISSION

1:10A-8.1 Transmission of discipline cases by the Department of Corrections to the Office of Administrative Law

(a) The Department shall attach to a completed transmittal form, described in N.J.A.C. 1:1-8.2(a), a copy of the charge, the hearing officer's and superintendent's adjudications, the inmate's appeal to the superintendent containing exceptions to the hearing officer's adjudication and any documents relating to an application for a stay of administrative sanctions.

(b) In addition to the information required by N.J.A.C. 1:1-8.2(a), the Department shall ensure that the transmittal provides the names and addresses of the inmate's representative and the superintendent's representative, if known; and the current location of the inmate.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES

1:10A-9.1 Scheduling of proceeding; notice

(a) After consulting with the representatives in the case and the Department, the Clerk shall send to all parties and to the Department, a Notice of Filing and Hearing, assigning a judge to the matter and setting the time, date and place of hearing. Whenever possible, the hearing date shall be scheduled approximately 60 days after the date of the Notice of Filing and Hearing.

(b) The hearing shall be scheduled at the institution in which the inmate is confined.

SUBCHAPTER 10. DISCOVERY

1:10A-10.1 Exchange of evidence lists

(a) Within 25 days of receipt of the Notice of Filing and Hearing, each party shall serve on each other party an evidence list containing the following information:

1. The name of each proposed witness;
2. A summary of the witness' testimony;
3. An indication of whether the testimony will be live or will be presented through affidavits or other written documents;
4. A description and copy of each document to be offered into evidence at the hearing;
5. A description of all physical evidence to be offered; and
6. A statement indicating whether a confidentiality request has been or will be made pursuant to N.J.A.C. 1:10A-10.2.

(b) Within 10 days of receipt of a party's evidence list, another party may object to the admissibility of a proposed witness, to the form of a witness' testimony, to a proposed document or to any other matter contained within the list or which should have been supplied on the list. Each objection must specify in writing the reasons for the objection and be filed with the judge and served upon the other party. Replies to each objection may be made in writing within five days of receiving the objection. Each reply must be filed with the judge and served on each party. The judge shall determine all such objections within 10 days of the filing of the reply and no later than the day of the hearing.

1:10A-10.2 Claims of confidentiality

(a) Where a party is asserting that it is necessary to maintain the confidentiality of the identity of a witness, contents of a document or physical evidence, a written claim of confidentiality must be forwarded to the judge within 25 days of receipt of the Notice of Filing and Hearing. This claim shall not be served on the other parties.

(b) The claim must contain the following:

1. A clear specification of the evidence for which the claim is asserted. If the claim relates to a document, the claimant shall attach a copy of the document in question to the claim;
2. Facts and argument demonstrating that divulgence of the identity of a witness or disclosure of documentary or physical evidence to the other party presents a bona fide risk of physical violence or significant harmful retaliation to that individual, to any other individual or to the security of the institution;

3. A statement as to whether or not the requesting party believes that the confidential information could be disclosed to the representative of the other party. If the requesting party believes that the information should not be disclosed to the representative, the party must explain why the representative cannot be present and participate without creating a substantial risk that the informant's identity will be revealed;

4. A summary of the confidential information in sufficient detail to permit the other party to rebut it, without disclosing the identity of the individual or materials. If the requesting party believes that there is a substantial risk that disclosure of the summary will disclose the identity of the individual or materials, the requesting party shall also include a request that the summary not be disclosed to the other party and an explanation of the risk.

(c) The judge shall decide in writing each confidentiality request within 10 days of receipt of the request.

(d) If the claim of confidentiality is denied, and a request for interlocutory review is not being made, the party who made the request shall immediately serve on each other party the information required in N.J.A.C. 1:10A-10.1(a) concerning the witness or item for which confidentiality was denied.

(e) If a claim of confidentiality is upheld, the order shall include:

1. A finding explaining why confidentiality is required;
2. A determination of whether the confidential information can be disclosed to the representative of the other party. In making such determination, the judge shall consider:
 - i. The seriousness of the potential risk involved; and
 - ii. Whether the hearing can be structured to minimize the possibility of disclosure of the confidential information to the other party.

3. If the confidential information cannot be disclosed to the representative of the other party, a determination of whether the confidential information can be summarized in sufficient detail to permit the other party to rebut it without disclosing the identity of the individual or materials. If so, the judge shall direct the applicant to provide the summary to the other party.

(f) The making of a request for interlocutory review of an order granting or denying of confidentiality claim shall automatically stay the effect of the judge's order pending the review.

1:10A-10.3 Breach of confidentiality

(a) If the representative of a party who received confidential information pursuant to N.J.A.C. 1:10A-10.2(b)2 discloses any part of that confidential information to any individual, the judge may order one or more of the following:

1. Revocation of the individual's right to appear in any case before the Office of Administrative Law;
2. The filing of a complaint with the New Jersey Supreme Court or with an appropriate Ethics Committee for disciplinary action;
3. Such other action as the judge deems appropriate.

1:10A-10.4 Additional discovery

(a) Within 10 days after receiving the Notice of Filing and Hearing, the institution shall provide the inmate with copies of any reports or other materials in the institution's possession, including exculpatory matter, concerning the charge.

(b) Within 10 days of receipt of the other party's witness list, a party may serve no more than 10 single part written interrogatories which shall not request information which has already been provided.

(c) Answers to interrogatories are due within 10 days after receiving the written interrogatories. A party who wishes to object to an interrogatory or who wishes to object to the answer to an interrogatory or to compel an answer to an interrogatory shall place a telephone conference call to the judge and the other parties for resolution of the matter. A party objecting to an interrogatory shall place the telephone call within five days of receipt of the interrogatory. A party objecting to a response or seeking to compel a response shall place the telephone call within five days of the due date for the response to the interrogatory. If a party fails without good reason to place a timely telephone call, the judge shall deny the party's objection or motion to compel.

(d) No other discovery shall be provided except on motion for good cause shown.

SUBCHAPTER 11. SUBPOENAS

1:10A-11.1 Subpoenas

(a) Except on motion for good cause shown, no subpoenas shall be issued for any individual who is employed by or confined at any State institution. If such individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10-10.1, as a witness who will present live testimony and the judge has not sustained an objection to the witness' testimony, the Department shall use its best efforts to ensure the presence of the witness at the time and place of hearing.

(b) No subpoena shall be issued for any other individual unless the individual is listed on a properly served evidence list, pursuant to N.J.A.C. 1:10A-10.1, as a witness who will present live testimony and the judge has not sustained an objection to the witness' testimony.

SUBCHAPTER 12. MOTIONS

1:10A-12.1 Limitations on prehearing motions

Except for motions specifically permitted by this chapter and motions for emergent relief, a party may not file a motion in advance of the scheduled date of hearing.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:10A-13.1 Prehearing conferences

Except for good cause shown, prehearing conferences shall not be scheduled in any proceeding conducted under this chapter.

SUBCHAPTER 14. CONDUCT OF CASES

1:10A-14.1 De novo hearings

Hearings conducted pursuant to this chapter shall be de novo. The hearing shall not be "on the record" below, but shall be a plenary hearing at which evidence and testimony are presented.

1:10A-14.2 Closed hearings

(a) Because of the security which must be provided each hearing participant, all evidentiary hearings or any other proceedings conducted at an institution pursuant to this chapter will be conducted in closed session.

(b) Applications by any member of the public seeking permission to attend any hearing shall be made to the Commissioner of the Department of Corrections and shall not be made to the judge.

1:10A-14.3 Sealing the record

(a) The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of that part of any record wherein confidential testimony or evidence was presented.

(b) When sealing a portion of the record, the judge must specify the consequences of such an order to all confidential material in the case file including any evidence, the tapes and the initial decision. The judge shall also include what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceeding.

(c) No duplicate copy of any sealed material shall be permitted.

(d) That part of any record that has been sealed shall be safeguarded by the judge and/or Clerk until the Clerk, after the initial decision, can deliver the sealed material to an authorized representative of the Department.

1:10A-14.4 Verbatim record of proceedings; sound recording; requesting transcript

(a) All proceedings shall be recorded verbatim by sound recording.

(b) In any case in which a claim of confidentiality has been upheld, prior to the issuance of an initial decision, all requests for transcripts shall be made to the judge. The judge shall determine whether the individual requesting the transcript may receive a transcript of all or of any part of the tapes.

(c) Subsequent to the issuance of the initial decision and upon return of the case of the Department, all requests for transcripts must be directed to the Department.

1:10A-14.5 Failure to appear

(a) If the inmate refuses to appear at the hearing, the judge shall prepare an initial decision dismissing the appeal and affirming the sanction.

(b) If the institution is unable to proceed at the hearing, the judge shall prepare an initial decision dismissing the charges and penalty.

SUBCHAPTER 15. EVIDENCE

1:10A-15.1 Testimony of witnesses; confidentiality; non-contested facts

(a) Live testimony shall be presented by witnesses under oath.

(b) A party shall be permitted cross-examination of any witness testifying in person for whom a claim of confidentiality has not been upheld.

(c) Where a claim of confidentiality for a witness has been upheld, the testimony of that witness shall be taken in the presence of the judge, the party presenting the confidential witness, any necessary security personnel and, if permitted by the judge's order, the representative of the other party. No other party nor representatives of any other party, nor any person permitted by the Commissioner to attend under N.J.A.C. 1:10-14.2(b) may be present during this testimony.

1. The judge may schedule a time and date other than the scheduled hearing date for taking the testimony of a confidential witness and need not disclose this schedule to the other party or his or her representative.

2. If the confidential information presented at the hearing significantly varies from the summary presented, the judge shall determine how most appropriately to proceed in order to adequately safeguard the interests of the absent party.

(d) Where a claim of confidentiality for a document or physical evidence has been upheld, the party and/or representative of the party offering the evidence shall present the evidence to the judge in the presence of any necessary security personnel, and if permitted by the judge's order, the representative of the other party. No other persons may be present.

(e) Evidence to prove non-contested facts may be presented by affidavit or other writing and by written or oral stipulations.

(f) Any inmate testifying shall be accorded use immunity in subsequent criminal prosecutions to the extent that his or her statements shall not be used affirmatively against him or her. Such use immunity extends to evidence derived directly or indirectly from the prisoner's statement, but shall not prevent prosecution for perjury relating to the immunized statement.

SUBCHAPTER 16. THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. DECISION

1:10A-18.1 Findings based upon confidential informant

Each factual finding which is based upon confidential testimony shall be supported by evidence presented in the record from which it can reasonably be determined that the informant was credible or that the information presented was reliable. In addition, the informant's statement must be factual, rather than conclusory and be sufficiently specific to establish that the informant spoke with personal knowledge.

1:10A-18.2 Delivering the record to the Department

Within 10 days after the initial decision is filed with the Department, the Clerk shall deliver along with the record to the Department the audio tapes of the hearing.

SUBCHAPTER 19. THROUGH SUBCHAPTER 21. (RESERVED)

AGENCY NOTE: Chapter 10B was adopted separately on October 6, 1986 at 18 N.J.R. 2008(a). It is included in this adoption notice so that readers may refer to a complete version of the Special Hearing Rules. Chapter 10B became effective upon publication and is operative at this time.

**CHAPTER 10B
DIVISION OF MEDICAL ASSISTANCE AND HEALTH
SERVICES APPLICANT/RECIPIENT HEARINGS**

SUBCHAPTER 1. HEARING APPLICABILITY**1:10B-1.1 Applicability**

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of Medical Assistance and Health Services involving applicants for or recipients of Medicaid and Medically Needy benefits or services.

(b) This chapter shall not apply to matters involving providers.

(c) Any aspect of the hearing not covered by these rules of special applicability shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that this chapter is inconsistent with the U.A.P.R., this chapter shall apply.

SUBCHAPTER 2. DEFINITIONS**1:10B-2.1 Definitions**

For purposes of this chapter, the following definitions apply.

"Applicant" means any person who has made an application to become qualified to receive Medicaid or Medically Needy benefits.

"Recipient" means a New Jersey resident who has been determined to meet the applicable eligibility criteria for either the Medicaid or Medically Needy Programs and is determined to need medical care and services authorized under the New Jersey Medical Assistance and Health Services Act.

"Provider" means any person, public or private institution, agency or business concern approved by the Division of Medical Assistance and Health Services that is lawfully providing medical care, services, goods and supplies and holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

SUBCHAPTER 3. THROUGH SUBCHAPTER 4. (RESERVED)**SUBCHAPTER 5. REPRESENTATION****1:10B-5.1 Representation**

An applicant/recipient may appear at a proceeding or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-3.12.

SUBCHAPTER 6. THROUGH SUBCHAPTER 8. (RESERVED)**SUBCHAPTER 9. CLERK'S NOTICE; SCHEDULING OF HEARING****1:10B-9.1 Clerk's notice**

(a) The Clerk shall send a written notice of filing and hearing to each party at least 10 days before the scheduled hearing date.

(b) The notice shall indicate that the applicant/recipient may represent himself/herself or use of legal counsel, a relative, a friend or other spokesperson as per the Federal Fair Hearing Regulations at 42 C.F.R. 431.206(b)(3).

(c) The notice shall establish the hearing location, time and date.

1:10B-9.2 Scheduling of hearing

(a) The hearing shall be conducted at a reasonable time, date and place.

(b) Upon presentation of acceptable information regarding an applicant's/recipient's illness or infirmity which would prevent his or her appearance at a hearing shall be scheduled at the applicant's/recipient's current residence.

SUBCHAPTER 10. DISCOVERY**1:10B-10.1 Discovery**

(a) The county welfare agency or the Division of Medical Assistance and Health Services shall provide the applicant/recipient or his or her authorized representative an opportunity to review the entire case file and all documents and records to be used in the hearing. The review shall occur at a reasonable time before the hearing as well as during the hearing.

(b) If a party wants information other than what is provided in (a) above, the party must request permission from the judge. The judge may permit the additional discovery only if there is good cause. The judge may not delay the hearing to allow for additional discovery.

SUBCHAPTER 11. THROUGH SUBCHAPTER 13. (RESERVED)**SUBCHAPTER 14. CONDUCT OF CASES****1:10B-14.1 Attendance at hearing**

The applicant/recipient or a representative and the county welfare agency or the Division of Medical Assistance and Health Services and their representatives, if any, shall attend the hearing.

SUBCHAPTER 15. THROUGH SUBCHAPTER 17. (RESERVED)**SUBCHAPTER 18. DECISIONS****1:10B-18.1 Initial decision**

An initial decision shall be issued within 21 days from the date of the hearing.

1:10B-18.2 Exceptions

(a) If the parties wish to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Medical Assistance and Health Services, the OAL Clerk and to all parties.

(b) Exceptions must be received by the Division of Medical Assistance and Health Services no later than five business days after receipt of the initial decision.

(c) No replies and cross-exceptions shall be permitted.

1:10B-18.3 Written initial decisions

All initial decisions shall be issued in writing. Oral initial decisions are not permitted.

**CHAPTER 11
INSURANCE FILING HEARINGS**

SUBCHAPTER 1. APPLICABILITY**1:11-1.1 Applicability**

The rules contained in this chapter shall apply to the notice and hearing of contested case matters involving the determination of a filing (as defined by N.J.A.C. 11:1-2.6) submitted by an insurer or a rating organization. Any aspect of notice or hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. THROUGH SUBCHAPTER 14. (RESERVED)**SUBCHAPTER 15. EVIDENCE****1:11-15.1 Evidence**

(a) At least 10 days prior to the commencement of the hearing or 10 days prior to the date on which an expert witness is scheduled to testify, the parties shall exchange, and shall file with the judge, written testimony for each individual that the party intends to call as an expert witness. The written testimony shall include the name, address, title, credentials and area of expertise of the witness and the nature and substance of his or her testimony.

(b) At the same time that the written testimony is exchanged, the parties shall also exchange all supporting data, calculations, work sheets and similar materials used by the expert witness in developing the written testimony. This supporting data shall not be filed with the judge. If the data has been previously distributed to the parties, through discovery or otherwise, the data need not be exchanged at this time.

(c) All written testimony which meets the requirements of N.J.A.C. 1:1-15.1 et seq. shall be admissible. Parties may object to the admissibility of the written testimony at the evidentiary hearing. When the prefiled

testimony of a witness is admitted into evidence, the witness shall be made available and subject to cross-examination.

(d) Upon application of a party, the judge may exclude, in whole or in part, the testimony of a witness for failure to comply with the requirements of this section.

SUBCHAPTER 16. THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 12
(RESERVED)

CHAPTER 13
DIVISION OF MOTOR VEHICLES
EXCESSIVE POINTS AND SURCHARGE CASES

SUBCHAPTER 1. APPLICABILITY

1:13-1.1 Applicability

(a) The rules in this chapter shall apply to hearings arising from Division of Motor Vehicles (DMV) cases involving:

1. Disciplinary actions, other than license revocations, for accumulating excessive points, and

2. Proposed license suspensions for failure to pay a surcharge under the New Jersey Merit Rating Plan.

(b) Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. THROUGH SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE
TRANSMISSION TO THE OFFICE OF
ADMINISTRATIVE LAW

1:13-4.1 Agency conference; failure to reach settlement

(a) In a case dealing with excessive points or a surcharge, DMV shall attempt to settle the dispute through a conference with the licensee. In surcharge cases, agency conferences are conducted pursuant to N.J.A.C. 13:19-12.3 through 12.9.

(b) If settlement is not reached, the parties shall use the conference to prepare the issues and evidence for the hearing, including:

1. Ascertaining whether the licensee disputes any facts recorded on the licensee's record abstract issued by DMV, and, if so, which facts and on what basis;

2. Ascertaining whether the licensee disputes the severity of the action proposed by DMV, and, if so, on what basis;

3. Ascertaining any discovery needs of the licensee; and

4. Ascertaining in excessive points cases whether the licensee is entitled to a time credit and, if so, the length thereof.

(c) At or forthwith after the conference, DMV shall supply the licensee with any material requested pursuant to N.J.A.C. 1:13-10.1 (Discovery), or any other appropriate documents.

(d) If settlement is not reached, DMV shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-14.3(b) and (c).

SUBCHAPTER 5. THROUGH SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:13-10.1 Discovery

(a) Discovery shall be limited to the records of DMV with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. In surcharge cases, when the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of DMV which supports the contested entry.

(b) DMV shall supply the licensee with a copy of the records set forth in N.J.A.C. 1:13-10.1(a).

(c) The licensee may make any discovery request either as part of the licensee's request to DMV for a hearing or at any pretransmission conference conducted by DMV.

SUBCHAPTER 11. THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:13-14.1 Proceeding on the papers

DMV excessive points and surcharge cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:13-14.2 Certification

(a) The licensee may return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8.

(b) In excessive points cases, the licensee shall indicate in the certification whether he or she disputes the facts recorded on the licensee's driving abstract issued by DMV or disputes the severity of the sanction proposed by DMV, or both, or wants to raise any other relevant issues.

(c) In surcharge cases, the licensee shall explain in the certification why the surcharge is not required or inaccurately calculated.

1:13-14.3 In-person hearings; telephone hearings

(a) If an in-person or telephone hearing is held, as provided by N.J.A.C. 1:1-14.8, such proceeding will be a summary hearing without any personal appearance by a DMV representative.

(b) In excessive points cases, DMV's case will be based on the licensee's driving record, the prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

(c) In surcharge cases, DMV's case will be based on the documents in (b) above, and shall also include the surcharge bill and, if the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, documentary evidence in the possession of DMV which supports the contested entry.

SUBCHAPTER 15. THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTERS 14
THROUGH 19
(RESERVED)

CHAPTER 20
HEARINGS BEFORE THE PUBLIC EMPLOYMENT
RELATIONS APPEAL BOARD

SUBCHAPTER 1. APPLICABILITY

1:20-1.1 Applicability

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. DEFINITIONS

1:20-2.1 Definitions

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING

1:20-3.1 Commencement of proceeding before the Appeal Board

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

1:20-3.2 Who may commence a proceeding before the Appeal Board

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

SUBCHAPTER 4. THROUGH SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. PLEADINGS

1:20-6.1 Time for filing of petition; exhaustion of demand and return system

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

1:20-6.2 Time for filing answer

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

1:20-6.3 Contents of petition

(a) A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b) A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, 429 East State Street, Trenton, NJ 08608.

(c) The petition shall contain the following:

1. The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

2. The full name and address of the majority representative of the nonmember's collective negotiations unit;

3. The full name and address of the public employer of the nonmember filing the petition;

4. The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5. A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6. A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

1:20-6.4 Contents of answer

(a) An answer shall be in writing and signed by a representative of the respondent.

(b) An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

1:20-7.1 Filing of petition and copies

A petitioner shall file an original and four copies of the petition with the Appeal Board.

1:20-7.2 Service of petition upon majority representative

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

1:20-7.3 Petition to public employer

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer, normally posted. The copies of the petition shall remain posted for a period of 30 days.

1:20-7.4 Filing of answer and copies

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

1:20-7.5 Service of answer upon petition

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

SUBCHAPTER 8. TRANSMISSION OF CASES

1:20-8.1 Transmission of cases to the Office of Administrative Law

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

SUBCHAPTER 9. NOTICES

1:20-9.1 Notice of filing; employer posting

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

SUBCHAPTER 10 THROUGH SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:20-14.1 Nature of hearing

The hearing shall be a plenary de novo proceeding.

1:20-14.2 Burden of proof

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

SUBCHAPTER 15. EVIDENCE

1:20-15.1 Evidence of demand and return proceedings

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

SUBCHAPTER 16. THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. CONCLUSION OF HEARING

1:20-18.1 Oral argument on exceptions

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

1:20-18.2 Motion to reopen

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

SUBCHAPTER 19. THROUGH SUBCHAPTER 21. (RESERVED)

CHAPTER 21
TRADE SECRET CLAIMS

SUBCHAPTER 1. APPLICABILITY

1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim under the New Jersey Worker and Community Right To Know Act, N.J.S.A. 34:5A-1 et seq. and N.J.A.C. 7:1G-1 et seq. and N.J.A.C. 8:59-3 et seq. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTER 2. THROUGH SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE
OF ADMINISTRATIVE LAW

1:21-8.1 Transmission of cases; the trade secret documentation or information

Whether the case is transmitted to the Office of Administrative Law, under N.J.A.C. 1:1-8.2, by the Department of Environmental Protection or the Department of Health, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

1:21-8.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of DEP or DOH representatives.

(b) When needed, upon the judge's direction, the trade secret information or documentation shall be brought to the hearing by the responsible department representatives.

(c) The trade secret information or documentation shall not be placed in the Office of Administrative Law case file and may not be copied by any Office of Administrative Law personnel.

(d) The trade secret information shall not be communicated over telecommunication networks, including but not limited to: telephones, computers connected by modems, or electronic mail systems.

(e) The judge may, when necessary for the performance of his or her functions, disclose the trade secret information to his or her secretary.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:21-10.1 Discovery in trade secret cases

(a) When necessary to prevent the trade secret from being disclosed without authorization, the judge may order:

1. That the requested discovery not be had;
2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
5. That discovery be conducted with no one present except persons designated by the judge;
6. That a deposition after being sealed be opened only by order of the judge;
7. That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge; or
8. Any other device which reasonably balances the discovery goal of minimizing surprise at hearings with the need to protect the trade secret from an unauthorized disclosure.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:21-12.1 Written motions

Written motions shall be made directly to the judge without the necessity of filing with the Clerk.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF TRADE SECRET CASE

1:21-14.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(a) Court reporters will not be provided for trade secret hearings. A verbatim record will be maintained by sound recording.

(b) When not in use, all audio tapes and case files together with all evidence and other related case materials, including any transcripts, shall be locked in an Office of Administrative Law filing cabinet in a locked room, whether or not particular tapes, case files, evidence or related materials include secret testimony or argument. Access to the file cabinet shall be limited to judges and their secretaries. Access to the locked room shall be restricted to a person or persons designated by the Director in writing. A record of access to the file cabinet shall be maintained by the designated persons.

(c) No duplicates or copies of any portion of an audio tape containing secret information shall be permitted.

(d) Upon the request of a person who is authorized by the judge to receive a transcript, the judge's secretary shall prepare a transcript of that portion of the hearing dealing with the secret information. A transcribing firm may be authorized to prepare a transcript of that portion of the hearing not dealing with the secret information.

1:21-14.2 Sealing the record

(a) On the last day of the evidentiary hearing, the parties shall be given the opportunity to address the record sealing requirements of the case. The record shall be sealed by order attached to the initial decision in every trade secret case.

(b) In rendering a sealing order, the judge shall consider the extent of restriction necessary to safeguard the trade secret and shall determine in each such order:

1. That the Office of Administrative Law shall not maintain a duplicate case file after the initial decision has been provided to the parties and agency head; and
2. That all documents transmitted to the Office of Administrative Law together with all evidence received at the hearing and all audio tapes or transcripts, if any, shall be returned to the transmitting agency with the initial decision; and

3. That all requests for transcripts prior to the initial decision shall be directed to the judge and that all requests for transcripts after the initial decision shall be directed to the transmitting agency; and

4. Whether any portions of the audio tapes of the proceeding may not be transcribed or whether other means of safeguarding the trade secret can be utilized when preparing a transcript; and

5. The names of persons who are authorized to request a transcript; and

6. Whether the entire initial decision, transcript, audio tapes, evidence and other related case materials or any part thereof must be marked "CONFIDENTIAL" and distributed by hand or certified mail in a plain envelope addressed only to a person authorized to receive the secret information; and

7. Whether the initial decision or any part thereof may be made available to the public in any agency's library.

1:21-14.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. 1:1-14.1 and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

SUBCHAPTER 15. THROUGH SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISIONS; RETURNING THE CASE TO THE TRANSMITTING AGENCY

1:21-18.1 Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials

(a) Unless the judge otherwise directs in the record sealing order (see N.J.A.C. 1:21-14.2), the parties to the case and the transmitting agency or their designated representatives will be telephoned and asked to pick up the initial decision at the judge's chambers at the Office of Administrative Law. The indicated date of receipt by the agency head, as required by N.J.S.A. 52:14B-10(c), shall be the second day after the Office of Administrative Law telephones the transmitting agency.

(b) Unless the judge otherwise directs in the record sealing order, the transmitting agency will be telephoned and asked to pick up at the Office of Administrative Law the transcript, if any, audio tapes, evidence and other related case materials on the same date it is requested to pick up the initial decision.

(c) After returning the case to the transmitting agency, the Office of Administrative Law may maintain in the Clerk's file only the transmittal form, the notices of filing and hearing and the order sealing the record.

SUBCHAPTER 19. THROUGH SUBCHAPTER 21. (RESERVED)

EDUCATION

STATE BOARD OF EDUCATION

(a)

School Districts Pupil Records

Adopted Amendments: N.J.A.C. 6:3-2.1 through 2.8

Proposed: February 17, 1987 at 19 N.J.R. 333(a).

Adopted: April 10, 1987 by State Board of Education,
Saul Cooperman, Secretary.

Filed: April 10, 1987 as R.1987 d.209, with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:36-19, Public Law
94-142.

Effective Date: May 4, 1987.

Expiration Date: August 18, 1988.

Summary of Public Comments and Agency Responses:

The Department received five comment letters concerning the proposal. One letter was in support of the proposed regulation; two letters from the same individual expressed concern with language changes for the terms surrogate parents and student information directories and suggested that the terms be deleted; two others expressed concern with how

districts will handle pupil records which relate to students involved in substance use as well as the need to have more control and access to individual records being kept on students. This commenter suggested additional language should be added. Comments from the Department's Division of Special Education indicated that there is a need for additional language in the retention and destruction of pupil records (N.J.A.C. 6:3-2.8) section of the Code.

The responses of the Department of Education to these comments are as follows:

1. The Department disagreed with the comment concerning the definitions of surrogate parents and student information directories. These amendments should not be deleted because they are necessary for clarification and for assuring both quality of service and level of accountability that are in the public interest.

2. The Department disagreed that additional language in the areas of substance use and individually kept files was necessary because these points are already implicit in the law.

3. The Department agreed with the comment from the Division of Special Education. Additional language to reinforce certain points was added to the rule because these points were not readily implicit in the law.

Upon adoption, the Department has added the definitions of "adult pupil," "pupil" and "pupil record" to clarify the use of the terms in the rules. Also, at N.J.A.C. 6:3-2.8, the Department decided to retain the provisions of the current subsection (d) but recodified it to subsection (b) with changes.

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

SUBCHAPTER 2. PUPIL RECORDS

6:3-2.1 Definitions

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

"Access" means the right to view, to make notes, and/or have a reproduction of the pupil record made.

"Adult pupil" means a person who is or was enrolled in the public school and who is at least 18 years of age or an emancipated minor.

"Parent" means the natural parent(s) or legal guardians(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the pupil, as well as the natural parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C. 6:28-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil's educational rights.

"Pupil" means a person who is or was enrolled in a public school.

"Pupil record" means information related to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. A pupil record includes information which is maintained for the purpose of second party review and not information recorded by any certified school personnel solely as a memory aid, not for the use of a second party.

"Student information *[directories]* *directory*" means a publication of a district board of education which includes the following information relating to a pupil: the student's name, address, telephone number, grade level, date and place of birth, dates of attendance, major field of study, participation in officially recognized activities, weight and height relating to athletic team membership, degrees, awards, the most recent educational agency attended by the pupil and other similar information.

6:3-2.2 General considerations

(a) This subchapter applies to all district boards of education or private agencies which provide educational services by means of public funds. District boards of education shall include, but not be limited to, all county boards of special services school districts, county vocational boards of education, jointure commissions, educational services commissions, education programs operated by county residential facilities and State operated special education programs.

(b) Each district board of education shall have the responsibility to compile and maintain pupil records and to regulate access, disclosure or communication of information from educational records in a manner that ensure the security of such records in accordance with this subchapter.

(c) Pupil records shall contain only such information as is relevant to the education of the pupil and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents in the language of the parent.

(e) A nonadult pupil may assert rights of access only through his or her parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to nonadult pupils or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.

(f) The parent(s) shall either have access to or be specifically informed about only that portion of another pupil's record that contains information about his or her own child.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with State Board of Education regulations;

2. Assure security of the records;

3. Enumerate and describe the pupil records collected and maintained by the district board of education;

4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;

5. Allow for the designation, release and public notice of directory information as defined herein;

6. Accord educational, occupational and military recruiters access to school facilities and student information directories pursuant to N.J.S.A. 18A:36-19.1, provided that any adult pupil or parent may request in writing to the chief school administrator to be excused from participating in *all* recruitment programs or having their name appear in student information directories for *all* recruitment purposes.

7. Assure compliance with the limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-2.5; and

8. Provide for the access and security of pupil records maintained in a computerized system.

(h) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the educational relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records. Such information shall be destroyed and not be recorded elsewhere, nor shall a record of such deletion be made.

(j) No liability shall be attached to any member, officer or employee of any district board of education permitting access or furnishing pupil records in accordance with these rules and regulations.

(k) When the parents' dominant language is not English or the parent is deaf, the district board of education shall make every effort to:

1. Provide interpretation of the pupil record in the dominant language of the parent; or

2. Assist the parent(s) in securing an interpreter.

6:3-2.3 Mandated and permitted pupil records

(a) The district board of education shall not compile any other pupil records except mandated and permitted records as herein defined.

1. Mandated pupil records are those pupil records which the schools have been directed to compile by New Jersey statute, regulation or authorized administrative directive. Mandated pupil records shall include the following:

i. Personal data which identifies each pupil enrolled in the school district. These data shall include the pupil's name, address, date of birth, name of parent(s), citizenship and sex of the pupil. The district board of education is prohibited from recording the religious or political affiliation of the pupil and/or parent(s) unless requested to do so in writing by the parent or adult pupil. The district is also prohibited from labeling the pupil illegitimate.

ii. Record of daily attendance.

iii. Descriptions of pupil progress according to the system of pupil evaluation used in the district. Grade level or other program assignments shall also be recorded.

iv. History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified district employees.

v. Records pursuant to rules and regulations regarding the education of educationally handicapped pupils.

vi. All other records required by the State Board of Education.

2. Permitted pupil records are those which a district board of education has authorized by resolution adopted at a regular public meeting to be collected in order to promote the educational welfare of the pupil. The district board of education shall report annually at a public board meeting a description of the types of pupil records it has authorized certified school personnel to collect and maintain. The pupil records so authorized must also comply with this subchapter as to relevance and objectivity.

6:3-2.4 Maintenance and security of pupil records

(a) The chief school administrator or his or her designee shall be responsible for the security of pupil records maintained in the school district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

(c) When records are stored in a computerized system, computer programmed security blocks are required to protect against any security violations of the records stored therein. To guard against the loss of pupil records, school districts must maintain an updated duplicate copy of pupil records.

6:3-2.5 Access to pupil records

(a) Only authorized organizations, agencies or persons as defined herein shall have access to pupil records.

(b) The district board of education may charge a reasonable fee for reproduction, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-2, provided that the cost does not effectively prevent the parents from exercising their rights under this subchapter or under rules and regulations regarding educationally handicapped pupils.

(c) Authorized organizations, agencies and persons shall include only:

1. The parent(s) of a pupil under the age of 18 and the pupil who has the written permission of such parent(s);

2. Pupils at least 16 years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education;

3. The adult pupil and the pupil's parent(s) who have the written permission of such pupil, except that the parent(s) shall have access without consent of the pupil as long as the pupil is financially dependent on the parent(s) and enrolled in the public school system or if the pupil has been declared legally incompetent by a court of appropriate jurisdiction;

4. Certified school district personnel who has assigned educational responsibility for the pupil;

5. A district board of education, in order to fulfill its legal responsibilities as a board, has access through the chief school administrator or his or her designee to information contained in a pupil's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult pupil;

6. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those pupil files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed;

7. Accrediting organizations in order to carry out their accrediting functions;

8. The Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records;

9. Officials of other district boards of education within the State of New Jersey in which the pupil is placed, registered or intends to enroll, subject to the following conditions:

i. Mandated pupil records shall be forwarded to the receiving district with written notification to the parent(s) or adult pupil.

ii. Permitted records shall be forwarded to the receiving district only with the written consent of the parent or adult pupil except where a formal sending-receiving relationship exists between the school districts.

iii. All records to be forwarded shall be sent to the chief school administrator or his or her designee of the school to which the pupil has transferred within 10 days after the transfer has been verified by the requesting school district.

10. Officers and employees of a state agency who are responsible for protective and investigative services for pupils referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask such State agency for its cooperation in sharing the findings of the investigation;

11. Organizations, agencies and persons from outside the school if they have the written consent of the parent(s) or adult pupil, except that these organizations, agencies and persons shall not transfer pupil record information to a third party without the written consent of the parent(s) or adult pupil;

12. Organizations, agencies and individuals outside the school, other than those specified in this rule, upon the presentation of a court order;

13. Bona fide researchers who explain in writing the nature of the research project and the relevance of the records sought and who satisfy the chief school administrator or his or her designee that the records will be used under strict conditions of anonymity and confidentiality. Such assurance must be received in writing by the chief school administrator prior to the release of information to the researcher.

6:3-2.6 Conditions for access to pupil records

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a written request to review the record and the actual review of the record;

2. Authorized organizations, agencies and persons from outside the school whose access requires the consent of parents or adult pupils must submit their request in writing, together with any required authorization, to the chief school administrator or his or her designee;

3. The chief school administrator or his or her designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage or loss. In every instance of inspection of pupil records by persons other than parents, pupils or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the pupil record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, the records studied and the purposes for which the data will be used;

4. Unless otherwise judicially instructed, the district board of education shall, prior to the disclosure of any pupil records to organizations, agencies, or persons outside the school district pursuant to a court order, give the parent or adult pupil at least three days' notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed;

5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the chief school administrator in consultation with the professional staff is convinced that the disclosure would create a substantial risk of harm to the pupil or to a person with whom the record is concerned. When the chief school administrator is convinced that the risk is of such high degree, he or she shall notify the parent or adult pupil in writing within five days that access to the record has been denied and that the person has the right to appeal this decision to the Commissioner of Education. If an appeal is made, the commissioner shall designate a professional of the same discipline as the originator of the record to review the record and to recommend whether access should be granted. The commissioner shall make a determination within 30 days of the receipt of the request. Any decision made by the commissioner may be appealed to the State Board of Education.

6:3-2.7 Rights of appeal for parents and adult pupils

(a) (No change.)

(b) To appeal, a parent or adult pupil must notify the chief school administrator in writing of the specific issues relating to the pupil record. Within 10 days of notification, the chief school administrator or his or her designee shall meet with the parent or adult pupil to review the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult pupil may appeal this decision either to the district board of education or the Commissioner of Education within 10 days. If appeal

is made to the district board of education, a decision shall be rendered within 20 days. The decision of the district board of education may be appealed to the commissioner pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent shall be afforded a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the pupil record with copies made available to the parent or adult pupil.

(c) Appeals relating to the pupil records of educationally handicapped pupils shall be processed in accordance with the requirements of N.J.A.C. 6:28.

(d) Regardless of the outcome of any appeal, a parent or adult pupil shall be permitted to place a statement in the pupil record commenting upon the information in the pupil record or setting forth any reason for disagreement with the decision of the agency. Such statements shall be maintained as part of the pupil record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information must also be disclosed to that party.

6:3-2.8 Retention and destruction of pupil records

(a) A pupil record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq, while the student is enrolled in the school district.

(b) Mandated pupil records of currently enrolled pupils, other than that described in (c) below, may be destroyed after the information is no longer necessary to provide educational services to a pupil. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental permission have been unsuccessful.

[(d)]*(c) Upon graduation or permanent departure of a pupil from the school system:

1. The parent or adult pupil shall be notified in writing that a copy of the entire pupil record will be provided to them upon request.

2. Information in pupil records, other than that described in ***[(c) above]* *(e) below*** may be destroyed, but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental permission have been unsuccessful.

[(b)]*(d) No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult pupil.

[(c)]*(e) The New Jersey public school district of last enrollment shall be responsible for maintaining a pupil's records upon graduation or permanent departure of the pupil from the school district and shall keep in perpetuity a permanent record of a pupil's name, date of birth, sex, address, telephone number, grades, attendance record, classes attended, grade level completed, year completed, name(s) of parent(s) and citizenship status.

STATE BOARD OF EDUCATION

(a)

Business Services

Tuition for Private Schools for the Handicapped

Adopted Repeals: N.J.A.C. 6:20-4.1 and 4.3

Adopted New Rules: N.J.A.C. 6:20-4.1, 4.2, 4.9 and 4.10

Adopted Recodification and Amendment: N.J.A.C. 6:20-4.3

Adopted Amendments: N.J.A.C. 6:20-4.4, 4.5, 4.6, 4.7 and 4.8

Proposed: February 17, 1987 at 19 N.J.R. 336(a).

Adopted: April 10, 1987 by State Board of Education,

Saul Cooperman, Secretary.

Filed: April 10, 1987 as R.1987 d.210, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:46-21.

Effective Date: May 4, 1987.

Operative Date: July 1, 1987.

Expiration Date: August 9, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

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

SUBCHAPTER 4. TUITION FOR PRIVATE SCHOOLS FOR THE HANDICAPPED

6:20-4.1 Tuition rate procedures

(a) The term "actual cost per pupil" for determining the tuition rate(s) for a given year for a private school for the handicapped located in New Jersey, referred to in N.J.S.A. 18A:46-21, shall mean the cost per pupil in average daily enrollment certified by the commissioner, based upon the actual allowable costs for that year, as shown in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.

1. Allowable costs shall be based on a 10 month school program and a minimum of 180 days of pupil instruction between September 1 and June 30 and shall be reasonable and provided in accordance with the individualized education program of a handicapped pupil. A reasonable cost shall be a cost which is ordinary and necessary and does not exceed the cost which would be incurred by an ordinarily prudent person in the conduct of business.

2. "Average daily enrollment" for the purpose of determining the actual cost per pupil shall be the sum of the days present and absent of all public school pupils enrolled in the register(s) of the school divided by the number of days the private school for the handicapped was actually in session rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days. A pupil enrolled in a preschool program (10 hours per week of pupil instruction), a half-day program or enrolled in a full day program on a shared time basis shall not have a maximum average daily enrollment in excess of 0.5.

(b) Whenever possible, the actual amounts expended for each allowable cost item according to the prescribed bookkeeping and accounting system for each private school site, 10 month school year program or extended school year program shall be recorded and used in determining the actual cost per pupil.

(c) Whenever it is not possible to charge the actual amount expended for a particular allowable cost item for each private school site, 10 month school year program or extended school year program, the individual share of such expenditure for each site or program shall be determined on a pro rata basis in accordance with the following ratios or other acceptable method as approved by the commissioner;

1. Administration: Ratio of number of teachers, aides and assistants at each site or in each program to the total number of teachers, aides and assistants.

2. Instruction:

i. Salaries: Ratio of time spent at each site or in each program to the total time spent.

ii. Textbooks, school library and audio-visual materials, teaching supplies and other expenses for instruction: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

3. Attendance and health services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

4. Pupil transportation services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

5. Operation of plant: Ratio of square feet of floor space at each site or in each program to the total square feet of floor space used. Whenever floor space is shared by pupils in two or more sites or programs, the square footage for such floor space shall be prorated based upon the time such floor space is used by pupils at each site or in each program. Floor space used shall not include offices, boiler rooms, corridors or other rooms not used by pupils.

6. Maintenance of plant: Ratio of square feet of floor space at each site or in each program to the total square feet of floor space used.

7. Fixed charges: Rates of average daily enrollment at each site or in each program to the total average daily enrollment.

8. Food services: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

9. Student-body activities: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

10. Non-pupil transportation vehicles: Ratio of average daily enrollment at each site or in each program to the total average daily enrollment.

(d) A tentative tuition rate shall be established by written contractual agreement between the private school for the handicapped and the sending district board of education. The tentative tuition rate shall be an amount not in excess of the private school's estimated actual cost per pupil for the ensuing school year. The written contract shall be on a form prepared by the commissioner and shall be executed prior to the enrollment of a pupil.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the pupil was enrolled during the month for each month the pupil is enrolled. The per diem rate shall be determined by dividing the estimated actual cost per pupil for the school year by the estimated number of days school will be in session and rounding to the nearest two decimal places.

2. The contractual agreement for an extended school year program shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate which shall not exceed the per diem rate determined for the 10 month school program.

3. The contractual agreement shall require the sending district board of education to pay the private school for the handicapped on a mutually agreed upon date but not later than 60 days after receipt of the monthly tuition bill and attendance report.

(e) The Department of Education shall determine the estimated actual cost per pupil for each private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the private school for the handicapped shall submit to the sending district board of education a copy of the department's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1. The estimated actual cost per pupil calculation shall be based upon the audited actual cost per pupil for the school year prior to the current school year.

2. This calculation shall increase the audited actual cost per pupil by an amount equal to twice the percentage increase represented by dividing the State average net current expense budget per pupil for the current school year by the State average net current expense budget per pupil for the school year prior to the current school year.

3. The tentative tuition rate shall include:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6:20-4.5; and

ii. For non-profit schools, a working capital amount in accordance with N.J.A.C. 6:20-4.6.

(f) The Department of Education may approve a higher tentative tuition rate for any year in which the private school for the handicapped can prove to the satisfaction of the Department of Education that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year.

2. The request for a particular pupil shall be submitted prior to the provision of the extraordinary services which causes the request and shall be filed jointly by the private school for the handicapped, the pupils' parent(s) or guardian(s) and the district board of education or State agency that determined the placement is necessary.

3. The Department of Education shall respond to the higher tentative tuition rate request within 30 calendar days.

(g) The commissioner shall certify the actual cost per pupil and the per diem rate according to these rules.

(h) When the commissioner determines that the tentative tuition rate or per diem rate established by written contractual agreement is greater than the certified actual cost per pupil or per diem rate for the school year, the private school for the handicapped shall pay each district board of education the difference no later than June 30 of the school year in which the certified actual cost per pupil or per diem rate is received from the commissioner or not more than 30 days after an appeal on a certified amount is finally resolved.

(i) When the commissioner determines that the tentative tuition rate or per diem rate established by written contractual agreement is less than the actual cost per pupil or per diem rate for the school year, the private school for the handicapped may charge each sending district board of education all or part of the difference owed. The district board of educa-

tion shall pay the difference on a mutually agreed upon date but not later than the end of the second school year following the year for which the actual cost per pupil is certified.

(j) The commissioner shall prepare the contract and the form to establish the estimated actual cost per pupil and per diem rate for the ensuing school year.

6:20-4.2 New private schools for the handicapped

(a) For the first two years of operation of a private school for the handicapped which was first in operation after the 1985-86 school year, the estimated actual cost per pupil and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Department of Education for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the commissioner which shall provide for, but not be limited to, the following:

1. Identifying data;
2. Projected allowable cost items and the projected enrollments;
3. An income schedule for the budget year;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(b) If the Department of Education approves the estimated actual cost(s) per pupil, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per pupil for the first two years of operation.

(c) If, after each year of operation, the commissioner determines that the actual cost per pupil or per diem rate differs from the estimated cost per pupil or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of N.J.A.C. 6:20-4.1.

6:20-4.3 Bookkeeping and accounting

(a) An approved private school for the handicapped shall maintain accounting and bookkeeping systems as prescribed in a publication issued by the Department of Education in accordance with the following standards:

1. Accounts shall be kept in accordance with generally accepted accounting principles (G.A.A.P.) as defined by the American Institute of Certified Public Accountants, except as already modified in these rules.
2. Accrual accounting shall be used.
3. Fixed asset expenditures of \$1000.00 or more shall be capitalized and depreciated using the straight line method.
4. Asset, liability and fund balance accounts, as well as expenditure and revenue accounts, shall be maintained.
5. Non-profit organizations shall maintain financial records on a fund basis, and profit-making organizations shall maintain financial records on a modified fund basis.
6. A chart of accounts issued by the Department of Education shall be maintained by each private school for the handicapped. Each expenditure or revenue account utilized shall be reflected on the private school's general ledger. The private school shall be restricted to those account categories listed in the chart of accounts.

7. If multiple sites for a private school have been approved, financial information shall be segregated by site in the bookkeeping records. If both a 10 month school year program and extended school year program have been approved, financial information shall be segregated by program in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

- i. Cash receipts journal;
- ii. Cash disbursement journal;
- iii. General ledger;
- iv. Tuition ledger;
- v. Payroll journal;
- vi. Fixed asset inventory.

8. Documentation to verify postings shall be maintained. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements or any payment for which invoices or cash register receipts are not utilized.

9. A payroll shall be prepared and supported by the employee time record in a format prescribed by the Department of Education*, *[and]* signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

10. A financial report prescribed by the Department of Education shall be prepared at a minimum each quarter for the 10 month program and once at the end of the session for the extended school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

11. Good internal control practices shall be maintained which include the separation of duties such as the recording and authorizing of checks and purchases approvals.

12. A private school shall use the Department of Education contract for each pupil received from a local school district.

13. An imprest petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$500.00 and, except in the case of an emergency, no disbursement shall exceed \$50.00.

14. A student activity fund shall be approved by the governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.

15. An inventory of non-depreciable, non-consumable equipment and materials shall be maintained.

16. A mileage record shall be maintained for each school-owned or leased vehicle in a format prescribed by the Department of Education.

17. Upon request from the Department of Education, a profit-making private school shall provide a copy of the Internal Revenue Service (I.R.S.) corporate tax return to the Department of Education. A non-profit private school shall provide a copy of I.R.S. form 990.

18. A private school shall maintain all pertinent financial record(s) for a period of seven years.

19. A non-profit private school for the handicapped shall file a copy of its corporation dissolution papers with the Department of Education within 90 days of dissolution. Such papers shall include the total dollar amount transfer *[to]* *of* the working capital fund (public school placement restricted fund balance) and the name of the recipient non-profit corporation.

6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of the certified actual cost per pupil includes the following:

1. The cost of maintaining an administrative office in a private home or other residence;
2. Advertising cost(s) associated with public relations and lobbying, except for the printing of descriptive brochures;
3. The salary of a professional staff member who is not certified but is functioning in a position requiring certification;
4. The salary or fringe benefits of a staff member for time not expended and /or services not performed;
5. A salary or consultant fee paid to an individual functioning in a conflict of interest position;
6. A salary in excess of the highest salary paid in any school year to a certified or non-certified employee in a similar job title in a local school district in the same county that the private school for the handicapped is located. Part-time or split-time positions will be prorated;
7. A salary for a director of a private school in excess of the highest salary paid in any school year to a chief school administrator in a local school district in the same county that the private school for the handicapped is located;

8. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The commissioner shall determine whether the challenge is frivolous by considering at least the following factors:

- i. Overall merit of the claim;
- ii. Whether the challenge serves the public interest.

9. A consultant fee for professional services which does not include at least a detailed list of the nature of the professional services provided, the number of days worked, the charge per day and the product or outcome of the consultation. Professional services are services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which requires knowledge of an advanced type in a field of learning and is acquired by a prolonged, formalized course of specialized instruction and study;

10. Total contributions, donations, awards and scholarships in excess of \$750.00;

11. Depreciation unacceptable under federal tax law and regulation and depreciation on:

- i. Donated goods;

- ii. That which is not based on estimated straightline method;
- iii. A single item costing below \$500.00.
- 12. An investment expense;
- 13. Costs incurred for the entertainment of a school officer or employee for a non-school related activity or any related item such as meals, lodging, rentals, transportation and gratuities;
- 14. All personal expenses, such as a personal travel expense, holiday party or repair on a personal vehicle;
- 15. The cost of a fine or penalty which results from a violation of or failure by the school to comply with Federal, State and/or a local law or rule;
- 16. The cost for meals, unless the meals meet the nutritional requirements of the Child Nutrition Program;
- 17. Fringe benefits when the benefits are determined in an arbitrary or capricious manner rather than on a uniform established policy based on an equitable standard of distribution, such as years of service or education;
- 18. The cost of organized fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest which is done to raise capital or obtain a contribution;
- 19. Goodwill;
- 20. Interest costs on loans when:
 - i. Interest is in excess of the general prevailing rate at the time the loan was taken;
 - ii. The loan is a less-than-arm's length transaction which has not been previously approved by the department;
 - iii. The loan is not exclusively used to meet program needs.
- 21. Interest costs on long-term loans or mortgages when:
 - i. The loan is used for other than financing of fixed assets;
 - ii. The loan is not secured by the fixed asset being financed;
 - iii. The interest costs are on the portion of the loan term which exceeds the recovery period for depreciation of the fixed asset securing the loan.
- 22. A loan to an employee or officer of the corporation;
- 23. A loss incurred on the sale or exchange of fixed assets between related parties;
- 24. The write-off of uncollected accounts receivable (bad debts) before three years have elapsed and before a reasonable effort has been made to collect such accounts receivable;
- 25. An ordinary living expense for a pupil that is normally assumed by the parent of a pupil attending a public day school;
- 26. Pension costs which are not in conformance with the Employee Retirement Income Security Act of 1974 and its successor legislation;
- 27. A payment made to a school employee in lieu of a pension;
- 28. The cost associated with a professional conference and/or meeting held in countries not contiguous to the United States;
- 29. A payment or benefit to an employee in lieu of salary (bonus);
- 30. A profit or loss on an investment;
- 31. The cost of staff salary, a supply or printing and reproduction of a material for a research activity;
- 32. Payment of Federal, State and local income taxes on income other than tuition;
- 33. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
- 34. Transportation cost for a pupil to and from school;
- 35. Any costs associated with a school-owned or leased vehicle where a mileage log was not maintained;
- 36. Personal use of a school-owned or leased vehicle;
- 37. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
- 38. Rental costs for buildings and equipment when owned by a parent organization not separately incorporated;
- 39. Certain costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through *corporations*, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include:
 - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return

calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Department of Education, signed by the property owner and notarized;

ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense and maintenance costs) incurred by the sub-lessor. No profit, return on investment or windfall of any kind shall be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

iii. Cost of purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when such services are provided by the salaried employee of the private school acting as an employee or agent of the related party;

40. A cost found to be patently unreasonable.

6:20-4.5 Surcharge

For profit-making school(s), the school's* tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs.

6:20-4.6 Working capital fund

For non-profit schools, the school's tuition rate may include an amount which will permit the school to establish a working capital fund which is not in excess of 15 percent of the private school's allowable actual costs.

6:20-4.7 Calculation of pupil attendance

(a) Each private school for the handicapped shall maintain a public school register for recording pupil attendance in accordance with N.J.A.C. 6:20-1.3.

(b) Each private school for the handicapped shall submit the school summary register card (A-38) annually to the Department of Education by September 1 to verify the average daily enrollment for the previous school year.

6:20-4.8 Audit requirements

(a) Each approved private school for the handicapped shall annually submit to the commissioner by November 1, regardless of the fiscal year of the school, a certified audit from an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who shall hold an uncancelled registration license as a public school accountant for New Jersey based on the July 1 to June 30 school year.

(b) The audit shall follow audit standards and a format established and published by the Department of Education.

(c) The certified audit shall determine the actual tuition rate(s) at the end of the school year.

(d) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Department of Education shall be made as follows:

1. In the event the actual tuition rate is less than the estimated tuition rate, the approved private school for the handicapped shall pay each district board of education for such differences no later than June 30 of the school year in which the audit is received or no later than 30 days after an appeal on an audit is finally resolved;

2. In the event the actual tuition rate is more than the estimated tuition rate, a district board of education shall pay the approved private school for the handicapped the difference no later than the end of the second fiscal year following the audit year.

(e) If audit adjustments in excess of \$10.00 are necessary, such adjustments shall be made in the manner described in N.J.A.C. 6:20-4.1.

(f) Audits filed after the November 1 due date shall cause the estimated actual cost per pupil for the ensuing school year to be calculated based upon the audited actual cost per pupil for the school year two years prior to the current school year, and N.J.A.C. 6:20-4.1(f) shall not apply.

6:20-4.9 Appeals

(a) The decision of the Department of Education, pursuant to N.J.A.C. 6:20-4.1(f) and N.J.A.C. 6:20-4.2(b), may be appealed in accordance with N.J.S.A. 18A:6-9.

(b) The commissioner's certification may be appealed in accordance with N.J.S.A. 18A:6-27.

6:20-4.10 Out-of-state approved private schools for the handicapped

(a) The commissioner shall accept a tuition rate for an approved out-of-state private school for the handicapped provided the tuition rate has been approved by the state in which the private school for the handicapped is located.

1. By July 1 of each year, the approved private school for the handicapped shall submit verification of the approval of the tuition rate by the state in which the private school is located to the commissioner on forms prescribed by the Department of Education.

2. An annual independent audit shall be submitted to the Department of Education each year to support the approved rate. Any adjustment necessary as a result of the certified audit shall be made in accordance with the provisions of N.J.A.C. 6:20-4.1.

(b) Approved private schools for the handicapped located in states which do not approve a tuition rate shall comply with the provisions of N.J.A.C. 6:20-4.

(c) All approved private schools for the handicapped in which the actual New Jersey pupil enrollment exceeds or is expected to exceed 15 percent of the total school enrollment shall comply with the provisions of N.J.A.C. 6:20-4.

(d) A tuition rate(s) charged to a New Jersey district board of education shall not exceed the rate(s) charged to school districts of the state in which the private school for the handicapped is located.

(e) An approved private school for the handicapped located in another state shall have bookkeeping and accounting records available for inspection upon request by the Department of Education.

(f) Tuition rates for private schools located in other states shall be based on reasonable costs and shall only include the cost of educational services. Reasonable costs are costs which are ordinary and necessary and do not exceed the costs which would be incurred by an ordinarily prudent person in the conduct of business. Residential, medical costs and ordinary living expenses shall not be included in the tuition rate.

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(a)

Construction Grants and Loans for Wastewater Treatment Facilities

Pinelands Procedures and Requirements

Adopted New Rule: 7:22-6

Proposed: September 22, 1986 at 18 N.J.R. 1896(a).

Adopted: April 9, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: April 10, 1987 as R.1987 d.207, with substantive and technical changes not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3).

Authority: Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

DEP Docket No. 036-86-08.

Effective Date: May 4, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting N.J.A.C. 7:22-6 ("Subchapter 6") to prescribe the procedure to be followed by an applicant for a grant and/or a loan from the Pinelands Infrastructure Trust Fund established pursuant to the Pinelands Infrastructure Trust Bond Act of 1985, P.L. 1985, c.302. This rule was proposed on September 22, 1986 at 18 N.J.R. 1896(a).

A public hearing was held on October 6, 1986 to provide interested parties the opportunity to present testimony. The comment period closed on October 22, 1986.

COMMENT: Since the Pinelands Infrastructure Trust Bond Act of 1985 provided authorization for funds for potable water systems as well as for wastewater treatment, funds should be made available for this purpose.

RESPONSE: In view of the significant wastewater treatment needs already existing in the Pinelands area, as well as the desire to encourage growth in regional growth areas, a decision by the Pinelands Commission has been made to make the \$30 million approved in the Pinelands Infrastructure Trust Bond Act of 1985 available first for the construction of wastewater treatment facilities.

COMMENT: Since the Federal Priority System is not to be used, what process will be used to rank projects under the Pinelands program?

RESPONSE: The Pinelands Commission has completed the Pinelands Infrastructure Master Plan including a project inventory (a listing of potentially-fundable wastewater treatment projects) and the ranking criteria for their priority system from which the proposed priority list was generated. A public hearing on the proposed Pinelands Infrastructure Master Plan was conducted on January 6, 1987.

COMMENT: The priority system for the Pinelands' funding program should recognize the needs of municipalities required to meet advanced wastewater treatment levels.

RESPONSE: The Pinelands Commission has considered all wastewater treatment needs, including advanced treatment, in the development of the criteria for ranking projects that pursue funding under the Pinelands Infrastructure Trust program. The priority to be associated with advanced wastewater treatment projects, as well as other appropriate project ranking criteria such as cost-effectiveness, growth development potential, etc., have been thoroughly evaluated by Pinelands Commission staff and their consultants in this effort.

COMMENT: Would municipalities have to spend additional funds to fulfill the project report requirements rather than use various documents that have already been developed under the Federal grant program?

RESPONSE: The Department will accept a planning and/or design document that has been developed pursuant to the Federal grant program rather than requiring new documents to be developed.

COMMENT: Would an applicant have to comply with the requirements of the rules on debarred or suspended persons if it is only requesting funds for the construction of its project, and does not request an allowance for planning and/or design?

RESPONSE: The Department requires a statement as to whether the services of the debarred or suspended firms were used during the planning and/or design phase. If the answer is positive, and funds are being requested for construction of the project, the availability of moneys for the project will have to be determined on a case-by-case basis. For example, if the firm(s) involved provided the engineering for the design of the project, and questions as to technical completeness or appropriateness of the project arise, the Department may require additional actions before funds will be made available.

COMMENT: How would the ranking be determined to receive a grant/loan for planning and design since funds for these purposes are available through the Pinelands Infrastructure Trust Program?

RESPONSE: The availability of a planning and/or design grant will be determined on a case-by-case basis by the Pinelands Commission.

COMMENT: The rules should specifically indicate that the Pinelands grant/loan will only cover the engineering, administrative, legal costs, etc. (exclusive of low bid building costs) initially appearing on the grant application.

RESPONSE: The Department has carefully reviewed the applicable provisions of the rules and feels that this has already been satisfactorily addressed. Thus, no further clarification is necessary.

COMMENT: The Department should be obligated to notify the recipient of status changes on the State Treasurer's list.

RESPONSE: If a contractor has requested exemption from the debarment provision of this subchapter, the Department as well as the grant/loan recipient inherently have concern over the status of the contractor's request. It is neither the Department's nor the recipient's obligation to notify the other of the contractor's status change, but it is the contractor's obligation to so notify.

COMMENT: Numerous recommendations were made regarding minor language changes for clarification.

RESPONSE: The specific recommendations have been reviewed by the Department, and those with which the Department agrees have been included to better clarify the rules. These include minor changes to N.J.A.C. 7:22-6.6(a), 6.7(a), 6.8(b), 6.11(h), 6.24, and 6.29(e).

7:22-6.4 Definitions

COMMENT: Individual or communal septic systems should be specifically excluded under the definition of wastewater treatment facilities.

RESPONSE: Although the definition of wastewater treatment facilities has not been modified, N.J.A.C. 7:22-7, Determination of Allowable Costs for Pinelands Infrastructure Trust Financial Assistance, at N.J.A.C. 7:22-7.6, which made on-site systems eligible as proposed, is not being adopted to permit a reproposal making such systems ineligible.

COMMENT: Value engineering was defined but did not appear subsequently in the rules. If a value engineering is to be required, it is recommended that it only be required for projects with estimated construction costs of \$3 million or more exclusive of interceptors, force mains, etc. (that is, only pump stations, treatment processes and ultimate disposal methods should receive value engineering).

RESPONSE: Value engineering studies are not required for the Pinelands funding program and as such, the definition will be deleted from the rules.

7:22-6.9 Notice of project eligibility

COMMENT: Municipalities would not be able to submit a complete application within the 45 day time period required for a municipality's response to the Notice of Project Eligibility; a longer time period is necessary.

RESPONSE: Municipalities are required to reply within a 45 day period to the Notice of Project Eligibility as to whether or not they wish to pursue a grant/loan through the Pinelands Infrastructure Trust Fund. Complete plans and specifications are not required to be submitted within this 45 day period. The Notice of Project Eligibility will identify the period of time in which plans and specifications and a complete grant/loan application must be submitted in order to receive moneys from the Pinelands Infrastructure Trust Fund within a given time period.

COMMENT: A representative of the Pinelands Commission suggested that, pursuant to N.J.A.C. 7:22-6.9(c), if a project is bypassed because it is not ready to proceed, the Department should entertain a request to reserve the money for one year to let the municipality finish its planning and design.

RESPONSE: The water quality improvement goals of the Pinelands Commission are very important to the Department in the administration of this program. The Department anticipates working closely with the Pinelands Commission and decisions about whether or not to bypass a project or to wait until it is ready to proceed will be joint decisions.

COMMENT: Under N.J.A.C. 7:22-6.9(c), the length of time that a project will remain on the Pinelands Infrastructure Trust Funding List should be indicated if the project is bypassed.

RESPONSE: Until funding of the project has been awarded, projects are not removed from the Pinelands Funding List. Thus, it is not necessary to specify how long a project would remain on a funding list in the event that it is bypassed not being ready to proceed.

COMMENT: N.J.A.C. 7:22-6.9(d) should be clarified to indicate that a local government unit is required to proceed with a project if a grant/loan is accepted, not just if it is "pursuing" a grant/loan. In addition, an applicant should not be required to proceed with construction if it only received a grant/loan for planning and/or design.

RESPONSE: The Department has reviewed this issue and has deleted this section of the rules.

7:22-6.11 Application procedures

COMMENT: The application procedures should be expanded to require submission of comments or approvals from relevant State, local or Federal agencies (such as clearing house review) if the planning and design documents for the project were not already reviewed by these agencies.

RESPONSE: The Department agrees and has included this requirement at N.J.A.C. 7:22-6.11(d)21.

COMMENT: Must prior approval be received for awarding consulting engineering contracts if grant/loans are to be sought for planning or design work?

RESPONSE: If an allowance for planning and design is being sought under N.J.A.C. 7:22-7.12, approval from the Department is not required prior to the award of a planning or design contract with a consulting engineer. However, if the Pinelands Commission determines that a specific planning or design grant is warranted under N.J.A.C. 7:22-6.11(e), then those items identified in N.J.A.C. 7:22-6.11(f) and (g) for planning and design, respectively, must be submitted to the Department for review and approval prior to the award of the planning and/or design contract for which reimbursement is sought. This will ensure that the costs incurred under the contract are allocable to the project and eligible for grant funding. These provisions have been added at N.J.A.C. 7:22-6.11(f)(3) and (g)(6).

COMMENT: If a sewer use ordinance or user charge system (or similar item) was approved under the Federal Construction Grants Program, a copy of this letter should suffice for the Department's approval.

RESPONSE: If these documents have been recently approved under the Federal Construction Grants Programs, they will most likely be acceptable under the Pinelands Program. However, in certain cases portions of these items may be outdated and may necessitate modifications. Thus, the Department feels submittal of these documents for approval as a condition of a grant/loan award is appropriate. Municipalities are encouraged to provide copies of any letters of approval in conjunction with their application submittal.

7:22-6.17 Grant and loan conditions

COMMENT: The certification "that it has not and shall not enter into any contract with, nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting . . ." under N.J.A.C. 7:22-6.17(a)17 is inappropriate in that it mandates that recipients certify something in the future. In addition, the same type of certification requirement under n.J.A.C. 7:22-6.38 regarding debarred contractors, as well as in regard to discrimination and affirmative action under N.J.A.C. 7:22-6.17(a)20, should be revised to certify that "to the best of its knowledge" it will not enter into any of the prohibited type contracts.

RESPONSE: The Department has reviewed this comment and has not modified the applicable sections of the regulations as requested. It remains the responsibility of the local government unit to ensure that the requirements of the rules regarding contracting with debarred firms and affirmative action are met for projects receiving State grant/loan funds.

COMMENT: Assistance was requested to develop and proceed with an appropriate affirmative action plan, including receipt of a list of approved Minority Business Enterprise/Womens Business Enterprise firms ("MBE/WBE").

RESPONSE: Staff from the Department's Office of Equal Opportunity and Public Contract Assistance is available to provide assistance to develop an appropriate affirmative action plan. In addition, frequently updated lists of approved MBE/WBE firms are available from this office.

COMMENT: Were the goals for small businesses and for MBE/WBE participation in projects cumulative (i.e., a 30 percent total involvement) if a local higher goal for MBE participation exists?

RESPONSE: The rules identify that a 10 percent minimum (total) is required for socially and economically disadvantaged firms. If higher goals apply to projects within a region, then the local government unit is required to attempt to meet this goal to the best of its ability. The percentages are not, however, cumulative. Assistance is available from the Office of Equal Opportunity and Public Contract Assistance to municipalities to ensure that applicable requirements are met.

COMMENT: The public participation requirements must be indicated. In addition, must public participation and Small Business Enterprise/Minority Business Enterprise/Woman Business Enterprise ("SBE/MBE/WBE") requirements be met if the project is only being covered by an allowance?

RESPONSE: Specific requirements regarding public participation programs have not been established by the Department since the level of detail of a program would depend on the scope and impact of the particular project in question. However, conscientious project management by municipalities would dictate that a certain amount of public participation be solicited, particularly to ensure acceptability of the project as well as to provide notice that local user charges will be affected.

In response to the questions whether SBE/MBE/WBE requirements must be met if only an allowance is being offered for planning and design, it is the policy of the State to encourage participation by such parties to the extent possible. Thus, although not required for planning and design, municipalities will be encouraged to solicit involvement by SBE/MBE/WBE firms in order to ensure that the proper project goals are met and that the full allowance will be provided for the project.

COMMENT: A recipient cannot certify that a project or phase of a project can be initiated and completed in accordance with the time schedule specified in the Pinelands grant/loan required under N.J.A.C. 7:22-6.17(a)18, as many situations could cause the problem, including bid-related problems, severe weather conditions, etc.

RESPONSE: The Department has reviewed this provision and agrees that as stated, municipalities may not be able to provide the required certification. This section has been revised to require that the project has been initiated and completed in compliance with the grant/loan agreement or approved amendments thereto (as indicated under the grant/loan amendment section of the rules, any significant change in the time period associated with a project must be included under a grant/loan amendment).

COMMENT: If the insurance requirements of N.J.A.C. 7:22-6.17(a)19 are to be specified, they should be reasonable minimum limits for the Pinelands grant/loan.

RESPONSE: The Department intends to specify (in the grant/loan agreement) minimum limits for insurance requirements as dictated by State law.

7:22-6.21 Administrative loan changes

COMMENT: The Department's unilateral action to modify a disbursement schedule does, in fact, affect the substantive terms of a grant/loan unless there was a violation of the terms or conditions of a grant/loan.

RESPONSE: N.J.A.C. 7:22-6.21 provides for administrative changes that may be made by the Department. The intent of this section was to permit the Department to modify disbursement schedules to allow a certain amount of flexibility for progress payments to be made to municipalities if minor changes to the construction schedule occurs. This section of the rules has been modified to indicate that the Department is limited in its ability to adjust grant/loan disbursement from the estimated schedule included under the grant/loan agreement (within a 90 day period) without execution of a formal amendment.

7:22-6.28 Land acquisition

COMMENT: The acquisition of treatment plant sites and sewer line easements should not be eligible under N.J.A.C. 7:22-6.28.

RESPONSE: The Pinelands Commission felt that such costs should be allowable under their program and, as such, they have been included as an allowable project cost item.

7:22-6.29 Project initiation

COMMENT: It would be inappropriate to require the award of all elements of the wastewater treatment facilities within 12 months. Instead, a percentage (such as 80 percent) of the building contracts should be required to be awarded. In particular, equipment that will not be necessary until the facility is on-line should not be required to be purchased too early.

RESPONSE: As the goal is to require municipalities to initiate their projects with a minimum of delay, the provisions of the rules have not been revised. However, N.J.A.C. 7:22-6.29(e) already includes a provision that will allow an extension if specifically approved by the Department.

COMMENT: N.J.A.C. 7:22-7.4(b)4 is in conflict with N.J.A.C. 7:22-6.29(e).

RESPONSE: The necessary sections have been reviewed for consistency and 7:22-6.29(e) has been revised.

7:22-6.32 Preaward costs

COMMENT: A recipient should not be the first party to sign the grant/loan agreement and return it to the State for execution. Some activities, in order to be included as allowable costs, cannot commence until execution of the grant/loan agreement.

RESPONSE: The Department will provide approvals for preaward costs under the conditions noted in N.J.A.C. 7:22-6.32. (Note: Each of the requirements of this section would be met by a municipality that is in the process of executing a grant/loan agreement with the Department.) Thus, the local government unit would be able to proceed with its project during the short period that the grant/loan agreement is being executed and still maintain the eligibility of these costs.

7:22-6.37 Fraud and other unlawful or corrupt practice

COMMENT: N.J.A.C. 7:22-6.37(b) should be deleted from the proposed regulations since "the recipient should not be a policeman."

RESPONSE: The Department disagrees with this comment and the above-referenced section remains in the rules. N.J.A.C. 7:22-6.37(b) is included to ensure that recipients investigate any allegation or evidence of such illegality or corrupt practice and take appropriate remedial action either together with the proper enforcement agency or on its own.

7:22-6.38 Debarment

COMMENT: Explain the relevance of the recipient inserting the clause identified in N.J.A.C. 7:22-6.38(b).

RESPONSE: The recipient is required to insert this clause to alert contractors of the ramifications of non-compliance with N.J.A.C. 7:1-5.2 and to reflect the State's interest in the project.

COMMENT: It would be impossible for recipients to comply with N.J.A.C. 7:22-6.38(c), which requires that, prior to acceptance of Pinelands Infrastructure Trust funds, certification be made that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended or disqualified bidders.

RESPONSE: This certification is essential to ensure that public funds are not used to benefit those bidders who are guilty of wrongdoing(s). In reimbursement project cases, the contractor and subcontractors have already been awarded a contract and most likely have initiated construction prior to the acceptance of Pinelands Infrastructure Trust funds. In these cases, the required certification should easily be made.

7:22-6.39 Noncompliance

COMMENT: Rather than suspend work for non-compliance with the grant/loan conditions, the Department should seek judicial action against the recipient and/or the contractor.

RESPONSE: The Department, in order to properly manage the project, must have immediate remedies available to prevent non-compliance with the grant/loan conditions. Additionally, this option prevents con-

tinued misuse or the "tying-up" of State moneys (which could potentially be used for other projects) pending judicial outcomes.

COMMENT: The provisions for which a notice of non-compliance may be issued are too broad and thus opens up trivial violations to the notice of noncompliance procedure. They should only apply to significant violations.

RESPONSE: To ensure the proper use of public funds, the Department may issue a notice of non-compliance for any violation (whether significant or not) of the grant/loan conditions. As the Department is accountable to the public, it is essential that the recipient be held accountable by the Department in the administration of the project.

7:22-6.42 Stop-work orders

COMMENT: It is inappropriate for the Department to issue a stop-work order for violations of the grant/loan conditions by the recipient or terminate a grant/loan for "good cause."

RESPONSE: The Department recognizes that a stop-work order may be issued for violations which may have nothing to do with the contractor's construction. However, to prevent mismanagement of public funds, the Department must avail itself of these remedies to penalize recipients for improper actions.

7:22-6.43 Termination of grants or loans

COMMENT: The sections of the rules dealing with noncompliance, withholding of funds, stop-work orders and termination of grants or loans (N.J.A.C. 7:22-6.39 through 6.43) give such power to the Department that the right and obligation of the recipient to administer its own construction contract is totally abrogated. A particular objection was in regard to N.J.A.C. 7:22-6.32, Notice of Noncompliance, which indicates that the Department may withhold disbursement(s) or issue a stop-work order without the prior issuance of a notice pursuant to that section.

RESPONSE: The various sections that have been referenced are important controls that the Department may use in overseeing the project. These controls may be implemented in the event that significant project inadequacies warrant the Department's actions. While the vast majority of projects are constructed without initiation of any of these provisions, their inclusion in the rules is necessary in order to allow the Department to take immediate action where necessary. The Department has included a provision in N.J.A.C. 7:22-6.43 to allow for a withholding of funds or the issuance of a stop-work order without first issuing a notice of noncompliance in order to enable the Department to address, without significant delay, project deficiencies (that is, where repeated violations have occurred, the local government unit has failed to take action, or similar situations).

In the event that a municipality feels that the Department has acted inappropriately, the rules also include provisions for administrative hearings and resolution of such issues. Thus, municipalities have a mechanism to resolve situations in which it feels the Department has acted improperly.

COMMENT: It is too onerous to be able to lose a loan or grant solely due to receipt of payments for unallowable costs or costs that may be subsequently determined to be unallowable.

RESPONSE: The Department must prevent the use of these funds for improper purposes (that is, for unallowable costs). It is recognized that grant/loan moneys will have been received prior to an audit (which may uncover unallowable costs which were previously funded). The Department will use its discretion in deciding whether to terminate a grant/loan for minor discrepancies in the interpretation of the allowable cost criteria.

COMMENT: The recipient should give the Department notice of its intent to partially or completely terminate the project work prior to the actual termination.

RESPONSE: This provision has been included in the rules at N.J.A.C. 7:22-4.3(b)(1).

7:22-6.45 Administrative hearing

COMMENT: The Department cannot unilaterally terminate a grant/loan without due process. Additionally, "an opportunity for consultation" does not qualify as due process.

RESPONSE: N.J.A.C. 7:22-6.45, Administrative Hearings provides the recipient with due process pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:22-6.44 Rescission of Pinelands grants or loans

COMMENT: What is the difference between rescission and termination of grants or loans?

RESPONSE: Termination of a grant or a loan would indicate that no further payments will be made to the recipient. Rescission of a grant would indicate that the Department intends to recover all of the grant

funds paid to the recipient. As a loan cannot be rescinded, the necessary changes have been made to N.J.A.C. 7:22-6.44.

"Certified mail," "economically disadvantaged individuals," "socially disadvantaged individuals" and "substantial alteration" have been added to the definitions.

N.J.A.C. 7:22-6.6(d) and 7:22-6.24 have been amended by the Department to ensure the allowability of construction costs incurred prior to the execution of a formal loan agreement.

N.J.A.C. 7:22-6.7(a) has been clarified and the public hearing requirement for the Trust Funding List has been changed to a hearing on the Pinelands Infrastructure Master Plan, which includes the Trust Funding List.

N.J.A.C. 7:22-6.8(a), Pinelands Infrastructure Trust State and Federal funding, is not being adopted. The Department is preparing a reproposal of this subsection substantively different from the original proposal and is, therefore, reserving this subsection in the adoption.

N.J.A.C. 7:22-6.17(a)15 and 16 have been deleted and reserved, and amended, respectively, upon adoption to permit the Department to consider whether the cited Environmental Guidelines, Construction Requirements and Technical Requirements were regulatory in nature and, if so, to be promulgated as rules.

N.J.A.C. 7:22-6.17(a)20 has been amended to include a citation to applicable anti-discrimination rules.

N.J.A.C. 7:22-6.17(a)21 has been changed pursuant to advice from the Attorney General to require not less than 10 percent of the total amount of all contracts for construction, materials or services for a project to be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals. The proposal had required 10 percent of "the amount of any contract" to be so awarded. N.J.A.C. 7:22-6.17(a)22, 23 and 24 have been added to further this compliance and clarify the anti-discrimination requirements.

N.J.A.C. 7:22-6.26 has been added to permit Pinelands moneys to be used to cover allowable cost overruns up to the grant or loan amount adjusted due to the low bid building cost.

N.J.A.C. 7:22-6.32, Preaward costs, was changed for clarification purposes, as "costs" cannot be performed, and to make this section consistent with the Trust and Fund rules. Section (a)iv was added to reflect the applicability of the New Jersey Wastewater Treatment Privatization Act, N.J.S.A. 58:27-1 et seq.

N.J.A.C. 7:22-6.38(b) has been amended to more properly express the intent of the Department to be reflected in the required contractual debarment clause.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 6. PINELANDS INFRASTRUCTURE TRUST FUND PROCEDURES AND REQUIREMENTS FOR THE CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

7:22-6.1 Scope

This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection governing the disposition of appropriations pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302) or other moneys appropriated to the Pinelands Infrastructure Trust Fund, for the purposes of awarding financial assistance to local government units through the issuance of Pinelands grants or loans for the planning, design, and construction of wastewater treatment facilities. These rules prescribe the procedures to be followed by the applicant and the Department respectively, in the application for grants and loans from the Pinelands Infrastructure Trust as well as the administration of these funds, including accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for the construction of wastewater treatment facilities.

7:22-6.2 Construction of rules

This subchapter shall be construed so as to permit the Department and the Pinelands Commission to discharge its statutory functions and to effectuate the purposes of the law.

7:22-6.3 Purpose

(a) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302);
2. To establish policies and procedures for the distribution of funds appropriated pursuant to the Pinelands Infrastructure Trust Bond Act of 1985 and other moneys appropriated to the Pinelands Infrastructure

Trust Fund, for the purposes of providing financial assistance to local government units through the issuance of Pinelands grants and loans for the costs of planning and design, in accordance with N.J.A.C. 7:22-6.11(e), (f), and (g), and construction of wastewater treatment facilities necessary to accommodate development in the regional growth areas as defined in the comprehensive management plan;

3. To protect the public and the State by insuring that Pinelands Infrastructure Trust funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of Pinelands Infrastructure Trust funds is consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of Pinelands Infrastructure Trust funds;

6. To establish accounting procedures for the administration of Pinelands Infrastructure Trust funds;

7. To establish Pineland loan repayment requirements for projects receiving loans; and

8. To establish standards for the construction of wastewater treatment facilities.

7:22-6.4 Definitions

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

"Allowable costs" means those costs that are: eligible, reasonable, necessary, and allocable to the project; permitted by generally accepted accounting principles; and approved by the Department in the Pinelands grant or loan agreement. Allowable costs shall be determined on a project specific basis in accordance with N.J.A.C. 7:22-7.1 through 7.11.

"Allowance" means *[a loan amount]* ***an eligible project cost*** for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-7.12, and awarded in conjunction with the Pinelands Fund ***grant or*** loan to build the project.

"Applicant" means any local government unit that applies for a Pinelands grant or loan pursuant to the provisions of these rules and regulations.

"Assistant Director" means the Assistant Director, Construction Grants Administration Element, Division of Water Resources, New Jersey Department of Environmental Protection.

"Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

"Bonds" means the bonds authorized to be issued, or issued, under the Pinelands Infrastructure Trust Bond Act.

"Building cost" means the cost for the acquisition, erection, alteration, remodeling, improvement or extension of wastewater treatment facilities. This definition excludes administration, legal, fiscal and engineering costs associated with the planning and design of the project.

"Certified mail" means any means of delivery where proof of receipt is obtained and date of receipt is recorded.

"Collection system" means the common lateral sewers, which are primarily installed to receive wastewaters directly from individual systems or from private property and which include service "Y" connections designed for connection with those facilities when owned, operated and maintained by or on behalf of the local government. Included in this definition are crossover sewers connecting more than one property on one side of a major street, road or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned, operated and maintained by the local government unit. This definition excludes other facilities which convey wastewater from individual structures from private property to the lateral sewer or its equivalent.

"Commission" means the New Jersey Commission on Capital Budgeting and Planning.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.

"Comprehensive management plan" means the plan for the protection of the Pinelands area adopted pursuant to N.J.S.A. 13:18A-8.

"Construction" includes, but is not limited to, the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary for the construction of wastewater treatment facilities; the acquisition of land (including sewer right-of-ways); the erection, building, alteration, remodeling, improve-

ment, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

"Department" means the New Jersey Department of Environmental Protection.

"Director" means the Director of the Division of Water Resources of the Department of Environmental Protection.

"Discharge Allocation Certificate" (DAC) means the certificate issued by the Department which designates the quantity and quality of pollutants which may be discharged by any person planning to undertake any activity which shall result in a discharge to surface water or a substantial modification in a discharge to surface water pursuant to the New Jersey Pollutant Discharge Elimination System (N.J.P.D.E.S.), N.J.A.C. 7:14A-1.1 et seq.

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.

"Economically disadvantaged individuals" as defined in 15 U.S.C. 637(a)(6) means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged individuals.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1251 et. al.), and any amendments or supplements thereto.

"Final building cost" means the total actual allowable cost of the final work in place for the project, in accordance with the scope as defined in the Pinelands grant or loan agreement.

"Force account work" means the use of the recipient's own employees or equipment for construction, construction related activities, or for repair or improvements to a facility.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street washwaters, or drainage. Inflow does not include, and is distinguished from, infiltration.

"Initiation of operation" means the date specified by the recipient in the Pinelands grant or loan agreement on which use of the project begins for the purposes that is was planned, designed and built.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, or any other political subdivision of the State authorized to construct and/or operate wastewater treatment facilities.

"Low bid building cost" means the total actual allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

"Pinelands Bond Act" means the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

"Pinelands Area" means the area so designated by N.J.S.A. 13:18A-11a.

"Pinelands Commission" means the commission created pursuant to N.J.S.A. 13:18A-4.

"Pinelands Fund" or "Pinelands Infrastructure Trust Fund" means the Pinelands Infrastructure Trust Fund established pursuant to the Pinelands Bond Act.

"Pinelands grant" or "Pinelands Infrastructure Trust Fund grant" means a grant from the Pinelands Infrastructure Trust Fund for the allowable costs of a project.

"Pinelands grant agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Pinelands Infrastructure Master Plan" means an infrastructure needs report prepared by the New Jersey Pinelands Commission which includes a capital projects inventory within regional growth areas, assessment of projects, establishment of a priority ranking system for projects, and a final ranking of Pinelands Infrastructure projects.

"Pinelands Infrastructure Trust Funding List" means the mechanism by which projects are ranked and a subsequent funding list developed by the Pinelands Commission through the Pinelands Infrastructure Master Plan.

"Pinelands loan" or "Pinelands Infrastructure Trust Fund Loan" means a loan from the Pinelands Infrastructure Trust Pinelands Fund" for the allowable costs of a project.

"Pinelands loan agreement" means the legal instrument executed between the State of New Jersey and the local government unit for the construction of wastewater treatment facilities.

"Project" means the defined services for the construction of specified operable facilities as approved by the Department in the Pinelands grant or loan agreement.

"Recipient" means any local government unit which has received a Pinelands grant or loan pursuant to this subchapter.

"Regional growth area" means an area designated in the comprehensive management plan as a receiving area for Pinelands Commission development credits to accommodate regional growth.

"Scope of work" means the detailed description of the extent of services required to construct the wastewater treatment facilities.

"Socially disadvantaged individuals" as defined in 15 U.S.C. 637(a)(5) means those individuals who have been subjected to racial and ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. 15 U.S.C. 637(d)(3) presumes that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities.

"Substantial alteration" means any change which results in an alteration of the project costs or a change of 90 days or more in the project schedule.

["Value engineering" means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.]

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, septage, stormwater runoff, or any combination thereof, or other residue discharged or collected into a sewer system or stormwater runoff system or any combination thereof.

"Wastewater treatment facilities" includes, but is not limited to, any equipment, plants, structures, machinery, apparatus, or land that shall be an integral part of the treatment process or used for the ultimate disposal of residues resulting from such treatment, or any combination thereof, acquired, used, constructed or operated by or on behalf of a local government unit for the storage, collection, reduction, recycling, reclamation, disposal, separation or other treatment of wastewater, wastewater sludges, septage or industrial wastes, including but not limited to, pumping and ventilating stations, treatment systems, plants and works, connections, extensions, outfall sewers, combined sewer overflow, intercepting sewers, trunklines, sewage collection systems, and other equipment, personal property and appurtenances necessary thereto.

"Water Quality Management Plans" means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act (33 U.S.C. 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

7:22-6.5 Pinelands Infrastructure Trust Fund

(a) The proceeds from the sale of bonds issued pursuant to section 5.a of the Pinelands Act shall be paid to the State Treasurer and held thereby in a separate ***interest bearing*** account specifically dedicated to making grants and low interest loans to local government units for financing the cost of the construction of wastewater treatment facilities.

(b) The moneys in the Pinelands Fund are specifically dedicated and have been appropriated for the purposes identified in N.J.A.C. 7:22-6.3 of this subchapter; however, no moneys shall be expended from the Pinelands Fund for those purposes without the specific appropriation thereof by the Legislature.

(c) Payments of principal and interest on loans awarded from the Pinelands Fund shall be made to the Pinelands Fund.

7:22-6.6 Terms of grants and loans from the Pinelands Infrastructure Trust Fund

(a) The Pinelands Fund may offer grants and loans for up to 100 percent of allowable project costs for the acquisition, construction, improvement, expansion, repair or rehabilitation of all or part of any structure, facility, or equipment necessary for or ancillary to any wastewater treatment ***[system]* *facilities*** and may offer a range of options regarding the term, interest rate and level of loan funding.

(b) The total term of the loans shall be generally 20 years. The interest rate shall not exceed 50 percent of the Bond Buyer Municipal Bond Index for bonds available for purchase during the last 26 weeks preceding the

date of the execution of the loan agreement by the Department. Repayments shall begin no later than one month after the date of the initiation of operation or final inspection of the wastewater treatment facilities, or four years from date of loan award, whichever occurs first or as indicated in the Pinelands loan agreement. Thereafter, loan repayments shall be made in accordance with the repayment schedule indicated in the ***Pinelands*** loan agreement. Principal and accrued interest ***with respect to a particular Pinelands loan*** may, however, be prepaid in accordance with the provisions of the relevant Pinelands loan agreement.

(c) Local government units shall secure all Pinelands loans in a manner acceptable to the Department. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, service/deficiency agreement(s) with government units with general taxing power, municipal bond insurance, surety bonds and other arrangements acceptable to the Department.

(d) Pinelands grant and loan proceeds will be disbursed to recipients at intervals as work progresses and expenses are incurred and approved. ***Pinelands grant or loan disbursements shall be made as indicated in the Pinelands grant or loan agreement where the grant or loan is awarded on a retroactive basis for reimbursement of prior expenditures.***

(e) The specific terms and conditions of the grant or loan shall be incorporated in the Pinelands grant or loan agreement to be executed by the recipient and the State.

7:22-6.7 Criteria for project funding priority

(a) ***[Each year, the] *The* Division shall *[develop]* *utilize* a Pinelands Infrastructure Trust Funding List which shall be the same as the priority list of projects contained within the Pinelands Infrastructure Master Plan *developed by the Pinelands Commission*. The Pinelands Infrastructure *[Trust Funding List]* *Master Plan* shall be the subject of ***at least one*** public ***[hearings]* *hearing*** held by the ***[Division]* *Pinelands Commission*** including a public comment period. Local government units are only eligible for Pinelands Infrastructure Trust funding if they are on the priority list and are ranked by the Pinelands Infrastructure Master Plan. Eligible projects ***[shall be]* placed on the Pinelands Infrastructure Trust *[funding]* *Funding* List ***shall be eligible to receive a Notice of Project Eligibility*** in accordance with N.J.A.C. 7:22-6.8. The following must be submitted by the authorized representative of the local government unit to ***[confirm]* *be considered for*** ranking on the Pinelands Infrastructure Trust Funding List:****

1. Brief description of the project including category of need (that is, secondary treatment, advanced treatment, collection system) and any significant change in scope of work from that contained in the Pinelands Infrastructure Master Plan;

2. Brief description of existing and anticipated water quality deficiencies; and

3. Estimated costs associated with building ***[and]* *the*** project, excluding planning and design except as provided in 7:22-6.11(e), (f), and (g). Significant changes in estimated costs shall be outlined.

(b) Any significant change in estimated costs or scope of work from that contained in the Pinelands Infrastructure Master Plan may result in deferral or rejection of a project.

(c) All information shall be submitted to:

***[Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
Division of Water Resources
N.J. Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]*
*The Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064***

with copies to:

***[The Pinelands Commission
P.O. Box 7
New Lisbon, New Jersey 08064]*
*Bureau Chief
Bureau of Design and Technical Services
Construction Grants Administration Element
Division of Water Resources
N.J. Department of Environmental Protection
CN-029
Trenton, New Jersey 08625***

7:22-6.8 Pinelands Infrastructure Trust State and federal funding

(a) ***[Local government units receiving funding through a federal grant shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for the construction of the same step work (planning, design or building). However, in no case shall the total of funding assistance under a federal grant, State matching assistant pursuant to N.J.A.C. 7:22-2.1 et seq., and assistance from the Pinelands Fund exceed the total eligible project costs. Further, local government units receiving funding through a loan from the Wastewater Treatment Fund pursuant to N.J.A.C. 7:22-3.1 et seq. and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-4.1 et seq. shall also be eligible to receive financial assistance from the Pinelands Infrastructure Trust Fund for construction of the same wastewater treatment facilities; however, in no case shall the total of funding assistance under the Wastewater Treatment Fund, the New Jersey Wastewater Treatment Trust and Pinelands Infrastructure Trust Fund funds exceed the total eligible project costs.]* ***(Reserved)*****

(b) ***[Each year those]* *Those*** local government units whose projects are ranked within the fundable range of the Pinelands Infrastructure Trust Funding List shall receive a Notice of Project Eligibility in accordance with N.J.A.C. 7:22-6.9. The Department ***as directed by the Pinelands Commission*** reserves the right to send a Notice of Project Eligibility to the next highest ranked local government unit(s) for contingency project(s) should the project(s) within the fundable range not proceed as planned.

7:22-6.9 Notice of project eligibility

(a) The Department shall send a Notice of Project Eligibility by certified mail to those local government units whose projects rank high enough on the Pinelands Infrastructure Trust Funding List to receive funds. The Department ***as directed by the Pinelands Commission*** reserves the right to send a Notice of Project Eligibility to the next highest ranked project(s) outside the fundable range to act as contingency project(s) should the project(s) within the fundable range not proceed as planned. This notice shall not constitute an obligation to provide Pinelands Infrastructure Trust funding for the project. The Notice of Project Eligibility ***[shall]* *may*** not be sent to any local government unit who is in current default on any State loan. **However,*** unless the Department determines that repayment of the defaulted loan will be received ***[.]* *, a Pinelands grant or loan agreement will not be executed between the Department and the local government unit.***

(b) Local government units receiving a Notice of Project Eligibility shall notify the Department within 45 days of receipt as to their intent to proceed with the project and shall submit to the Department a complete application in conformance with N.J.A.C. 7:22-6.11 within the time period specified in the Notice of Project Eligibility. Failure of the local government unit to respond to the Notice of Project Eligibility within 45 days shall be interpreted as a decision by the local government unit to not apply for Pinelands Infrastructure Trust funding ***at this time*** and ***[shall]* *may*** result in that project being bypassed on the Pinelands Infrastructure Trust Funding ***[list]* *List***. Failure to submit the complete application within the time period specified in the Notice of Project Eligibility shall result in the Department's disapproval of the local government unit's loan application unless the Department, at its discretion approves, for good cause, an extension to this period.

(c) Written notice of a bypass or disapproval action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project shall be bypassed on the Pinelands Infrastructure Trust Funding List which may allow the next highest ranked contingency project to be within the fundable range on the Pinelands Infrastructure Trust funding list. A bypassed or disapproved project shall remain on the funding list and its priority shall remain the same.

[(d) Applicants pursuing a Pinelands Infrastructure Trust Grant or loan shall be obligated to proceed with the project.]

7:22-6.10 Pre-application procedures

(a) Local government units are urged to be familiar with the requirements of this subchapter and to contact the Department early in the planning process so that their projects are in a position to proceed at time of Notice of Project Eligibility.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for a Pinelands grant or loan. During the conference the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625

7:22-6.11 Application procedures

(a) Each application for Pinelands Infrastructure Trust funds shall be submitted to the Department in conformance with the time period specified in the Notice of Project Eligibility or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that an applicant is required to furnish.

(b) Submissions which do not substantially comply with this subchapter shall not be processed further and shall be returned to the applicant.

(c) Processing of a Pinelands grant or loan application generally requires 60 calendar days after receipt of a complete application by the Division.

(d) The following shall be submitted when applying for a Pinelands Infrastructure Trust funding for the construction of the wastewater treatment facilities:

1. An application for Pinelands Infrastructure Trust funding pursuant to this subchapter for construction of wastewater treatment facilities. Each application shall constitute an offer to accept the requirement of this subchapter and, upon execution of the agreement by the State and the applicant, acceptance of the terms and conditions of the Pinelands grant or loan agreement;

2. A resolution passed by the local government unit authorizing the filing of an application for Pinelands Infrastructure Trust Funding specifying the individual authorized to sign the Pinelands grant or loan application on behalf of the local government unit. If two or more local government units are involved in the project a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Statement of assurances (CGA Form LP-4);

4. Assurance of compliance with the civil rights requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) (CGA Form LP-5);

5. Project Report/Facilities Plan including evidence of compliance with the appropriate Water Quality Management Plans and Environmental Assessment Guidelines;

6. Sewer System Evaluation Survey (for Rehabilitation projects only);

7. Department approvable plans, specifications and technical design report;

8. A description of the public participation process to date;

9. A statement indicating small, minority and women's business enterprise participation during planning and design;

10. Project cost breakdown;

11. Projected cash flow schedule;

12. Projected construction schedule. Should the anticipated date of the initiation of operation occur after July 1, 1988, a court-sanctioned order specifying a compliance schedule shall be required where applicable;

13. Department-approvable sewer use ordinance and user charge system;

14. Certificate (legal opinion) from counsel as to title or mechanism to obtain title necessary for project sites and easements;

15. A certification that required permits and approvals, if applicable for building and constructing the wastewater treatment facilities, were received from the following agencies:

i. Monitoring and Planning Element within the Division;

ii. Water Quality Management Element within the Division;

iii. Water Supply and Watershed Management Element within the Division;

iv. Division of Environmental Quality within the Department;

v. Division of Waste Management within the Department;

vi. Division of Fish and Game within the Department;

vii. Division of Coastal Resources within the Department;

viii. Office of Equal Opportunity and Public Contract Assistance within the Department;

ix. Office of New Jersey Heritage within the Division of Parks and Forestry;

x. New Jersey Department of Community Affairs;

xi. U.S. Army Corps of Engineers;

xii. New Jersey Pinelands Commission;

xiii. Delaware River Basin Commission;

xiv. Local Soil Conservation District Office;

16. A statement from the applicant indicating that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kick-back, collusion or conflicts of interest relating to or in connection with the planning and design of the project;

17. A statement from the applicant which indicates if it used the services of a person for planning or design of the project whose name appears on the State Treasurer's list of debarments, suspensions and voluntary exclusions;

18. Executed intermunicipal agreements, if required;

19. Draft engineering agreements for building services;

20. A description of how the applicant plans to repay the Pinelands loan, if applicable, and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the Pinelands loan that shall guarantee that at the time of the signing of the Pinelands loan agreement it shall be irrevocably committed to repay the Pinelands loan and pay any other expenses necessary to fully complete, implement, operate and maintain the project. The description shall include: pro forma projections of the applicant's financial operations during the construction period of the project and five years thereafter; a summary of the sources and uses of all funds anticipated to be used for the project to be financed by the Pinelands Fund loan; and a statement of the assumptions used in creating these projections. Applicants shall secure all loans in a manner acceptable to the State pledging to provide funds to repay the debt, even if the Pinelands loan is terminated pursuant to N.J.A.C. 7:22-6.43. Acceptable security arrangements include but are not limited to general obligation bonds of the local government unit, municipal bond insurance, and service/deficiency agreement(s) with government units with general taxing power and surety bonds.

21. Comments or approvals from relevant State, local, and Federal agencies.

[21.]*22. Such other information as the Department may require.

(e) Certain planning and design projects shall be permitted under the Pinelands Infrastructure Trust Bond Act. These projects shall be approved subject to a determination of need as determined by the New Jersey Pinelands Commission. This determination of need may be based on but is not necessarily limited to groundwater contamination, surface water contamination, the potential use of Pinelands Development Credits in Regional Growth Areas, community financial and budget restraints, or overall development pressures. Any agency receiving a planning grant or loan moneys must agree, as a grant or loan provision, to abide by and follow the findings of the Planning Study with regard to recommendations for infrastructure construction.

(f) The following shall be submitted when applying for Pinelands Infrastructure Trust funding for the planning of wastewater treatment facilities:

1. A plan of study representing:

i. The proposed planning area;

ii. An identification of the entity or entities that will be conducting the planning;

iii. The nature and scope of the proposed project including a schedule for the completion of certain tasks;

iv. An itemized description of the estimated costs for the project; and

v. Any significant public comments received.

2. Comments or approvals of relevant State, local and Federal agencies.

3. Draft engineering agreements and related cost documentation.

(g) The following shall be submitted when applying for Pinelands Infrastructure Trust Funding for the design of wastewater treatment facilities:

1. A project report (including the environmental assessment) in accordance with Department guidelines;

2. Adequate information regarding availability of proposed site(s), if relevant;

3. Comments or approvals of relevant State, local and Federal agencies;

4. Proposed intermunicipal agreements necessary for the construction and operation of the proposed wastewater treatment for any facilities serving two or more municipalities and facilities; and

5. A schedule for initiation and completion of the project including milestones.

6. Draft engineering agreements and related cost documentation.

(h) Applicants ***[are advised that]*** ***shall obtain*** all necessary federal, State and local permits and approvals ***[must be obtained]*** prior to the

award of a Pinelands grant or loan unless prior approval for an extension for one or more specific permits has been granted by the Division that does not significantly affect the grant or loan award. ***Excluded from prior acquisition are permits and approvals which are impractical to obtain prior to the loan award (such as, road opening permit and blasting permit).***

(i) All applications shall be sent to:

Assistant Director
Construction Grants Administration Element
Division of Water Resources
New Jersey Department of Environmental Protection
401 East State Street
CN-029
Trenton, New Jersey 08625

7:22-6.12 Use and disclosure of information

All applications and other submissions, when received by the Department, constitute public records. The Department shall make them available to persons who request their release to the extent required by New Jersey and/or Federal law.

7:22-6.13 Evaluation of application

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

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Pinelands Infrastructure Master Plan;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Division shall either approve the application or make the determination that the awarding of Pinelands Infrastructure Trust funds shall be deferred. An approval by the Division shall only be issued after certification by the Pinelands Commission that the master plan and zoning ordinance of the municipalities and the Master Plan of the County wherein the project is to take place is in conformance with the Comprehensive Management Plan.

(c) The Division shall promptly notify applicants in writing of any deferral action, indicating the reasons for the deferral and a time frame for the resolution of any outstanding issues. A deferral action shall result in one of the following:

1. An approval of the application if the outstanding issues are addressed to the satisfaction of the Division within the specified time frame; or

2. A disapproval of the application if the outstanding issues are not addressed to the satisfaction of the Division within the specified time frame.

(d) The Department shall promptly notify applicants in writing of any disapproval. A disapproval of an application shall not preclude its reconsideration if resubmitted by the applicant. However, reconsideration of a revised Pinelands application and/or processing of a Pinelands grant or loan agreement for the project within the current fiscal year may be bypassed, precluding funding of the project until a future fiscal year. Affected applicants shall be notified in writing of such action. As a result of a disapproval and project bypass action, the next ranked project on the Pinelands Infrastructure Trust Funding List may fall within the fundable range.

7:22-6.14 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete its full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-6.15 Pinelands Infrastructure Trust Fund grant and loan agreements

(a) The Department shall prepare and transmit the Pinelands Infrastructure Trust Fund grant or loan agreement to the applicant.

1. The applicant shall execute the Pinelands grant or loan agreement and return it within 45 calendar days after receipt. The Department may, at its discretion, extend the time for execution. The Pinelands grant or loan agreement shall be signed by a person authorized by resolution to obligate the applicant to the terms and conditions of the Pinelands grant or loan agreement being executed. The authorizing resolution shall also be submitted at this time.

2. The Pinelands grant or loan agreement shall set forth the terms and conditions of the Pinelands grant or loan, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The Pinelands grant or loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

4. The Pinelands grant or loan agreement shall not be executed by the State if the applicant is in current default on any State loan.

5. After the State has completed its internal processing of the Pinelands grant or loan agreement, the Department shall transmit a copy of the executed Pinelands grant or loan agreement to the recipient.

7:22-6.16 Effect of grant and loan awards

(a) At the time of execution of the Pinelands grant or loan agreement by the Department and the recipient, the grant or loan shall become effective and shall constitute an obligation of the Pinelands Infrastructure Trust Fund in the amount and for the purposes stated in the Pinelands grant or loan agreement.

(b) The award of funds shall not commit or obligate the Department to award any continuation funds to cover cost overruns of the project. Cost overruns for any project or portion thereof shall be the sole responsibility of the recipient.

(c) The award of funds by the State shall not be used as a defense by the applicant to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1. The recipient shall comply with the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.);

2. The recipient shall certify that it is, and shall assure that its contractors and subcontractors are, maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions;

3. The recipient shall comply with the Department's standards of conduct. (N.J.A.C. 7:22-5.1 et seq.);

4. The recipient shall comply with the requirements of the N.J.P.D.E.S. permit pursuant to N.J.A.C. 7:14A-1 et seq.;

5. The recipient shall adopt a sewer use ordinance consistent with the requirements of the Department;

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. 403;

7. The recipient shall comply with all applicable requirements of federal, State and local laws;

8. The recipient shall pay the unallowable costs of the construction of the project;

9. The Pinelands grant or loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project objectives or Department requirements. The recipient shall comply with any special conditions which the Department requires in the agreement or any amendment thereto;

10. The recipient shall retain sufficient qualified operating and management personnel including a qualified chief operating officer or executive director, from the time of completion of construction or initiation of operation, whichever is earlier, until such time as the operation of the facility is discontinued;

11. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of federal, State and local laws, ordinances, rules and regulations and to contract specifications and requirements;

12. No Pinelands grant or loan moneys shall be disbursed to a local government unit who is in current default on any State loan. In order to facilitate full or partial payment of such defaulted loan obligation the Department may, at its discretion, make a Pinelands grant or loan disbursement where it determines that the local government unit will repay the defaulted loan obligation and associated penalties. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such defaulted loan;

13. An amount of any Pinelands grant or loan disbursement equal to fifty percent of any unpaid portion of a State assessed penalty pursuant to N.J.A.C. 7:14-8.1 et seq., Assessment of Civil Administrative Penalties, shall be held in escrow until said penalty is paid in full;

14. The Department may assess penalties to late loan repayments as appropriate as specified in the Pinelands grants or loan agreements;

15. *The recipient shall comply with the following guidelines of the Department: "Environmental Guidelines for the Planning, Design, and Construction of Wastewater Treatment Facilities" and "Construction Requirements for the Construction of Sewerage Facilities" which can be obtained from the Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625.]* ***(Reserved)***

16. The recipient shall have an operations maintenance manual developed*.* [in accordance with the Department's "Technical Design Report Requirements" which can be obtained from the Assistant Director at the address listed in paragraph (a)15.]*

17. The recipient shall certify that it has not and shall not enter into any contract with, nor has any subcontract been or shall be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of project work;

18. The recipient shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the Pinelands grant*[s]* or loan agreement ***or approved amendments thereto***;

19. The recipient must submit proof that it and its contractors and subcontractors shall comply with all insurance requirements of the Pinelands grants or loan agreement and that it shall be able to certify that the insurance is in full force and effect and that the premiums have been paid;

20. The recipient shall certify that it and its contractors and their subcontractors shall comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules and regulations promulgated pursuant thereto ***including, but not limited to, N.J.A.C. 17:27-1 et seq.***;

21. The recipient shall establish an affirmative action program for the hiring of minority workers in the performance of any construction contract for that project and to establish a program to provide opportunities for socially and economically disadvantaged contractors and vendors to supply materials and services for the contract, consistent with the provisions of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.). Not less than 10 percent of the amount of any contract for construction, materials or services for a project should be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in sections 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and (d)), and any regulations promulgated pursuant thereto; and

22. The recipient shall designate an officer or employee, who may be an existing officer or employee, to serve as its public agency compliance officer, pursuant to N.J.A.C. 17:27-3.5;

23. The recipient shall submit its affirmative action program, the name of its designated compliance officer, and its procurement plan for implementing (a)21 above with its application;

24. Not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in section 637(a) and 637(d) of the Small Business Act (15 U.S.C. 637(a) and 637(d)) of the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has MBE/WBE goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals shall take precedence over State goals. Procedures to be followed in implementing this paragraph shall be found in the Local Public Contracts Law, N.J.S.A. 40A:11-41 et seq., and in guidelines to be published by the Department to assist recipients in complying with statutory and regulatory reporting requirements; and

[22.]*25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any construction contract for that project, in accordance with the rate determined by the Commissioner of Labor pursuant to N.J.S.A. 34:11-56.25 et seq.

(b) The recipient shall certify that it is in compliance with all other requirements and conditions of the Pinelands grants or loan agreement.

(c) The Department may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Pinelands Bond Act.

7:22-6.18 Administration and performance of funds

The recipient bears primary responsibility for the administration and success of the project, including any subagreements made by the recipient for accomplishing funding objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that Pinelands grant and loan moneys be used in conformance with these rules and the grant or loan agreements to achieve grant or loan objectives and to insure that the purposes set forth in the Pinelands Bond Act are fully executed.

7:22-6.19 Project changes and grant or loan modifications

(a) A Pinelands grant or loan modification means any written alteration of the grant or loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) There shall be no Pinelands grant or loan modification increasing the funding amount beyond adjustments to cover the low bid building costs. Adjustments due to the low bid building costs will be made only after a subsequent passage of a legislative appropriations act containing the specific project of concern. All other increased costs shall be the responsibility of the recipient.

(c) The recipient shall promptly notify the Assistant Director, Construction Grants Administration Element, Division of Water Resources in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant or loan modification, including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of the project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof; and
6. Changes which may increase or substantially decrease the total cost of a project;

(d) If the Department decides a formal Pinelands grant or loan amendment is necessary, the recipient shall be notified and a formal Pinelands grant or loan amendment shall be processed in accordance with N.J.A.C. 7:22-6.20. If the Department decides a formal Pinelands grant or loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-6.21 or 6.22, as applicable.

7:22-6.20 Formal grant or loan amendments

(a) The Department shall require a formal Pinelands grant or loan amendment to change principal provisions of a Pinelands grant or loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof, or substantially alter the objective or scope of the project.

(b) The State and recipient shall effect a formal Pinelands grant or loan amendment only by a written amendment to the Pinelands grant or loan agreement executed by the State and the recipient.

7:22-6.21 Administrative grant or loan changes

Administrative changes by the Department, such as a change in the designation of a key Department personnel or of the office to which a report is to be transmitted by the recipient, or a *[change in]* ***non-substantial alteration of*** the disbursement schedule for Pinelands grants or loans for construction of wastewater treatment facilities, constitute changes to the Pinelands grant or loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-6.22 Other changes

All other project changes, which do not require formal Pinelands grant or loan amendment, as stated in N.J.A.C. 7:22-6.20, shall be undertaken only upon written approval of the Assistant Director, Construction Grants Administration Element.

7:22-6.23 Access

(a) The recipient and its contractors and subcontractors shall provide to Pinelands Commission personnel, Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Department such documents and information as requested by the Department.

(c) The recipient, and all contractors and subcontractors which contract directly with the recipient or receive a portion of State moneys, may be subject to a financial audit.

(d) Records shall be retained and available to the Department until the final loan repayment has been made by the recipient.

7:22-6.24 State disbursement

Disbursement of Pinelands grants and loan moneys shall be made at intervals as work progresses and expenses are incurred ***and approved***, but in no event shall disbursement exceed the allowable costs which have been incurred at that time. No disbursement shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. ***Should the recipient be receiving Pinelands grant or loan moneys for expenditure incurred prior to the award of the Pinelands grant or loan, the disbursement schedule shall be as indicated in the Pinelands grant or loan agreement.***

7:22-6.25 Assignment

The right of a recipient to receive disbursements from the State under a Pinelands grant or loan may not be assigned, nor may repayments due under a Pinelands loan be similarly encumbered.

7:22-6.26 Unused funds

Where the total amount disbursed under a grant or loan due to the low bid building cost is less than the initial Pinelands grant or loan award, and/or where the total amount disbursed under a Pinelands grant or loan due to the final building cost is less than the low bid building cost, the Pinelands grant or loan agreement shall be adjusted and the difference shall be retained in the Pinelands Infrastructure Trust Fund to be re-allocated pursuant to subsequent legislative appropriations acts to other wastewater treatment facilities projects. ***However, where allowable cost overruns occur, Pinelands moneys may be used to cover these cost overruns up to the grant or loan amount adjusted due to the low bid building cost.***

7:22-6.27 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State grant and/or loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Pinelands Commission shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, the amount of financial assistance from the Pinelands Infrastructure Trust Fund, and other information as required by the Division.

7:22-6.28 Land acquisition

The acquisition of land (including sewer right-of-ways) shall be eligible for Pinelands Infrastructure Trust Funding in accordance with N.J.A.C. 7:22-7.7

7:22-6.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the Pinelands grant or loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this subchapter.

(b) The recipient shall not advertise any contract for the building of the wastewater treatment facilities until authorization to advertise said contract has been granted by the Department.

(c) Once bids for building the wastewater treatment facilities are received, the recipient shall not award the subagreement(s) until authorization to award has been given by the Department.

(d) The recipient and the contractor to whom the subagreement(s) has been awarded shall attend a preconstruction conference with Department personnel prior to the issuance of a notice to proceed.

(e) The recipient shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all ***significant*** elements of the wastewater treatment facilities ***[within twelve]* *no later than 12* months *of]* *after* the grant or loan award, unless a specific extension has been approved by the Department.**

(f) Failure to promptly award all subagreement(s) for building the project shall result in a limitation on allowable costs in accordance with N.J.A.C. 7:22-7.4(b)4.

7:22-6.30 Project performance

(a) Within 30 days of the actual date of initiation of operation of the wastewater treatment facilities the recipient shall, in writing, notify the Assistant Director.

(b) For the wastewater treatment process portion of the project, on the date one year after the initiation of operation, the recipient shall certify to the Assistant Director the performance record of the project. If the Department or the recipient concludes that the project does not meet the wastewater treatment facilities' performance standards as specified in the Pinelands loan agreement, the recipient shall submit the following:

1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

3. The scheduled date for certifying to the Assistant Director that the project is meeting the specified performance standards.

(c) The recipient shall take corrective action necessary to bring a project into compliance with the specified performance standards at its own expense.

(d) Nothing in this section:

1. Prohibits a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any part performing project work; or

2. Affects the Department's right to take remedial action, including enforcement, against a recipient that fails to carry out its obligations.

7:22-6.31 Allowable project costs

(a) Project costs shall be determined allowable to the extent permitted by 7:22-7.1 through 7.11.

(b) Notwithstanding (a) above, the Department shall not participate in costs for work that the Department determines is not in compliance with specifications or requirements of project contracts or Pinelands grant or loan agreement. Costs for work not in compliance with the contracts or agreement unallowable.

7:22-6.32 Preaward costs

(a) The Department shall not award grant or loan assistance for ***[planning, design or building]* costs *incurred for building*** performed prior to the award of the funds for the project, except:

1. For ***building*** costs, otherwise eligible for funding, incurred within one year prior to grant or loan award ***[has]* *that have*** met the following conditions:

i. The local government unit has submitted items three through twenty of N.J.A.C. 7:22-6.11(d) to the Department prior to the advertisement of any contract for which cost reimbursement is being sought;

ii. The local government unit has not advertised any contract, for which cost reimbursement is being sought, without the authorization to advertise the contracts being given by the Department; and

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department^{[.]*}; or*

iv. The local government unit has complied with i above and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. In emergencies or instances where delay could result in significant cost increases or significant environmental impairment, the Assistant Director, Construction Grants Administration Element, may approve preliminary building activities (such as procurement of major equipment requiring long lead times, minor sewer rehabilitation, acquisition of allowable land or advance building of minor portions of wastewater treatment facilities). However, advance approval shall not be given until after the Department reviews and approves an environmental assessment and any specific documents necessary to adequately evaluate the proposed action.

(b) If the Assistant Director approves preliminary building activities, such approval is not an actual or implied commitment of Pinelands Infrastructure Trust funds and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act for the project in concern.

(c) Any procurement is subject to the requirements of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.).

7:22-6.33 Force account work

(a) A recipient must secure the Assistant Director's prior written approval for use of force account work for construction, construction-related activities or for repairs or improvements to a facility where costs shall exceed \$25,000.

(b) The recipient shall demonstrate that:

1. The work can be accomplished cost effectively by the use of force account; or

2. Emergency circumstances necessitate its use.

7:22-6.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are ineligible for reimbursement from the Pinelands Fund unless Pinelands Commission approval for separate planning and design costs has been obtained. However, an allowance to assist in defraying the planning and design costs shall be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-7.12.

7:22-6.35 Infiltration/inflow

(a) This section stipulates the requirements for proposed sewer system rehabilitation projects only.

(b) The applicant shall demonstrate to the Assistant Director's satisfaction that the project area is subject to excessive infiltration/inflow and that an adequate rehabilitation plan has been developed. For combined sewer overflow projects, inflow is not considered excessive in any event.

(c) If the rainfall induced peak inflow rate results in chronic operational problems or system surcharging during storm events or the rainfall induced total flow rate exceeds 275 gallons per capita per day during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and shall propose a rehabilitation program to eliminate the excessive inflow.

(d) If the applicant can demonstrate that any specific portion of its sewer system is subject to excessive infiltration of 120 gallons per capita per day or more during periods of high groundwater, the applicant shall perform a cost effectiveness analysis and propose a sewer system rehabilitation program to eliminate the excessive infiltration.

7:22-6.36 Reserve capacity

[(a)] The Department shall limit the recipient's Pinelands grant or loan assistance to the cost of the project *[designed for a 20 year reserve capacity for wastewater treatment plants and pumping stations and a 40 year reserve capacity for collection systems and interceptor projects]* ***based on the ultimate buildout capacity as defined by the Pinelands Commission***. Design shall be based on up to 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day, whichever is less, for systems built after the effective date of these regulations.

7:22-6.37 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer funds, acquire property pursuant to the award documents, and award contracts and subcontracts pursuant to those funds free from bribery, graft, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection, and cooperation in the prosecution of any such conduct. The State shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall immediately notify the Assistant Director, Construction Grants Administration Element, when such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any related matter.

7:22-6.38 Debarment

(a) No recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting *[with the]* ***on any project financially assisted by the* State *[and the]* *or the* Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.**

(c) The recipient, prior to acceptance of Pinelands Infrastructure Trust funds, shall certify that no contractor or subcontractor is included on the State Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a State agency in addition to that of the Depart-

ment of Environmental Protection. If Pinelands Infrastructure Trust funds are used for disbursement to a debarred firm, the Department reserves the right to immediately terminate (N.J.A.C. 7:22-6.43) the Pinelands loan and/or take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the recipient may take into account the loss of Pinelands Infrastructure Trust funds under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive and responsible bidder pursuant to law and the recipient may advise prospective bidders that these procedures shall be followed.

(e) Any person included on the State Treasurer's list as a result of action by a State agency, who is or may become a bidder on any contract which is or shall be funded by a Pinelands grant or loan under this subchapter, may present information to the Department why this section should not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-6.39 Noncompliance

(a) In addition to any other remedies as may be provided by law, or in the Pinelands grant or loan agreement, in the event of noncompliance with any grant or loan condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-6.40;

2. Withhold Pinelands Infrastructure Trust funds pursuant to N.J.A.C. 7:22-6.41;

3. Order suspension of project work pursuant to N.J.A.C. 7:22-6.42;

4. Terminate or rescind the Pinelands grant or loan funds pursuant to N.J.A.C. 7:22-6.43 or N.J.A.C. 7:22-6.44; and/or

5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.).

7:22-6.40 Notice of noncompliance

Where the Department determines that the recipient is in non-compliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Department may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor fails to take corrective action or if the action taken is inadequate, then the Department may issue a stop-work order or withhold disbursement. The Department may, however, withhold disbursement or issue a stop-work order pursuant to N.J.A.C. 7:22-6.41 and 6.42 without issuing a notice pursuant to this section.

7:22-6.41 Withholding of funds

The Department may withhold, upon written notice to the recipient, a Pinelands grant or loan disbursement or any portion thereof where it determines that a recipient has failed to comply with any grant or loan condition, provision of this subchapter, or contract specification or requirement.

7:22-6.42 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the recipient or noncompliance with the terms and conditions of the Pinelands grant or loan. The Department shall limit the use of stop-work orders to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the recipient an opportunity to discuss the stop-work order with Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;

2. A clear description of the work to be suspended;

3. Instructions as to the issuance of further orders by the recipient for materials or services;

4. Guidance as to action being taken on subagreements;

5. Other suggestions to the recipient for minimizing costs.

(c) The Department may, by written order to the recipient (certified mail, return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop-work order, in full or in part;
- ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-6.43; or
- iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the loan period, and/or the project, and the Pinelands grant or loan agreement shall be modified if necessary. However, additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-6.43 Termination of grants or loans

(a) Termination of Pinelands grants or loans by the Department shall be conducted as follows:

1. The Department may terminate a Pinelands grant or loan in whole or in part for good cause. The term "good cause" shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the grant or loan agreement;
- ii. Default by the recipient;
- iii. A determination that the Pinelands grant or loan was obtained by fraud;
- iv. Without good cause therefor, substantial performance of the project work has not occurred;
- v. Gross abuse or corrupt practices in the administration of the project have occurred; or
- vi. Pinelands Infrastructure Trust moneys have been used for nonallowable costs.

2. The Department shall give written notice to the recipient (certified mail, return receipt requested) of its intent to terminate a Pinelands grant or loan, in whole or in part, at least 30 days prior to the intended date of termination.

3. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the Pinelands grant or loan in whole or in part.

(b) Project termination by the recipient shall be subject to the following:

1. A recipient shall not unilaterally terminate the project work for which a Pinelands grant or loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the Director of any complete or partial termination of the project work by the recipient *or intent thereof*.

2. If the Department determines that there is good cause for the termination of all or any portion of a project for which the Pinelands grant or loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the Pinelands grant or loan effective with the date of cessation of the project work by the recipient. The determination to terminate the Pinelands grant or loan shall be solely within the discretion of the Department. If the Department determines not to terminate, the recipient shall remain bound by the terms and conditions of the Pinelands grant or loan agreement.

3. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the Pinelands grant or loan pursuant to this section or rescind the grant or loan pursuant to N.J.A.C. 7:22-6.44.

(c) The Department and recipient may enter into a mutual agreement to terminate at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and the schedule for repayment of the Pinelands grant or loan.

(d) Upon termination, the recipient may be required to immediately refund or repay the entire amount of the Pinelands Infrastructure Trust funds received to the State. If a loan is guaranteed by a security/deficiency

agreement, such agreement may have to be brought into effect to ensure the entire repayment of the Pinelands loan. The Department may, at its discretion, authorize the immediate repayment of a specific portion of the Pinelands loan and allow the remaining balance to be repaid in accordance with a revised Pinelands loan repayment schedule.

(e) The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of Pinelands Infrastructure Trust funds awarded under the Pinelands loan. The recipient shall make no new commitments without the Department's specific approval thereof. The Department shall make the final determination of the allowability of termination costs.

(f) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under federal, State and local law as warranted.

7:22-6.44 Rescission of Pinelands grants *[or loans]*

(a) The Department may, in writing, rescind the Pinelands grant *[or loan]* if it determines that:

- 1. Without good cause therefor, substantial performance of the project work has not occurred;
- 2. The Pinelands grant *[or loan]* was obtained by fraud; or
- 3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to rescind the Pinelands grant *[or loan]*. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant or loan. Upon rescission of the Pinelands grant or loan, the recipient shall return all Pinelands grant or loan funds previously paid to the recipient. The Department shall make no further payments to the recipient. In addition, the Department retains the right to pursue such remedies as may be available under federal, State and local law.

7:22-6.45 Administrative hearings

(a) The Director of the Division shall make the initial decision regarding all disputes arising under a Pinelands grant or loan. The recipient shall specifically detail in writing and in detail the basis for its appeal. When a recipient so requests, the Division shall produce a decision in writing and mail or otherwise furnish a copy thereof to the recipient.

(b) A recipient may request an administrative hearing within 15 days of a decision by the Director of the Division. The request for an administrative hearing shall specify in detail the basis for the appeal.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the recipient raises a substantial and meritorious issue and such efforts at settlement fail, the Department shall file a request for an administrative hearing with the Office of Administrative Law. Administrative hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. promulgated pursuant to those Acts.

7:22-6.46 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

(a)

Construction Grants and Loans for Wastewater Treatment Facilities

Determination of Allowable Costs: Pinelands

Adopted New Rule: N.J.A.C. 7:22-7

Proposed: September 22, 1986 at 18 N.J.R. 1904(a).

Adopted: April 9, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: April 10, 1987 as R.1987 d.208, with substantive and technical changes not requiring additional public notice and comment. (See: N.J.A.C. 1:30-4.3).

Authority: Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.302).

DEP Docket No. 036-86-08.

Effective Date: May 4, 1987.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection is adopting N.J.A.C. 7:22-7 ("Subchapter 7") to set forth the policies and procedures for determining the allowability of project costs for grants or loans from the Pinelands Infrastructure Trust Fund.

A public hearing was held on this subchapter on October 6, 1986 to provide interested parties the opportunity to present testimony on this proposal. The comment period closed on October 22, 1986.

COMMENT: Project cost allowability determinations permit subjective judgments on the part of the project reviewer.

RESPONSE: These subjective judgments are essential to allow the necessary flexibility to fund a variety of projects and allow for case-by-case determinations.

COMMENT: The costs associated with preparing a report required by N.J.A.C. 7:22-6.30(b)(1) are unallowable, yet the "prime engineer" services under N.J.A.C. 7:22-6.30 which could include this report are allowable under N.J.A.C. 7:22-7.4(a)6.

RESPONSE: The costs associated with determining and certifying that the project meets its performance standards are allowable. However, should a corrective action report be required as a result of not being able to perform satisfactorily, it is not an allowable cost.

7:22-7.3 Definitions

COMMENT: The definitions referred to in N.J.A.C. 7:22-7.3 are not yet published.

RESPONSE: The definitions referred to were published but were inaccurately identified as N.J.A.C. 7:33-6.4. The necessary change has been made identifying N.J.A.C. 7:22-6.4 as the correct section.

7:22-7.4 Costs related to subagreements

COMMENT: The requirement that the costs associated with a claim are allowable only if an amendment is executed before the costs are incurred is both unworkable and unreasonable.

RESPONSE: This section has been revised to state that Department approval must be obtained for these costs before they are incurred. N.J.A.C. 7:22-7.4(a)4v has been added to increase the expeditious settlement of claims.

7:22-7.6 Privately or publicly owned small and onsite systems

COMMENT: All types of on-site systems should be excluded from funding.

RESPONSE: The Department agrees and is proposing a reproposal of this section to reflect this exclusion. The proposal text of N.J.A.C. 7:22-7.6 is not adopted, and that section is reserved.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 7. DETERMINATION OF ALLOWABLE COSTS FOR PINELANDS INFRASTRUCTURE TRUST FUND FINANCIAL ASSISTANCE

7:22-7.1 Purpose

The rules in this subchapter represent the policies and procedures for determining the allowability of project costs based on Department policy, appropriate State cost principles and reasonableness.

7:22-7.2 Applicability

The cost information contained in this subchapter applies to Pinelands grant and loan assistance awarded on or after the effective date of this subchapter. Project cost determinations are not limited to the items listed in this subchapter. Additional cost determinations based on applicable law and regulations not otherwise addressed herein shall be made on a project-by-project basis.

7:22-7.3 Definitions

Terms used in this subchapter are defined in accordance with N.J.A.C. *[7:33-6.4]* ***7:22-6.4***.

7:22-7.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1. The costs of subagreements for building the project;
2. The costs for establishing or using small, minority and women's business liaison services;

3. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;

4. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a subagreement*,* provided ***that***:

i. The claim arises from work within the scope of the Pinelands grant or loan;

ii. ***[A formal Pinelands grant or loan amendment is executed specifically]* ***Department approval has been received*** covering the costs before they are incurred;**

iii. The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient; ***[and]***

iv. The Assistant Director determines that there is a significant State interest in the issues involved in the claim***[.]**; and***

v. Meritorius claims are resolved in an expeditious manner.

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided the costs are:

- (1) Within the scope of the project;
- (2) Not caused by the recipient's mismanagement;
- (3) Not caused by the recipient's vicarious liability for the improper action of others; and
- (4) The cost of which when added to the final building cost, does not exceed the low bid building cost.

ii. Provided the requirements of (a)5i above are met, the following is an example of allowable change orders and contractor claim costs:

(1) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.

iii. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant or loan award official and shall be allowable only to the extent that they meet the requirements of paragraph (a)5i, are reasonable, and do not attempt to pass on to the Department the cost of events that were the responsibility of the recipient, the contractor, or others.

6. The costs of the services of the prime engineer required by N.J.A.C. 7:22-6.30 during the first year following initiation of operation of the project;

7. The cost of development of a plan of operation including an operation and maintenance manual;

8. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

(b) Unallowable costs related to subagreements include:

1. Except as provided in (a)5 above, architectural or engineering services or other services necessary to correct defects in a planning document, design drawings and specifications, or other subagreement documents;

2. The costs (including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

i. The claim arises from work within the scope of the loan;

ii. ***[A formal grant or loan amendment is executed specifically]* ***Department approval has been received*** covering the costs before they are incurred;**

iii. The claim cannot be settled without arbitration or litigation;

iv. The claim does not result from the recipient's mismanagement;

v. The Assistant Director determines that there is a significant State interest in the issues involved in the claim; and

vi. In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

3. Bonus payments for completion of building before a contractual completion date;

4. All costs associated with the award of any subagreement for building significant elements of the project more than 12 months after the grant or loan award, unless an extension is specified in the project schedule approved by the Assistant Director at the time of grant or loan award.

7:22-7.5 Mitigation

(a) Allowable costs related to mitigation include:

1. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the wastewater treatment facilities;

2. The costs of site screening necessary to comply with State Environmental Guidelines, to complete related studies and plans, or necessary to screen adjacent properties;

3. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

(b) Unallowable costs related to mitigation include:

1. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the wastewater treatment facilities nor reflect regional architectural tradition;

2. The costs of land acquired for the mitigation of adverse environmental effects identified pursuant to an environmental review under State Environmental Guidelines.

7:22-7.6 *[Privately or publicly owned small and onsite systems]*

(Reserved)

*(a) Allowable costs for small and onsite systems serving residences and small commercial establishments include:

1. The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences;

2. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings.

3. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;

4. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer;

5. The cost of restoring individual system building sites to their original conditions.

(b) Unallowable costs for small and onsite systems include:

1. Modification to physical structure of homes or commercial establishments;

2. Conveyance pipes from the house to the treatment unit located on user's property or from the house to the property line if the treatment unit is not located on that user's property;

3. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.]*

7:22-7.7 Real property

(a) Allowable costs for land and rights-of-way include:

1. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement of sewer right-of-ways, wastewater treatment plant sites, sanitary landfill sites and sludge disposal areas. These costs include:

i. The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

ii. The cost of land acquired for a soil absorption system for a group of two or more homes;

iii. The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

iv. The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

2. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services;

3. The cost associated with the preparation of the wastewater treatment facilities site before, during and, to the extent agreed on in the Pinelands grant or loan agreement, after building. These costs include:

i. The cost of demolition of existing structures on the wastewater treatment facilities site (including rights-of-way) if building cannot be undertaken without such demolition;

ii. The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the recipient is legally obligated to pay under State or local law; and

iii. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

4. The cost of acquiring all or part of existing publicly or privately owned wastewater treatment facilities provided all the following criteria are met:

i. The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

ii. The acquired wastewater treatment facilities were not built with previous State, Federal, New Jersey Wastewater Treatment Trust or Pinelands Infrastructure Trust financial assistance;

iii. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

iv. The acquisition does not circumvent the requirements of these regulations, or other federal, State or local requirements.

(b) Unallowable costs for land and rights-of-way include:

1. Any amount paid by the recipient for eligible land in excess of just compensation, based on the appraised value, the recipient's record of negotiation or any condemnation proceeding, as determined by the Assistant Director;

2. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

7:22-7.8 Equipment, materials and supplies

(a) Allowable costs of equipment, materials and supplies include:

1. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

2. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

3. Cost of shop equipment installed at the wastewater treatment facility necessary to the operation of the facility;

4. The costs of necessary safety equipment, provided the equipment meets applicable federal, State, local or industry safety requirements;

5. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded by the Pinelands grant or loan. This calculation shall be based on:

i. The portion of the total collection system paid for by the Pinelands grant or loan;

ii. A demonstrable frequency of need; and

iii. The need for the requirement to preclude the discharge or bypassing of untreated wastewater.

6. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

i. Portable stand-by generators;

ii. Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

iii. Septage tankers, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

7. Replacement parts identified and approved in advance by the Assistant Director as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

i. Not immediately available and/or whose procurement involves an extended "lead-time";

ii. Identified as critical by the equipment supplier(s); or

iii. Critical but not included in the inventory provided by the equipment supplier(s).

(c) Unallowable costs of equipment, materials and supplies include:

1. The costs of equipment or material procured in violation of the procurement requirements;

2. The cost of furnishings including draperies, furniture and office equipment;

3. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

4. The cost of vehicles for the transportation of the recipient's employees.

5. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

7:22-7.9 Industrial and federal uses

(a) Except as provided in (b)1 below, allowable costs for wastewater treatment facilities serving industrial and federal facilities include development of a municipal pretreatment program approvable under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq. and purchase of monitoring equipment and construction of facilities to be used by the municipal wastewater treatment facilities in the pretreatment program.

(b) Unallowable costs for wastewater treatment facilities serving industrial and federal facilities include:

1. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under 40 C.F.R. Part 403 and N.J.S.A. 58:10A-6 et seq.;

2. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal wastewater treatment facilities;

3. All incremental costs for sludge management incurred as a result of the recipient providing removal credits to industrial users beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

7:22-7.10 Infiltration/inflow

(a) Allowable costs related to infiltration/inflow include:

1. The cost of the wastewater treatment facilities capacity adequate to transport and treat nonexcessive infiltration/inflow under N.J.A.C. 7:22-6.35.

2. The cost of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under N.J.A.C. 7:22-6.35.

(b) Unallowable costs related to infiltration/inflow include:

1. The incremental cost of the wastewater treatment facilities capacity which is more than 20 years reserve capacity using 120 gallons per capita per day for existing systems and 70 gallons per capita per day plus a reasonable allowance for infiltration (100 gallons per day per inch diameter per mile of new sewer or less) or 75 gallons per capita per day whichever is less, for existing unsewered needs and for future systems plus present and future commercial and industrial flows.

7:22-7.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project.

2. The costs of additions to wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84-660) or its amendments, or the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c. 329) or its amendments, or the New Jersey Wastewater Treatment Trust Act of 1985 (N.J.S.A. 58:11B-1 et seq.) or its amendments, or the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c. 302) or its amendments and that fails to meet its performance standards provided:

i. The project is identified on the Pinelands Infrastructure Trust Funding List as a project for additions to wastewater treatment facilities that has received previous State or federal funds;

ii. The grant or loan application for the additions includes an analysis of why the wastewater treatment facilities cannot meet its specified performance standards; and

iii. The additions could have been included in the original federal grant or State assistance award; and

(1) Are the result of one of the following:

(A) A change in the specified performance standards required by the State or the United States Environmental Protection Agency (EPA);

(B) A written understanding between the Regional Administrator of EPA and grantee prior to or included in the original Federal grant award;

(C) A written understanding between the Assistant Director and the recipient prior to or included in the original Fund loan award;

(D) A written understanding between the trust and the recipient prior to or included in the original Trust loan award.

(E) A written understanding between the Assistant Director and the recipient prior to or included in the original Pinelands grant or loan award;

(F) A written direction by the Regional Administrator of EPA or the Assistant Director to delay building part of the wastewater treatment facilities; or

(G) A major change in the wastewater treatment facilities' design criteria that the grantee cannot control; or

(2) Meet all of the following conditions:

(A) The wastewater treatment facilities have not completed its first full year of operation;

(B) The additions are not caused by the recipient's mismanagement or the improper actions of others;

(C) The costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the grant or loan; and

iv. This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover wastewater treatment facilities that fail at the end of its design life.

3. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Assistant Director.

4. Costs of recipient's employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the wastewater treatment facilities, if approved in advance by the Assistant Director.

(b) Unallowable miscellaneous costs include:

1. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

2. Preparation of applications and permits required by federal, State or local regulations or procedures;

3. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissioners, regions, districts or other units of government;

4. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them;

5. The costs of replacing, through reconstruction or substitution, wastewater treatment facilities that were assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84-660) or its amendments, or the Wastewater Treatment Bond Act of 1985 (P.L. 1985, c. 329) or its amendments or the New Jersey Wastewater Treatment Trust Act of 1985 (N.J.S.A. 58:11B-1 et seq.) or its amendments or the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302) or its amendments, and that fail to meet its project performance standards. This provision applies to failures to occur either before or after the initiation of operation but does not apply to wastewater treatment facilities that fail at the end of its design life;

6. Personal injury compensation or damages arising out of the project;

7. Fines and penalties due to violations of, or failure to comply with, federal, State or local laws, regulations or procedures;

8. Costs outside the scope of the approved project;

9. Costs for which grant or loan disbursement has been or will be received from another federal or State agency for the project;

10. Costs of wastewater treatment facilities for control of pollutant discharges from a separate storm sewer system;

11. The cost of wastewater treatment facilities that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains;

12. The costs of preparing a corrective action report required by N.J.A.C. 7:22-6.30(b)(1).

7:22-7.12 Allowance for planning and design

(a) This section provides the method the Department will use to determine both the estimated and final allowance under N.J.A.C. 7:22-6.34 planning and design. The Pinelands grant or loan agreement will include an estimate of the allowance.

(b) The Pinelands Infrastructure Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Pinelands Infrastructure Trust share of the allowable building cost.

(c) The allowance is not intended to reimburse the recipient for costs actually incurred for planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (that is, reimbursement on a dollar-for-dollar basis) will not be appropriate.

(d) The estimated and final allowance will be determined in accordance with this section and Tables 1 and 2. Table 2 is to be used in the event that the recipient received a federal grant or a Pinelands grant or loan for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

(e) The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending wastewater treatment facilities, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

1. The initial award amount of all prime subagreements for building the project;

2. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project;

3. The purchase price of eligible real property.

(f) The estimated allowance is to be based on the estimate of the initial allowable building cost.

(g) The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

(h) The recipient may request payment of 50 percent of the Pinelands Infrastructure Trust share of the estimated allowance immediately after the Pinelands Infrastructure Trust loan award. Final payment of the Pinelands Infrastructure Trust share of the allowance may be requested in the first disbursement after the recipient has awarded all prime subagreements for building the project, received the Assistant Director's approval for force account work, and completed the acquisition of all eligible real property.

(i) The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) or the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

TABLE 1.—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building Cost	Allowance as a percentage of building cost†
\$ 100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
200,000,000	4.7984

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables should not be used to determine the compensation for planning or design services. The compensation for planning or design services should be based upon the nature, scope and complexity of the services required by the community.
 †Interpolate between values.

TABLE 2.—ALLOWANCE FOR DESIGN ONLY

Building Cost	Allowance as a percentage of building cost†
\$ 100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

NOTE: The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

†Interpolate between values.

**COMMISSION ON RADIATION PROTECTION
 BUREAU OF RADIATION PROTECTION**

(a)

**Radio Frequency Radiation
 Workplace Exposure**

Adopted Amendment: N.J.A.C. 7:28-42.1

Proposed: June 2, 1986 at 18 N.J.R. 1166(a).

Adopted: April 1, 1987 by the Commission on Radiation Protection, Max M. Weiss, Ph.D., Chairman.

Filed: April 10, 1987 as R.1987 d.206, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq., and N.J.S.A. 26:2D-1 et seq., specifically 26:2D-7.

DEP Docket No. 023-86-05.

Effective Date: May 4, 1987.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 42. RADIO FREQUENCY RADIATION

7:28-42.1 Scope

(a) This subchapter governs exposure to radio frequency radiation from fixed radio frequency devices.

(b) (No change.)

HIGHER EDUCATION

BOARD OF HIGHER EDUCATION

(a)

DEPENDENT/INDEPENDENT STUDENTS DEFINED

Adopted Repeal and New Rule: N.J.A.C. 9:5-1.1

Proposed: February 2, 1987 at 19 N.J.R. 264(c).

Adopted: April 3, 1987 by the Board of Higher Education,

T. Edward Hollander, Chancellor and Secretary.

Filed: April 9, 1987 as R.1987 d.204, **without change.**

Authority: N.J.S.A. 18A:62-4.

Effective Date: May 4, 1987.

Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:5-1.1 Dependent/independent student defined

(a) The term independent when used with respect to a student means any individual who:

1. Is 24 years of age or older by December 31 of the award year; or
2. Meets the requirements of (b) below.

(b) Except as provided in (c) below, an individual meets the requirements of this subsection if such individual:

1. Is an orphan or ward of the court; or
2. Is a veteran of the Armed Forces of the United States; or
3. Is a graduate or professional student who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year; or
4. Is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes of his or her parents (or guardian) for the first calendar year of the award year; or
5. Has legal dependents other than a spouse; or
6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating an annual total income of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving state student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

- i. The student has been separated from his or her parents due to an unsafe home environment or has been institutionalized in a correctional facility. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the director of the applicable student assistance program within the Department of Higher Education.

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6 above except for the income requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6 above except for the income requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5, or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education, is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the income requirement set forth therein.

v. The student was considered as an independent student for the purposes of New Jersey state student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6 above except for the income requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Eligibility under this subparagraph is subject to the approval of the director of the applicable student assistance program within the Department of Higher Education.

(c) An individual may not be treated as an independent student described in (b)3, 4, and 6 above if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

(d) The financial aid administrator may certify an individual described in (b)3, 4, and 6 above on the basis of a demonstration made by the individual but no disbursement of an award may be made without documentation.

(e) A dependent student shall be any student who does not meet any of the eligibility criteria listed in (a) or (b) above for independent student status.

STATE COLLEGES

(b)

Student Trustee Policies

Adopted New Rule: N.J.A.C. 9:6-6

Proposed: February 2, 1987 at 19 N.J.R. 265(a).

Adopted: April 3, 1987 by the Board of Higher Education,

T. Edward Hollander, Chancellor and Secretary.

Filed: April 9, 1987 as R.1987 d.205, **without change.**

Authority: N.J.S.A. 18A:64-3.2.

Effective Date: May 4, 1987.

Expiration Date: May 20, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 6. STUDENT TRUSTEE POLICIES

9:6-6.1 Eligibility of student representatives

(a) Eligibility to sit as a student representative on a State college board of trustees shall be limited to individuals who:

1. Are 18 years of age or older; and
2. Are citizens of the United States; and
3. Are full-time, regularly matriculated undergraduate students in good academic standing; and
4. Meet all requirements set by his or her college for participation as an officer in student government.

9:6-6.2 Alternate student representatives

Alternate student representatives shall be entitled to all rights afforded other non-voting members of the board of trustees with the exception of participation in matters set forth in N.J.A.C. 9:6-6.3.

9:6-6.3 Participation in closed meetings

Both the voting student representative member of the board of trustees and the alternate student representative shall be eligible to participate in and be present at all open and closed meetings of the board of trustees, as defined under N.J.S.A. 10:4-6 et seq., with the exception of any discussions within such closed meetings of topics set forth in N.J.S.A. 10:4-12(b)(5), (b)(7) or (b)(8).

9:6-6.4 Selection of student representatives

Every five years subsequent to the initial determination by a college board of trustees as to the method of selecting student representatives to the board, the college board of trustees may reconsider its current method of selecting student representatives pursuant to the provisions set forth under N.J.S.A. 18A:64-3.1 et seq. (P.L. 1986, c.136) for such purpose.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Medical Examiners

Fee Schedule

Adopted Amendment: N.J.A.C. 13:35-6.13

Proposed: February 17, 1987 at 19 N.J.R. 353(a).
Adopted: March 20, 1987 by the New Jersey Board of Medical Examiners, Frank Malta, M.D., Vice President.
Filed: April 2, 1987 as R.1987 d.201, **without change**.
Authority: N.J.S.A. 45:1-3.2.
Effective Date: May 4, 1987.
Expiration Date: November 19, 1989.

Summary of Public Comments and Agency Responses:

One letter with comments was received authored by the president of the University of Medicine and Dentistry of New Jersey, Stanley Bergen. He indicated that he is aware that the Board of Medical Examiners is merely a captive of fees charged to it for examinations prepared by other authorities, but wished to call to the attention of the Board the high cost to medical students, residents and young physicians of the entire process of interviewing for residencies and other positions and of taking necessary examinations.

The Board responded by indicating that it agreed with Dr. Bergen that it was necessary for the Board to pass on the cost of examinations to licensure applicants taking the exam. This is unfortunately necessary despite the Board's empathy with the plight of young physicians who face financial burdens in obtaining their education, licensure, and positions within the medical community.

Full text of the adoption follows.

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)	
i. Examination—Both Components	\$425.00
ii. Re-examination	
Component I	250.00
Component II	300.00
iii. License (M.D. or D.O.)	150.00
iv. N.J.S.A. 45:9-21(n)—exemption	150.00
v. N.J.S.A. 45:9-21(b)—temporary license	50.00
vi. Endorsement	150.00
vii. Biennial registration	80.00
2.-10. (No change.)	

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Peacetime Military Service Credit

Adopted New Rule: N.J.A.C. 17:1-4.36

Proposed: February 17, 1987, at 19 N.J.R. 353(b).
Adopted: March 23, 1987, by Douglas R. Forrester, Director, Division of Pensions.
Filed: March 31, 1987 as R.1987 d.198, **without change**.
Authority: N.J.S.A. 52:18A-96.
Effective Date: May 4, 1987.
Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:1-4.36 Peacetime military service; service credit

(a) A member or former member, or a person required to be a member, of a State-administered retirement system who leaves employment covered by a State-administered retirement system to enter military service of the United States and returns to covered employment within the time period and under the circumstances required for entitlement to reemployment rights under federal law (38 U.S.C. sec. 2021 et seq.), may obtain service credit in the State-administered retirement system covering the employment after military service as provided in this section. The types of service or situations eligible for reemployment rights include regular active duty, initial active duty for training, active and inactive training for members of reserve components and National Guard units, and situations where an employee leaves employment for military service or for examination of fitness for military service and is not taken into military service.

1. The person must be a member or be required to be a member of a State-administered retirement system prior to leaving employment to enter military service and must leave the covered employment to enter military service.

2. The person must return to employment covered by a State-administered retirement system within the time periods prescribed by federal law. A person may serve only four years, plus an additional year, or other additional, limited time periods in the case members of the National Guard or military reserve units called to active duty, to be eligible for reemployment rights. The person must seek reemployment within the time period prescribed by federal law which is generally 90 days following release from military service. A reservist or guardsman returning from initial active duty for training must seek reemployment within 31 days after release from duty. A person returning from other training duty or who leaves employment for military service or for examination of fitness for military service and is not taken into military service must report to work at the next regularly scheduled work period after release from duty. In all cases, the time limit for return to employment is tolled for up to one year for any injury or illness related to military service requiring hospitalization which continues after release from military service.

3. The person's military service must have been honorable or satisfactory. This requirement is not applicable to military training other than initial active duty for training.

4. The person may be denied reemployment rights if the person is not qualified to perform the duties of the position for which reemployment is sought or if the employer's circumstances have so changed as to make it impossible or unreasonable to reemploy the person. The person will not be entitled to service credit in a State-administered retirement system if reemployment is validly denied.

5. To receive service credit in a State-administered retirement system for military service, the person must apply within one year following the date of return to employment or the date initial pension contributions are certified to begin in the retirement system if the person's former membership was terminated or was in a different retirement system.

6. To obtain service credit for the military service, the person must make contributions to the retirement system for all of the period of military service based upon the person's current salary and full percentage contribution rate. The contributions must be authorized by the person

within one year following the date of return to employment or the date initial pension contributions are certified to begin, or the expiration date indicated on the quotation letter, whichever is later.

7. A person who returned to employment covered by a State-administered retirement system after December 3, 1974 and on or before January 24, 1986, and was eligible for reemployment rights under federal law with respect to the employment, may obtain service credit for the military service by applying, on or before January 24, 1987, to:

i. The retirement system of which the person is a member, or was a member in the case of a retired person; or

ii. The Division of Pensions in the case of a former member of a State-administered retirement system who is not retired or is not a current member.

8. The contributions required to obtain the service credit shall be based upon the person's salary and full percentage contribution rate at the time of return to employment.

9. The contributions required to obtain the service credit may be paid by any method authorized for purchases of service credit under the retirement system.

10. If a person retires prior to paying the total amount of contributions required to obtain service credit for the military service, the total amount of service credit shall be in direct proportion as the amount paid bears to the total amount of contribution obligation.

STATE TREASURER

(a)

Urban Enterprise Zone Authority

Adopted New Rules: N.J.A.C. 17:30

Proposed: November 3, 1986 at 18 N.J.R. 2191(b).

Adopted: April 3, 1987 by Feather O'Connor, State Treasurer.

Filed: April 7, 1987 as R.1987 d.203, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:18A-30(d) and N.J.S.A. 52:27H-88.

Effective Date: May 4, 1987.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

One letter with comments was received. The suggestions and responses were as follows:

COMMENT: The use of the term "public improvements" is ambiguous.

RESPONSE: The Department agrees with the suggestion and made the necessary change in N.J.A.C. 17:30-1.1.

COMMENT: It was questioned whether funds could be used for a business incubator facility.

RESPONSE: Further information is needed concerning the ownership, purposes and operation of the facility to determine whether funds could be used.

COMMENT: A request was made for the local Urban Enterprise Zones to receive funding for hiring private security personnel, or an auxiliary police unit.

RESPONSE: The Act indicates additional police must be employed by the municipality. A change in this procedure would require an amendment to the Act.

COMMENT: It was questioned whether the same "project" or "service" must be continued each year.

RESPONSE: Allocated funds are used for the projects and time period(s) approved by the Authority.

COMMENT: It was recommended that funds be able to be used towards administrative costs for the local Urban Enterprise Zone Corporation.

RESPONSE: This request would require a legislative amendment to the Act.

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

CHAPTER 30 URBAN ENTERPRISE ZONE AUTHORITY

SUBCHAPTER 1. GENERAL PROVISIONS

17:30-1.1 Purpose

[(a)] The enterprise zone assistance fund shall be used for the purpose of assisting qualifying municipalities in which enterprise zones are designated in undertaking *projects for the* public *[improvements]* *improvement of the zones* and in upgrading eligible municipal services in designated enterprise zones.

17:30-1.2 Compliance

(a) No disbursements shall be made from the enterprise zone assistance fund unless the governing body of the qualifying municipality and the zone development corporation created by the municipality comply with the requirements of this chapter.

17:30-1.3 Definitions

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

"Eligible municipal services" means the hiring of additional policemen or firemen who are assigned duties in the enterprise zone, or the purchasing or leasing of additional police or fire vehicles, equipment or apparatus to be used for the provision of augmented or upgraded public safety services in the enterprise zone.

"Project" means:

1. The purchasing, leasing, condemning, or otherwise acquiring of land or other property, or an interest therein, in the enterprise zone or as necessary for a right-of-way or other easement to or from the enterprise zone;

2. The relocating and moving of persons displaced by the acquisition of land or property;

3. The rehabilitation and redevelopment of land or property including demolition, clearance, removal, relocation, renovation, alteration, construction, reconstruction, installation or repair of a land or a building, street, highway, alley, utility, service or other structure or improvement;

4. The acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, except buildings and facilities for the general conduct of government and schools; and

5. The associated costs including the costs of an administrative, appraisal, economic and environmental analysis or engineering, planning design, architectural, surveying or other professional services necessary to effectuate the project.

SUBCHAPTER 2. ENTERPRISE ZONE ASSISTANCE FUND

17:30-2.1 Application procedure

(a) The governing body of a qualifying municipality in which an enterprise zone is designated and the zone development corporation created by the municipality for that enterprise zone may, by resolution jointly adopted after public hearing, propose to undertake a project for the public improvement of the enterprise zone or to increase eligible municipal services from moneys deposited in the enterprise zone assistance fund and credited to the account maintained by the State Treasurer for the enterprise zone. Proposals may be submitted to the Urban Enterprise Zone Authority by the qualifying municipality and the zone development corporation at any time during the calendar year.

(b) The proposal adopted shall set forth a plan for the project or for the increase in eligible municipal services and shall include:

1. A description of the proposed project or of the municipal services to be increased;

2. An estimate of the total project costs, or of the total costs of increasing the municipal services, and an estimate of the amounts of funding necessary annually from the enterprise zone account;

3. A statement of any other revenue sources to be used to finance the project or to fund the increase in eligible municipal services;

4. A statement of the time necessary to complete the project or of the time during which the increased municipal services are to be maintained; and

5. A statement of the manner in which the proposed project or increase in municipal services furthers the municipality's policy and intentions for addressing the economic and social conditions existing in the area of the enterprise zone as set forth in the zone development plan approved by the authority.

17:30-2.2 Evaluation process

(a) Upon adoption by the governing body of the qualifying municipality and by the zone development corporation, the proposal shall be

sent to the authority for its evaluation and approval. The authority shall approve the proposal as soon as practicable if it finds that:

1. In the case of a proposed project:
 - i. The proposed project furthers the policy and intentions of the zone development plan approved by the authority; and
 - ii. The estimated annual payments for the project from the enterprise zone account to which the proposal pertains are not likely to result in a deficit in that account.
2. In the case of an increase in eligible municipal services:
 - i. The proposal furthers the policy and intentions of the zone development plan approved by the authority;
 - ii. The qualifying municipality has furnished satisfactory assurances that the additional policemen or firemen to be hired, or the additional vehicles, equipment or apparatus to be purchased or leased,
 - (1) Shall be used to augment or upgrade public safety in the enterprise zone, and
 - (2) Shall not be used in other areas of the municipality;
 - iii. The qualifying municipality shall annually appropriate for the increased eligible municipal services an amount equal to 20 percent of the amount of annual payments for the eligible municipal services from the enterprise zone account; and,
 - iv. The estimated annual payments for the eligible municipal services from the enterprise zone account to which the proposal pertains are not likely to result in a deficit in that account.

17:30-2.3 Disbursement of funds

(a) If the authority approves the proposal, it shall annually, upon its receipt of a written statement from the governing body of the qualifying municipality and the zone development corporation, certify to the State Treasurer the amount to be paid in that year from the enterprise zone account in the enterprise zone assistance fund with respect to each project or license in eligible municipal services approved.

1. No money shall be disbursed unless the written statement has been submitted and approved by the authority.
2. The authority may at any time revoke its approval of a project or an increase in eligible municipal services if it finds that the annual payments made from the enterprise zone assistance fund are not being used as required by this section.

3. For the purposes of this Section, a "written statement" shall include:

- i. A detailed account of the money disbursed in the preceding year; and

- ii. A request for payments for the succeeding year.
- (b) Upon certification by the authority of the annual amount to be paid to a qualifying municipality with respect to any project or increase in eligible municipal services, the State Treasurer shall pay in each year to the qualifying municipality from the amounts deposited in the enterprise zone assistance fund an amount of money not to exceed the amount certified by the authority, within the limits of the amounts credited to the enterprise zone account of the qualifying municipality. Monies distributed by the State Treasurer shall be paid out in such a manner and in such increments as shall be determined by the authority, which may include periodic payments as work proceeds on the project.

OTHER AGENCIES

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

(a)

District Zoning Regulations

Adopted Amendments: N.J.A.C. 19:4-4.152, 4.154, 4.155 and 19:4-6.28

Proposed: January 5, 1987 at 19 N.J.R. 53(a).
Adopted: March 25, 1987 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Filed: April 10, 1987 as R.1987 d.212, **without change**.
Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.
Effective Date: May 4, 1987.
Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

The Commission received a letter from the Honorable Paul Amico, Mayor of Secaucus, stating that the Town does not object to the changes proposed to the Commercial Park Zone regulation. Additionally, a letter was received from Daniel Van Abs, Principal Planner for the New Jersey Department of Environmental Protection, Division of Coastal Resources, stating that there are no objections to the proposed change based on the retention of the marina and public access elements.

No member of the public was present at the Public Hearing, nor were any further written comments received.

Full text of the adoption follows.

19:4-6.28 Official Zoning Map

The zoning designation of Block 100, Lots 1, 2 and 3; Block 101, Lot 8; Block 110, Lot 1; Block 117, Lot 1; Block 118, Lots 2, 3, 4 and 5 in the Town of Secaucus, New Jersey, are changed from Waterfront Recreation to Commercial Park.

19:4-4.152 Commercial Park Zone: Bulk regulations

(a) The following are bulk regulations in the Commercial Park Zone:

- 1.-5. (No change.)

6. Minimum open space: 20 percent.

19:4-4.154 Commercial Park Zone: Environmental performance standards

(a) All uses in the Commercial Park Zone shall comply with the environmental performance categories of N.J.A.C. 19:4-6.1 through 19:4-6.16 as follows:

1. Environmental performance standard category A for radioactive materials; fire and explosion hazards;
2. Environmental performance standard category B for noise; vibration; steam, airborne emissions and glare;
3. All water quality standards shall apply.

19:4-4.155 Commercial Park Zone: Design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements of N.J.A.C. 19:4-6.18.

(b)

District Zoning Regulations Official Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: January 5, 1987 at 19 N.J.R. 54(a).
Adopted: March 25, 1987 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Filed: April 10, 1987 as R.1987 d.211, **without change**.
Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: May 4, 1987.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

The Commission received a letter from the Honorable Paul Amico, Mayor of Secaucus, stating that the Town does not object to the change of zoning designation for Block 112. Additionally, a letter was received from Daniel J. Van Abs, Principal Planner for the New Jersey Department of Environmental Protection, Division of Coastal Resources, stating that the change is consistent with the New Jersey Coastal Zone Management Plan and should not cause any significant environmental impact of the land use.

No member of the public was present at the Public Hearing nor were any further written comments received.

Full text of the adoption follows.

19:4-6.28 Official zoning map

The zoning designation of Block 112, Lots 1-7 in Secaucus, New Jersey, is changed from Service Highway Commercial to Low Density Residential.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the adopted change in zoning designation was submitted as part of the Commission's notice of adopted rule.

**CASINO REINVESTMENT DEVELOPMENT
AUTHORITY****(a)****Project Eligibility; Contracts with Casino Licensees
Adopted Amendments: N.J.A.C. 19:65-1.2, 2.1, 2.4,
and 2.7****Adopted New Rules: N.J.A.C. 19:65-2.9, 2.10 and
2.11****Adopted Repeal: N.J.A.C. 19:65-2.5**

Proposed: March 2, 1987 at 19 N.J.R. 404(b).

Adopted: April 3, 1987 by the Casino Reinvestment Development Authority, Michael G. Cohan, Executive Director.

Filed: April 13, 1987 as R.1987 d.213, **without change.**

Authority: N.J.S.A. 5:12-144.1 and N.J.S.A. 5:12-161(f).

Effective Date: May 4, 1987.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:**No comments received.**

Full text of the adoption follows.

19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

...
"Acquisition value" means the value at a time within a reasonable period of time prior to the approval of the project in accordance with N.J.A.C. 19:65-2.4(b) as determined by an appraisal of such property in form and substance acceptable to the Authority undertaken on a fair market value basis by an appraiser appointed by the Authority.

...
"Cost or "costs" means, with respect to an approved project, the reasonable costs, as determined by the sole discretion of the Authority, incurred in the development, construction, improvement or rehabilitation of such project, which costs shall include, but are not necessarily limited to, the following:

1. Costs of site preparation, development and demolition;
2. Costs of the development, construction, improvement and rehabilitation of facilities, including equipment, and of the acquisition of equipment related thereto;
3. Cost of necessary studies, surveys, plans and permits, including the fees payable in connection with architectural, engineering, legal, accounting and other services incurred in connection therewith;
4. Costs of interest incurred during construction and for a reasonable period thereafter prior to the receipt of a certificate of occupancy of the project; and
5. Cost of working capital and operating deficits.

...
"Equivalent investment" means an investment by a licensee in the form of an input of sufficient amounts from any source to provide for the payment of the costs and, if applicable, acquisition value of an approved project.

...
"Good cause" means and includes, but is not limited to, the following:

1. Managerial, operational and financial responsibility for the project; or
2. Acquisition, development, construction, improvement or rehabilitation of a project which would not be so acquired, developed, constructed, improved or rehabilitated through an investment by the Authority from the proceeds of bonds.

...
"Neighborhood Strategy Areas" means areas within a municipality designated from time to time by the Authority by resolution.

...
"Project" means any undertaking made to meet the purposes set forth in the Act, which include the following:

1. To provide, further and promote tourist industries in New Jersey and especially Atlantic County, by providing financial assistance for the planning, acquisition, construction, improvement, maintenance and oper-

ation of facilities for the recreation and entertainment of the public which may include an arts center, cultural center, historic site or landmark, or sports center;

2. To provide loans and other financial assistance for the planning, acquisition, construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities to provide decent, safe and sanitary dwelling units for persons of low, moderate, median range, and middle income in need of housing, and to provide mortgage financing for such units;

3. To assist in the financing of structures, franchises, equipment and facilities for operation of, expansion of and the development of public transportation or for terminal purposes, including but not limited to development and improvement of port terminal structures, facilities and equipment for public use;

4. To provide loans and other financial assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of convention halls in Atlantic County and the State of New Jersey, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors;

5. To make loans and assist in the financing of the construction, reconstruction, rehabilitation, repair or acquisition of infrastructure projects, including but not limited to sewage disposal facilities, water facilities, solid waste disposal facilities, roads, highways and bridges;

6. To assist in financing buildings, structures and other property to increase opportunities in manufacturing, industrial, commercial, recreational, retail and service enterprises in the State so as to induce and to accelerate opportunity for employment in these enterprises, particularly of unemployed and underemployed residents of the jurisdiction in which the investment is to be made;

7. To provide loans and other financial assistance for the planning, developing or preservation of new and existing small businesses as well as the planning, acquisition, construction, reconstruction, rehabilitation, conversion or alteration of the facilities that house these enterprises, particularly those which provide services or employment to unemployed or underemployed residents of the State;

8. To provide loans and other financial assistance to provide employment training and retraining, particularly for unemployed and underemployed residents of the State;

9. To encourage investment in, or financing of, any plan, project, facility, or program which directly serves pressing social and economic needs of the residents of the jurisdiction or region in which the investment is to be made, including but not limited to schools, supermarkets, commercial establishments, day care centers, parks and community service centers, and any other plan, project, facility or program which best serves the interest of the public as determined by the Authority.

19:65-2.1 Applications generally

(a) (No change.)

(b) (No change.)

19:65-2.4 Application review and approval

(a) The preliminary review of a project application and the determination of its eligibility for Authority funds shall be conducted as follows:

1. (No change in text.)

2. The Authority shall, by resolution, preliminarily determine whether the project is of the character and type which is eligible to be an approved project. In the event the Authority has so determined, the applicant shall thereafter submit such other information as the Authority from time to time may request in accordance with the provisions set forth herein.

3. (No change in text.)

4. After the Authority has made a preliminary determination of eligibility, the Authority shall conduct a public hearing in accordance with N.J.A.C. 19:65-2.8. Notwithstanding anything to the contrary herein, no further action under this Section shall be taken until after such public hearing has been held.

(b) Project approval and the reservation of funds for an approved project shall occur as follows:

1. After the public hearing has been held and the Authority has received an application that has been determined to be complete, the Authority, in accordance with the provisions of the Act and these rules shall, by resolution, determine whether the project is an approved project and shall reserve funds for such approved project in an amount necessary to complete the approved project.

2. In addition to considering information provided by the applicant, the Authority may utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency,

or any other person, entity, group or association which has an interest in the project and which desires to provide such information to the Authority. Further, the Authority may approve a project with such modification and conditions as it deems necessary and appropriate.

3. The reservation of funds for an approved project shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate; provided, that any such reservation of funds shall be subject to the following:

i. In the event the funds for such approved project are to be derived from the issuance of bonds by the Authority:

(1) The adoption of a bond resolution by the Authority containing such terms and conditions as the Authority shall deem necessary and appropriate and the approval of such bond resolution, prior to the adoption thereof, by the Treasurer of the State; and

(2) The approval for execution by the Authority of any agreements or contracts in connection with the loan or other use of the proceeds of the bonds for the approved project and the approval of the financing terms set forth in any such agreement or contract by the Treasurer of the State;

ii. In the event the funds for such approved project are to be derived through the making of an equivalent investment in accordance with N.J.A.C. 19:65-2.9 and/or a donation in accordance with N.J.A.C. 19:65-2.10, the approval for execution by the Authority of an agreement for credit with the licensee containing such terms and conditions as the Authority shall deem necessary and appropriate and the approval of the terms of the investments contained therein by the Treasurer of the State; and

iii. The reservation of funds shall be for such length of time not exceeding six months as the Authority shall determine in its discretion (which may be extended by the Authority, in its discretion, for an additional period or additional periods of not to exceed six months), during which time the conditions set forth above shall be satisfied.

(c) The procedure for final approval of an approved project is as follows:

1. Final approval of an approved project for investment shall occur within the time period prescribed in accordance with (b)3iii above. Final approval shall be granted through the adoption of a bond resolution and resolution relating to the authorization for execution of any agreements or contracts in connection with the loan or other use of the proceeds of the bonds or the approval for execution of an agreement for credit with the licensee, as applicable, or in accordance with the provisions of the Act and these rules.

19:65-2.5 (Reserved)

19:65-2.7 Priorities

In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1. As to projects in Atlantic City:

i. Will be situated in Neighborhood Strategy Areas so as to lead to the establishment of a balanced community and the development of a comprehensive housing program for the city of Atlantic City;

ii.-v. (No change.)

2.-3. (No change.)

19:65-2.9 Approval of projects which constitute equivalent investments

(a) The Authority may permit, in its sole discretion, a licensee to make equivalent investments in projects in lieu of purchasing bonds. In such instance, the licensee shall make an Application in the same manner as other applicants under these rules.

(b) The Authority may waive the requirement of a licensee to purchase bonds only after the licensee has provided the Authority with sufficient information to show good cause.

(c) In determining the amount of an equivalent investment to be permitted as a tax credit in lieu of purchasing bonds, the Authority shall review all information provided by the licensee and permit credit only for costs of the project actually incurred by the licensee and, in the case of the acquisition of land or other property, the acquisition value approved by the Authority.

(d) The licensee shall be required to provide the Authority with information sufficient for the Authority to make a determination of the amount of costs actually incurred, including a certification of such costs by a certified public accountant, licensed engineer or architect or other person or firm in a similar capacity independent of the licensee and acceptable to the Authority.

(e) In the event the licensee requests credit for an equivalent investment pursuant to these rules which includes as part of the investment a donation of realty, the amount of such investment shall include, in addition to the actual costs incurred, the amount of the donation of the realty determined in accordance with N.J.A.C. 19:65-2.10.

(f) In the event that a licensee requests to make an equivalent investment in a Project the amount of which is in excess of the licensee's current tax obligation, the Authority shall provide that such excess amount be applied against such licensee's tax obligations of future years, which annual amount of obligation shall be reduced by the Authority taking into account a current market discount rate (as determined from time to time by resolution of the Authority) from the date of the investment to the date on which the obligation would have been incurred.

(g) Notwithstanding anything in this Section to the contrary, the Authority shall not permit the licensee to make equivalent investments in lieu of purchasing bonds if it would result in:

1. The violation of any agreement or covenant, or the impairment of any contractual or financial obligation, of the Authority; or

2. The impairment of the set aside for the SBMWE Authority as provided in N.J.S.A. 5:12-181; or

3. The reduction or impairment of the allocation to be made pursuant to N.J.S.A. 5:12-144.1f relating to Atlantic City, South Jersey and North Jersey and the portions thereof to be used to finance housing facilities for persons or families of low through middle income.

(h) In addition to the provisions of this section, the Authority shall require that, in order to permit a licensee to make an equivalent investment in a project in lieu of purchasing bonds, all the other requirements of N.J.A.C. 19:65-2 be met, including, in particular, the priorities set forth in N.J.A.C. 19:65-2.7; provided, that the provisions of N.J.A.C. 19:65-2.6(b)2 and 3 need not be met.

19:65-2.10 Approval of projects which constitute donation of money or realty

(a) The Authority may permit, in its sole discretion, a licensee to make a donation of money or realty to projects in lieu of purchasing bonds. In such instance, the licensee shall make an application in the same manner as other applicants under these rules.

(b) With respect to a donation of realty, in determining the amount of the donation to be permitted as a tax credit in lieu of purchasing bonds, the Authority shall require the licensee to provide information relating to its acquisition value.

(c) Notwithstanding anything in this Section to the contrary, the Authority shall not permit the licensee to make donations in lieu of purchasing bonds if it would result in:

1. The violation of any agreement or covenant, or the impairment of any contractual or financial obligation, of the Authority; or

2. The impairment of the set aside for the SBMWE Authority as provided in N.J.S.A. 5:12-181; or

3. The reduction or impairment of the allocation to be made pursuant to N.J.S.A. 5:12-144.1f relating to Atlantic City, South Jersey and North Jersey and the portions thereof to be used to finance housing facilities for persons or families of low through middle income.

19:65-2.11 Cost certification

All applicants shall be required to provide the Authority with information sufficient for the Authority to make a determination of the amount of costs actually incurred, including a certification of such costs by a certified public accountant, licensed engineer or architect or other person or firm in a similar capacity independent of the applicant and acceptable to the Authority.

MISCELLANEOUS NOTICES

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules for Agency Rulemaking

Notice of Correction: N.J.A.C. 1:30-1.12, 1:30-3.6 and 1:30-4.1

Take notice that errors appear in the New Jersey Administrative Code at 1:30-1.12, Compliance; 1:30-3.6, Notice of petition for a rule and 1:30-4.1, Requirements for filing an adopted rule. There were also errors in the adoption notice of these rules published in the March 3, 1986 issue of the New Jersey Register at 18 N.J.R. 469(a). N.J.A.C. 1:30-1.12, 1:30-3.6 and 1:30-4.1 should appear as follows:

1:30-1.12 Compliance

(a) Upon an initial determination by the OAL, that any proposed or adopted rule, pre-proposal for a rule, or any notice is not in compliance with the technical or procedural requirements concerning rulemaking, the OAL may temporarily suspend the processing of that document. In such situations, the OAL shall contact the agency to indicate the basis for the initial determination of non-compliance. The OAL and the agency shall mutually review the initial determination. The OAL shall then make a final determination regarding noncompliance. The OAL shall assist the agency in a cooperative effort to obtain compliance.

(b) If the OAL determines that there is an issue of noncompliance which concerns statutory authority, related legal issues, or contested case jurisdiction, it shall refer the matter to the Office of the Attorney General for final determination.

1:30-3.6 Notice of petition for a rule

(a) (No change in text.)

(b) Within 30 days of receiving the petition, the agency shall mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which shall include:

1.-2. (No change in text.)

3. Certification by the agency head that the petition was duly considered pursuant to law;

4.-5. (No change in text.)

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

1:30-4.1 Requirements for filing an adopted rule

(a) With each adopted rule submitted for filing the adopting agency shall include:

1.-5. (No change in text.)

6. A brief description of the public's opportunity to be heard, including:

i.-ii. (No change in text.)

iii. Where and how the record of public comments can be inspected; a summary of the principal comments and points of controversy developed during the rulemaking proceeding including comments received from State, local or other governmental agencies which are not subject to attorney-client or other legal privilege; the reasons for adoption of the public views accepted; and reasons for rejection of the public views rejected;

7.-8. (No change in text.)

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(b)

NJPDES Annual Fee Schedule Report and Proposed Fee Schedule

Public Hearing

Take notice that the Department of Environmental Protection will hold a public hearing to present the New Jersey Pollutant Discharge Elimination System (NJPDES) 1987-1988 Annual Fee Schedule Report and the proposed Fee Schedule for fiscal year 1988. The hearing will be held on:

May 21, 1987 at 10:00 A.M.

Labor Education Center Auditorium

Cook College

Ryders Lane

Rutgers University

New Brunswick, New Jersey

The Annual Fee Schedule Report and Assessment of Fees will be mailed April 18, 1987 to all NJPDES permittees and will be available for inspection at the Division of Water Resources, 401 East State Street, Floor #4, Trenton, New Jersey during normal working hours and at all State Depository Libraries beginning April 18, 1987. Contact Debra Hammond, Bureau of Permits Administration at (609) 984-4428 for further information.

(c)

Announcement: Application Period for Water Supply Bond Rehabilitation and Interconnection Loan Program

Public Notice

Take notice that Richard T. Dewling, Commissioner of the Department of Environmental Protection, pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261, and the Consolidated Water Supply Bond Loan Regulations, N.J.A.C. 7:1A-1, 2, 3, 4 and 5, announces that the Department will be accepting loan applications until June 30, 1987 for local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly-owned water supply transmission facilities and for the interconnection of unconnected or inadequately connected water supply systems. Any political subdivision of the State or agency thereof shall be eligible to apply for a water supply bond rehabilitation or interconnection loan. Note that N.J.A.C. 7:1A-2.3(a) requires every applicant to schedule an informal pre-application conference with the Division of Water Resources prior to making a formal application for a water supply bond rehabilitation or interconnection loan.

Applications may be obtained and pre-application conferences may be scheduled by contacting the Division of Water Resources as listed below. Any questions concerning the water supply bond rehabilitation or interconnection loan programs should be addressed to:

Robert Oberthaler, Section Chief

Division of Water Resources

Water Supply and Watershed Management Element

401 East State Street

CN 029

Trenton, New Jersey 08625

(609) 633-7486

Note that all applications for the water supply bond rehabilitation or interconnection loan program must be received on or before June 30, 1987.

This notice is published as a matter of public information.

(a)

**Amendment to the Lower Raritan/Middlesex County
Water Quality Management Plan**

Public Notice

Take notice that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Monroe Township Municipal Utilities Authority to include the Country Estates development located in Monroe Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the NJDEP during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

**Amendment to the Lower Raritan/Middlesex County
Water Quality Management Plan**

Public Notice

Take notice that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Linpro Utilities Company so that it may serve the Linpro Single Family project, Sections 5 and 6 located in Plainboro Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

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Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

**Amendment to the Lower Raritan/Middlesex County
Water Quality Management Plan**

Public Notice

Take notice that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Linpro Utilities Company to include the Linpro Townhouses, Section 3 located in Plainsboro Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the NJDEP during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

**Amendment to the Tri-County Water Quality
Management Plan**

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of Mt. Laurel Township Municipal Utilities Authority's sewer service area to include the Ruderow/Cinelli Tracts located in Mt. Laurel, Burlington County.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

**Amendment to the Tri-County Water Quality Management Plan
Public Notice**

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow for new discharges to surface water and groundwater for the new Gloucester County Resource Recovery Facility in West Deptford. In addition, the amendment would allow the new facility to convey process and sanitary wastewater to the Coastal Eagle Point Refinery Wastewater Treatment Plant while expanding the sewer service area of the Gloucester County Utilities Authority (GCUA) to include the project site, to allow for a future sewer extension to GCUA if necessary. The plan amendment would also allow for the filling of less than one acre of wetlands for a minor road crossing and for discharge outfalls.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

INSURANCE

(b)

**THE COMMISSIONER
Notice of Total Direct Written Premiums for All Insurers in New Jersey for No-Fault, Liability and Physical Damage Lines**

Public Notice

Take notice that Kenneth D. Merin, Commissioner of Insurance, pursuant to the requirement of N.J.A.C. 11:3-20.7(c), hereby lists the total calendar year 1986 direct written premiums for all insurers in New Jersey for no-fault, liability and physical damage lines. This information is to be used by insurers to calculate their market shares as required by N.J.A.C. 11:3-20.7.

**PRIVATE PASSENGER AUTOMOBILE
DIRECT WRITTEN PREMIUMS (IN THOUSANDS)**

Lines	1986*
No-Fault	228,243
Liability	609,096
(Subtotal)	837,339
Physical Damage	507,809
(Total)	1,345,148

*Excludes business written through the New Jersey Automobile Full Insurance Underwriting Association. (The Department is interested in voluntary market share information for the purposes of N.J.A.C. 11:3-20. Thus, only voluntary market totals are provided.)

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of March

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated March 2, 1987.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
P496	Phases II, III & IV Interior & Exterior Restoration Old Barracks Trenton, NJ	Mendel Mesick Cohen Waite Hall Architects	\$1,500,000
M730	Study—Acute Care/Admission Facility Abell Building Renovations Greystone Park Psychiatric Hospital Greystone Park, NJ	Gilbert L. Seltzer Associates	\$15,300
F037	Facility Consultant FY-87 Kean College of NJ Department of Higher Education	Kruger Kruger Albenberg	\$15,000 Services
M565	Testing/Inspection Services New Rehabilitation Center NJ Commission for the Blind New Brunswick, NJ	Ambric Testing Associates	\$6,100 Competitive Unit Prices
S184-01	Testing/Inspection Services Phase I Division of Motor Vehicles Randolph, NJ	United States Testing Co., Inc.	\$15,000 Services
S211	Structural Repairs Division of Motor Vehicles Secaucus, NJ	Maitra Associates, Inc.	CCE Unknown,
P479	Old Mine Road Study Reassigned Project Warren County, NJ	James P. Purcell Associates	\$40,450 Services
M725	Sidewalk Replacement Hunterdon Developmental Center Clinton, NJ	Bernard R. Berson & Associates	\$185,000
P531	Pipeline Stabilization Reassigned Project Double Trouble State Park Ocean County, NJ	Maser, Sosinski & Associates	\$50,000
C332	Feasibility Study Ship Conversion-Medium Security Housing Various Delaware River Locations New Jersey	Brown & Root Development, Inc.	\$138,168 Services
C316	Catwalk Repairs	Vaughn Organization, PC	\$250,500
C332-01	Pre-Application Assessment/Study for Permanent Mooring of Major Vessel	BCM Eastern, Inc.	\$13,500 Services
C312-02	308 Additional Beds & Alterations Adult Diagnostic & Treatment Center Avenel, NJ	Vaughn Organization	\$9,807,000

COMPETITIVE PROPOSALS

	Vaughn Organization	4.725%	
	BBM Architects	4.82%	
	CUH2A	7.45%	
E174	Demolition of Special Needs Center (2A & 2B), Water Tower; Alterations to Mechanical & Electrical Systems Katzenbach School for the Deaf W. Trenton, NJ	D'Ambly, Inc.	\$382,000

COMPETITIVE PROPOSALS

	D'Ambly, Inc.	6.90%
	Pennoni Associates	9.50%
	Maitra Associates, Inc.	9.80%
	BCM Eastern, Inc.	11.1%

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by Title and Chapter. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the Title Table of Contents for each executive department or agency and on the Subtitle page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
1:1	5/15/90	3:7	9/16/90
1:2	5/15/90	3:11	3/19/89
1:5	10/20/91	(Except for 3:11-2 which expired 6/3/85)	
1:6	8/18/91	3:13	11/17/91
1:6A	1/1/88	3:17	6/18/91
1:7	8/9/90	3:19	3/17/91
1:10	3/4/90	3:21	2/2/92
1:10A	9/16/90	3:22	5/21/89
1:10B	10/6/91	3:23	5/3/87
1:11	3/4/90	3:24	8/20/89
1:20	8/1/88	3:26	12/31/90
1:21	7/15/90	3:27	9/16/90
1:30	2/14/91	3:28	12/17/89
1:31	8/12/87	3:30	10/17/88
		3:38	9/7/87
		3:41	10/16/90

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	1/18/87
2:23	6/6/88
2:24	2/11/90
2:32	2/3/91
2:48	11/27/90
2:50	7/15/87
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

CIVIL SERVICE—TITLE 4

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	8/16/87
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
(Except for 3:6-8 which expired 4/9/85)	

N.J.A.C.	Expiration Date
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

N.J.A.C.	Expiration Date
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/87
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	1/5/92
10:140	12/31/86
10:141	2/21/89

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:9	1/20/92
10A:16	4/6/92
10A:17	12/15/91
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:10	7/15/90
11:12	10/27/91
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12:10-1	8/15/89
12A:100-1	9/8/91

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84

N.J.A.C.	Expiration Date
13:44B	5/3/87
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	9/7/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	1/27/92
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88

N.J.A.C.	Expiration Date
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	11/15/87
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
(Except for 17:19-10 which expired 3/3/85)	
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88

N.J.A.C.	Expiration Date
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	9/25/91
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

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 March 2, 1987 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(d).

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.1987 d.1 means the first rule adopted in 1987.
- 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 number and 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: FEBRUARY 17, 1987.

NEXT UPDATE WILL BE DATED MARCH 16, 1987.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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
18 N.J.R. 869 and 1018	May 5, 1986	18 N.J.R. 2235 and 2344	November 17, 1986
18 N.J.R. 1019 and 1122	May 19, 1986	18 N.J.R. 2345 and 2408	December 1, 1986
18 N.J.R. 1123 and 1222	June 2, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1223 and 1326	June 16, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1327 and 1432	July 7, 1986	19 N.J.R. 165 and 260	January 20, 1987
18 N.J.R. 1433 and 1504	July 21, 1986	19 N.J.R. 261 and 324	February 2, 1987
18 N.J.R. 1505 and 1640	August 4, 1986	19 N.J.R. 325 and 392	February 17, 1987
18 N.J.R. 1641 and 1726	August 18, 1986	19 N.J.R. 393 and 430	March 2, 1987
18 N.J.R. 1727 and 1862	September 8, 1986	19 N.J.R. 431 and 476	March 16, 1987
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 587 and 672	April 20, 1987
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 673 and 794	May 4, 1987
18 N.J.R. 2149 and 2234	November 3, 1986		

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, 1:2—1:21	Administrative hearings	18 N.J.R. 1728(a)	R.1987 d.200
1:30-1.12, 3.6, 4.1	Agency rulemaking: correction to Administrative Code		19 N.J.R. 715(a) 19 N.J.R. 777(a)

(TRANSMITTAL 25, dated December 15, 1986)

AGRICULTURE—TITLE 2			
2:22	Control of dangerously injurious insects	19 N.J.R. 479(a)	
2:32	Sire Stakes Program	19 N.J.R. 480(a)	
2:50	Milk production and supply	19 N.J.R. 433(a)	
2:69-1.11	Commercial values of fertilizers	19 N.J.R. 484(a)	
2:90-1.3	Soil erosion and sedimentation control	18 N.J.R. 2081(a)	R.1987 d.171
2:90-1.5, 1.13, 1.14	Soil erosion and sediment control	19 N.J.R. 395(a)	19 N.J.R. 513(a)

(TRANSMITTAL 1987-1, dated February 17, 1987)

BANKING—TITLE 3			
3:7-5.1	Statement of interest and bank holding companies	19 N.J.R. 327(a)	R.1987 d.192
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)	19 N.J.R. 632(a)
3:23	License fees	19 N.J.R. 485(a)	
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)	

(TRANSMITTAL 1987-1, dated February 17, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4			
4:1-27.1	Overtime rules	19 N.J.R. 327(b)	
4:2-27	Overtime rules	19 N.J.R. 327(b)	
4:6	Overtime Committee Rules	19 N.J.R. 327(b)	

(TRANSMITTAL 1987-1, dated January 20, 1987)

COMMUNITY AFFAIRS—TITLE 5			
5:14-1.1—1.4, 2.1—2.3, 3.1—3.23, 4.1—4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)	
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)	
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)	
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)	
5:23-3.18, 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)	
5:23-4.5	Uniform Construction Code enforcement: conflict of interest	19 N.J.R. 332(a)	
5:23-7.100-7.116	Barrier Free Subcode	18 N.J.R. 757(a)	Expired
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)	

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:92-6.1, 8.2	Council on Affordable Housing: municipal credits; wetlands identification	19 N.J.R. 3(a)	R.1987 d.123	19 N.J.R. 407(a)

(TRANSMITTAL 1987-2, dated February 17, 1987)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:3-2	Pupil records	19 N.J.R. 333(a)	R.1987 d.209	19 N.J.R. 749(a)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(a)	R.1987 d.185	19 N.J.R. 632(b)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(b)	R.1987 d.186	19 N.J.R. 633(a)
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)		
6:20-4	Tuition for private schools for the handicapped	19 N.J.R. 336(a)	R.1987 d.210	19 N.J.R. 751(a)
6:21-18	Inspection of vehicles used for pupil transportation	19 N.J.R. 5(a)	R.1987 d.184	19 N.J.R. 633(b)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:53	Vocational education safety standards	19 N.J.R. 485(b)		
6:68-7	Municipal branch library services	19 N.J.R. 6(a)	R.1987 d.183	19 N.J.R. 634(a)
6:68-8	Evaluation and development of library collections	19 N.J.R. 7(a)	R.1987 d.182	19 N.J.R. 635(a)
6:68-9	Maintenance of library collections	19 N.J.R. 8(a)	R.1987 d.181	19 N.J.R. 635(b)

(TRANSMITTAL 1987-2, dated February 17, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3	Interim Environmental Cleanup Responsibility Act rules	19 N.J.R. 10(a)	R.1987 d.147	19 N.J.R. 514(a)
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)		
7:1F-1, 2	Industrial Survey Project rules	19 N.J.R. 11(a)	R.1987 d.193	19 N.J.R. 637(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:6-1.26, 1.37, 3.2, 3.5, 3.10, 3.11, 3.12, 4.5, 4.7	Boating and water-skiing	19 N.J.R. 396(a)	R.1987 d.194	19 N.J.R. 637(b)
7:6-1.42	Boating rules: diving and swimming	18 N.J.R. 1712(a)	R.1987 d.125	19 N.J.R. 408(a)
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)		
7:13-7.1	Floodway delineations along East Branch of Stony Brook, South Branch of Rockaway Creek, and Whale Pond Brook	18 N.J.R. 1239(a)	R.1987 d.138	19 N.J.R. 449(a)
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)	R.1987 d.197	19 N.J.R. 639(a)
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)	R.1987 d.196	19 N.J.R. 639(c)
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(e)	Redelineation of Henderson Brook in Fair Lawn	18 N.J.R. 2169(a)	R.1987 d.195	19 N.J.R. 639(b)
7:13-7.1(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook	19 N.J.R. 169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)	R.1987 d.207	19 N.J.R. 755(a)
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)	R.1987 d.208	19 N.J.R. 766(a)
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)		
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)		
7:25-18A.4	Sale of striped bass	18 N.J.R. 2170(a)	R.1987 d.126	19 N.J.R. 408(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-7.2, 9.1, 9.3, 10.8, 11.4	Hazardous waste management: containers, landfills, existing facilities	19 N.J.R. 441(a)		
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-19.2, 19.3, 19.4, 19.6, 19.9, 19.10, 19.12	Licensure of orthopedic and urologic x-ray technologists	18 N.J.R. 2361(a)	R.1987 d.139	19 N.J.R. 449(b)
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)	R.1987 d.206	19 N.J.R. 770(a)
7:30-2.3	Pesticide Control Code: correction to Administrative Code	_____	_____	19 N.J.R. 466(b)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

HEALTH—TITLE 8

8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:21-2.41	Sale of striped bass	18 N.J.R. 2174(a)	R.1987 d.127	19 N.J.R. 409(a)
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)		
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-5.7	Lifeguard training at ocean and tidal bathing beaches	19 N.J.R. 494(a)		
8:31-26	Standards for All Health Care Facilities: administrative recodification	_____	_____	19 N.J.R. 662(c)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:31B-7	Uncompensated Care Trust Fund	19 N.J.R. 495(a)		
8:31B-7.4, 7.5	Uncompensated Care Trust Fund	Emergency (expires 5-11-87)	R.1987 d.164	19 N.J.R. 568(a)
8:33E-1	Cardiac diagnostic facilities and services	19 N.J.R. 606(a)		
8:33E-2	Cardiac surgical centers	19 N.J.R. 610(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)	Expired	
8:43E-5	Intermediate Adult and Special Psychiatric Beds: certification of need	19 N.J.R. 171(b)		
8:52-1.8	Local health educators	19 N.J.R. 398(b)		
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a), 19 N.J.R. 118(a), 216(b))	18 N.J.R. 537(a)	R.1987 d.133	19 N.J.R. 450(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c))	18 N.J.R. 1167(a)	R.1987 d.189	19 N.J.R. 640(a)
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a))	18 N.J.R. 1775(a)	R.1987 d.190	19 N.J.R. 640(b)
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products	19 N.J.R. 13(a)	R.1987 d.191	19 N.J.R. 641(a)
8:71	Interchangeable drug products	19 N.J.R. 615(a)		

(TRANSMITTAL 1987-2, dated February 17, 1987)

HIGHER EDUCATION—TITLE 9

9:1-1.4	Submission of financial statements by independent special purpose and theological institutions	18 N.J.R. 2364(a)	R.1987 d.150	19 N.J.R. 514(b)
9:1-6.1	Approval of courses-for-credit offered by out-of-state institutions	18 N.J.R. 2365(a)	R.1987 d.151	19 N.J.R. 514(c)
9:4-1.5	Community college chargeback system	19 N.J.R. 14(a)	R.1987 d.152	19 N.J.R. 515(a)
9:5-1.1	Student dependency status defined	19 N.J.R. 264(c)	R.1987 d.204	19 N.J.R. 771(a)
9:6-6	Student membership on State college board of trustees	19 N.J.R. 265(a)	R.1987 d.205	19 N.J.R. 771(b)
9:7-2.6	Student assistance programs: student dependency status defined	19 N.J.R. 176(a)	R.1987 d.169	19 N.J.R. 515(b)
9:7-3.1	Tuition Aid Grant Program: 1987-88 Award Table	19 N.J.R. 177(a)	R.1987 d.170	19 N.J.R. 516(a)
9:7-4.11	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)		
9:7-9	Congressional Teacher Scholarship Program	18 N.J.R. 2174(b)	R.1987 d.168	19 N.J.R. 516(b)
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.2	Student residency	18 N.J.R. 1777(a)	R.1987 d.135	19 N.J.R. 450(b)
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)	R.1987 d.134	19 N.J.R. 451(a)

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0:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
0:49-1.5	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
0:51-2.6, 5.18	Correction to Administrative Code			19 N.J.R. 466(d)
0:56-3	HCPCS codes for dental services	19 N.J.R. 15(b)	R.1987 d.166	19 N.J.R. 519(a)
0:60-2.2, 2.3, 3.1	Personal care assistant services	18 N.J.R. 2365(b)	R.1987 d.179	19 N.J.R. 643(b)
0:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
0:63-1.14	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
0:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
0:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
0:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)	Expired	
0:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)		
0:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
0:81-3.18	PAM: exemption from WIN registration	18 N.J.R. 2301(a)	R.1987 d.132	19 N.J.R. 451(b)
0:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)	R.1987 d.175	19 N.J.R. 644(a)
0:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)		
0:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)		
0:81-7.29	Retroactive funeral payments	18 N.J.R. 2176(a)	R.1987 d.136	19 N.J.R. 452(a)
0:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)		
0:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)		
0:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
0:82-1.2, 2.13, 5.11	AFDC payment levels	19 N.J.R. 500(a)		
0:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
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0:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
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0:85-5.3	GAM: payment of medical insurance premiums	19 N.J.R. 33(a)	R.1987 d.176	19 N.J.R. 646(a)

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10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-2.3, 2.6, 2.19, 3.13—3.21	Food Stamp Program: employment and training requirements	Emergency (expires 6-2-87)	R.1987 d.202	19 N.J.R. 649(a)
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10:100-3.6	Submission of cemetery petition by funeral directors	19 N.J.R. 345(a)		
10:100-3.10	Retroactive funeral payments	18 N.J.R. 2176(a)	R.1987 d.136	19 N.J.R. 452(a)
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10A:16	Medical and health services	18 N.J.R. 1662(a)	R.1987 d.160	19 N.J.R. 535(a)
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)		
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)		
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(TRANSMITTAL 1987-2, dated February 17, 1987)

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(TRANSMITTAL 1987-1, dated February 17, 1987)

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(TRANSMITTAL 1987-1, dated February 17, 1987)

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(TRANSMITTAL 1987-2, dated February 17, 1987)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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(TRANSMITTAL 39, dated December 15, 1986)

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U.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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(TRANSMITTAL 1987-1, dated February 17, 1987)

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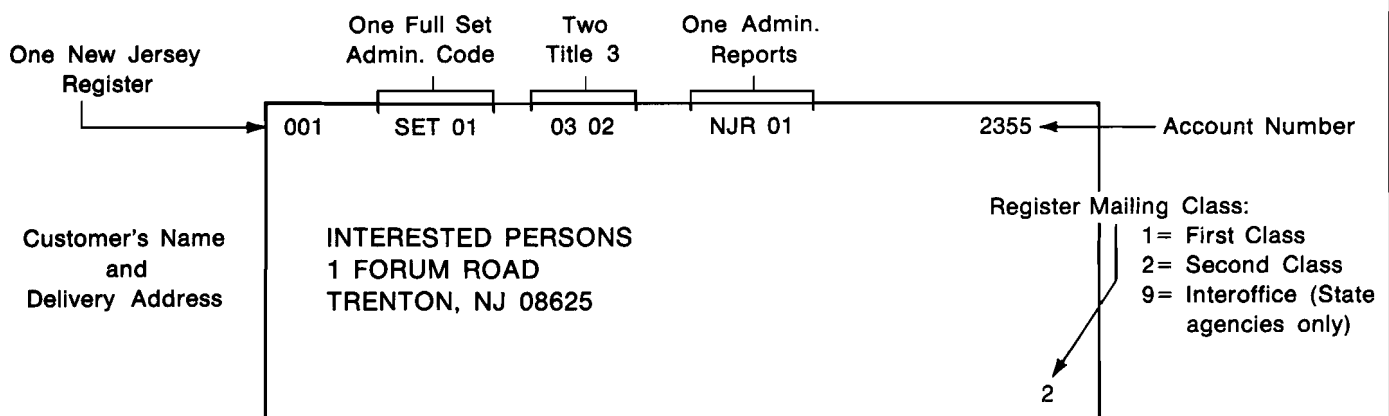
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